Notes

Special Protection Is Not the Solution to Save Domestic Steel: A Critique of the Bush Steel Initiative

Matthew J.S. Graham*

INTRODUCTION

The U.S. steel industry is in crisis.[1] Global gluts of steel and low prices have driven many domestic steel companies into bankruptcy.[2] The steel industry has sought protection from foreign competition in order to return itself to profitability.[3] President Bush has obliged and is pursuing a three-part Steel Initiative.[4] The initiative consists of entering into voluntary export restraint agreements with steel producing countries, negotiating the end of steel subsidies worldwide, and placing tariffs on certain steel imports pursuant to an International Trade Commission (ITC) Section 201[5] investigation.[6]

---

* J.D. Candidate, 2003, University of Minnesota Law School; B.S., 2000, University of North Dakota.

1. Robert Guy Matthews, *Man of Steel: Bush Shows His Mettle*, WALL ST. J., July 2, 2001, at A1.

2. Robert Guy Matthews, *U.S. Steel Mills Lift Key Domestic Prices*, WALL ST. J., Jan. 10, 2002, at A2.

3. Barry D. Solarz, *US Steel Industry: What the Future Holds*, *at* http://www.econstrat.org/bsolarz.htm (May 24, 2001).

4. *Bush Statement on Steel Negotiations, Import Investigation*, *at* http://usinfo.state.gov/topical/econ/group8/summit01/01060501.htm (June 5, 2001).

5. The ITC is an "independent, nonpartisan, quasi-judicial federal agency that provides trade expertise to both the legislative and executive branches of government, determines the impact of imports on United States industries, and directs actions against certain unfair trade practices." U.S. INT'L TRADE COMM'N, ABOUT THE USITC, *at* http://usitc.gov/webabout.htm (last visited Oct. 6, 2001). Section 201 refers to the safeguard provision of the Trade Act of 1974. *See* JOHN H. JACKSON ET AL., INTERNATIONAL ECONOMIC RELATIONS 597 (3d ed. 1995). The ITC's objective in a Section 201 investigation is to determine whether "an article is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States industry producing an article like or directly competitive with the imported article." 19 U.S.C. § 2251 (2000).

This Note seeks to understand President Bush's Steel Initiative and how it can be reconciled with a commitment to free trade. In a broader sense, this Note examines whether the domestic steel industry is deserving of any form of special protection. Part I briefly describes the current state of the steel industry, prior attempts to shield it from foreign competition, and President Bush's Steel Initiative. Part II analyzes President Bush's proposal under free trade principles. Section II.A. considers and rejects common arguments that an exception to free trade principles should be made for the steel industry. Section II.B. critiques the President's Steel Initiative. Next, Section II.C. proposes a course of action the President should follow. This Note concludes that the domestic steel industry should not be given special protection at the expense of U.S. consumers in the form of voluntary export restraint agreements or tariffs and that President Bush should rescind the tariffs he enacted and proceed to negotiate an end to steel subsidies with steel producing countries worldwide.

I. THE STATE OF THE DOMESTIC STEEL INDUSTRY AND PRESIDENT BUSH'S STEEL INITIATIVE

A. THE DOMESTIC STEEL INDUSTRY

The domestic steel industry is struggling.[7] More than half of domestic steel companies have filed for bankruptcy within the last four years.[8] Thousands of steel workers have lost their jobs.[9] Utilization of domestic steel capacity has been approximately seventy-five percent,[10] a rate too low for many companies to be profitable.[11] Each year, approximately twenty percent of

6. *Bush Statement on Steel Negotiations, Import Investigation, supra* note 4.

7. Matthews, *supra* note 1.

8. Matthews, *supra* note 2.

9. Thomas J. Usher, *The Steel Industry Is Hurting, But It Can be Saved*, WALL ST. J., Jan. 29, 2002, at A20.

10. Robert Guy Matthews, *Steelmakers Say They Are a Key Component of Security*, WALL ST. J., Sept. 19, 2001, at B4.

11. *Id.* High capacity utilization is very important to achieve profitability in the steel industry. INT'L TRADE ADMIN., U.S. DEP'T OF COMMERCE: REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE: STRUCTURAL PROBLEMS AND FUTURE SOLUTIONS 14 (July 2000), *available at* www.ita.doc.gov/media/steelreport726.html [hereinafter *The Report*]. Many of the major costs associated with the operation of a steel mill are fixed. *Id.* These costs include large capital investments to construct the mill and depreciation costs. *Id.* In addition, labor costs can be considered a fixed cost in this

domestic demand is supplied through imports.[12] One reason that foreign firms can undercut domestic firms on price[13] is their lower labor costs.[14] Also detrimental to the domestic steel industry is that the world's steel makers have recently produced approximately ten percent more steel than consumers demand.[15] This situation has sent domestic steel prices to twenty-year lows.[16]

These industry dilemmas come at a time when the steel industry should be booming.[17] There has been a long period of U.S. economic expansion, soaring steel demand, and high price levels.[18] Since 1980, the industry has modernized and undergone significant restructuring.[19] The industry has reduced employment by two-thirds, while nearly tripling labor productiv-

---

industry because of labor contracts that emphasize job security. *Id.* Moreover, once a mill is shut down, it is very expensive to restart production. *Id.* These factors require steel makers to run at a high capacity to maintain profitability and encourage them to keep producing even when there is low demand. *Id.*

12. Robert Guy Matthews, *Trade Panel Rules for U.S. Steelmakers*, WALL ST. J., Oct. 23, 2001, at A2. The United States imported 28.3 million tons of steel in 1997. *EU/US: Bush Threatens Steel Import Barriers*, 6/9/01 EUR. REP. 508, *available at* 2001 WL 26057542 (June 9, 2001). This number rose by ten million tons in 1998 during the Asian economic crisis before falling back to thirty-four million tons in 2000. *Id.* Preliminary 2001 reports indicate a significant downturn in steel import levels. *Id.*

13. The domestic industry argues that foreign firms beat them on prices because their governments subsidize them. Robert Guy Matthews, *U.S Steel Industry Itself Gets Billions in Public Subsidies, Study Concludes*, WALL ST. J., Nov. 29, 1999, at B12. However, the domestic industry itself has also received substantial support from public subsidies. *Id.*

14. *See* JACKSON, *supra* note 5, at 1196. Workers in the steel industry are paid much more than their counterparts in manufacturing in that steel wages rose to 175 percent of average manufacturing wages in 1981. *See id.* From an efficiency standpoint, countries with low labor costs should produce goods that require labor. *See id.* at 18. The law of comparative cost advantage posits that if a country has low labor costs, that country should specialize in the production of labor intensive goods, and their trading partners should specialize in goods that require more capital, skilled labor, or technology. *See id.* Encouraging countries to produce products for which they do not have a low comparative cost causes inefficiency. *See id.*

15. Matthews, *supra* note 12. More steel is produced than is demanded in part because the high fixed costs of production discourage steel makers from reducing output. *See supra* note 11 and accompanying text. Another reason production stays above demand is that there are many noncompetitive practices in the world steel industry. *See The Report*, *supra* note 11, at 4. The noncompetitive practices distort the market and lead to production decisions different from those that would be made in a competitive market. *Id.* In a competitive market, production would eventually fall to the level demanded. *Id.*

16. Matthews, *supra* note 12.

17. Solarz, *supra* note 3.

18. *EU/US: Bush Threatens Steel Import Barriers*, *supra* note 12, at 508.

19. *The Report*, *supra* note 11, at 6-7.

ity.[20] At the same time, the industry has received billions of dollars in subsidies from local, state, and federal governments.[21] In fact, steel imports into the United States have been under some form of restraint for the last twenty five years.[22]

The industry subsidy most costly to the U.S. public was a Voluntary Export Restraint (VER) agreement negotiated by President Reagan. In 1984, the steel industry petitioned the ITC for relief from imports under Section 201 of the Trade Act of 1974.[23] The ITC recommended quotas, but President Reagan instead entered into a VER agreement with countries exporting significant amounts of steel into the United States.[24] These import restraint agreements reduced the import share of the U.S. steel supply.[25] It has been estimated that the Reagan steel VER increased the price of imported steel by thirty percent and increased the price of domestic steel by twelve percent.[26] The VER cost U.S. consumers between $1.1 billion and $6.8 billion.[27] Some of this cost was extra profit to foreign steel producers because the reduced quantity of steel they were allowed to sell in the United States was more than offset by the higher prices they could charge.[28]

---

20. Solarz, *supra* note 3.

21. *See* Matthews, *supra* note 13. One subsidy from the federal government, The Emergency Steel and Oil and Gas Guaranteed Loan Program Act, provides guaranteed loans to steel companies unable to obtain credit from other sources. *See id.* This program was estimated to cost up to $1 billion in loan guarantees. *See id.* Further, in 1974, at a cost of $2 billion, the federal government paid the pensions of retirees from steel companies unable to pay the benefits themselves. *See id.*

22. *See* JACKSON, *supra* note 5, at 1195. Japan and the European Union limited exports to the United States under voluntary export restraint agreements from 1969 to 1974. *See id.* In 1978, a "trigger price mechanism" was implemented as a substitute for the antidumping petitions filed by the domestic steel industry. *See id.* An antidumping petition is a unilateral response to alleged unfair trade actions. *See id.* at 666. These petitions are allowed under international trade rules. *See id.* This plan allowed the United States government to file for expedited antidumping proceedings if the steel imports fell below the trigger price. *See id.* at 1195. The mechanism stayed in place only as long as the domestic steel industry did not file a significant amount of antidumping petitions itself. *See id.* In 1982, the industry did file a significant number of petitions and the mechanism was eliminated. *See id.* During this time, as a result of one of the petitions, the European Union agreed to limit steel exports to the United States. *See id.*

23. *See supra* note 5 for an explanation of a Section 201 investigation.

24. *See* JACKSON, *supra* note 5, at 1196.

25. *See id.*

26. Robert W. McGee, *An Economic Analysis of Protectionism in the United States With Implications for International Trade in Europe*, 26 GEO. WASH. J. INT'L L. & ECON. 539, 555 (1993).

27. *Id.*

28. *Id.* at 556.

The Reagan Steel VER also cost many U.S. citizens their jobs.[29] Although it was estimated that 16,900 jobs were saved in the steel industry, approximately 52,400 jobs were eliminated in industries that used steel.[30] Other estimates concluded that the VER destroyed 170,825 more jobs than it created.[31] It has been estimated that each job saved in the steel industry cost $750,000.[32] The voluntary restraints ended in 1992.[33] Nonetheless, this unprecedented support for the steel industry has remained intact while the world has moved towards free trade policies and away from protectionist support for other industries.[34]

There are many explanations why the steel industry has received special protection while other industries are forced to compete in a free trade environment. The first and most cynical reason is politics.[35] The steel industry is centralized in important swing states, such as West Virginia and Pennsylvania.[36] National government officials might be willing to help the industry in a quid pro quo for reelection.[37] Another explanation is that the government may also be protecting the steel industry in an attempt to save domestic jobs or increase wages.[38] In addition, some argue that the steel industry should be protected because they believe that having a strong steel industry is essential to our national defense.[39] Others believe that the industry

29. *Id.* at 558.
30. *Id.*
31. *Id.*
32. McGee, *supra* note 26, at 559.
33. *See* JACKSON, *supra* note 5, at 1196.
34. *See id.* at 202.
35. Virginia Postrel, *Why Bush Stiffed Enron*, WALL ST. J., Jan. 25, 2002, at A18.
36. *Id.*
37. *Id.*
38. *See* JACKSON, *supra* note 5, at 18 (refuting the common argument that interference in free trade is necessary to protect high paid workers from competition from low paid workers); PAUL A. SAMUELSON, ECONOMICS 696 (9th ed. 1973) (explaining that it is advantageous for trading partners if a country with low labor costs produces goods that require a large amount of labor); McGee, *supra* note 26, at 545 (noting that while protecting labor is a common argument for protectionism, the evidence suggests that protectionism costs more jobs than it saves); Alan O. Sykes, *Countervailing Duty Law: An Economic Perspective*, 89 COLUM. L. REV. 199, 211-12 (1989) (indicating that although workers who compete with subsidized foreign imports may be harmed, helping them with unemployment benefits is more efficient than protecting them with protectionist policies).
39. *See* JACKSON, *supra* note 5, at 18-19 (stating that although many industries argue they are necessary for national defense, they will not likely disappear if not protected by the government); SAMUELSON, *supra* note 38, at 693-94 (stating that

will return to profitability if it is given a temporary break from foreign competition.[40]

The domestic steel industry is looking overseas for an explanation of their current woes.[41] It blames "massive worldwide steel overcapacity . . . in many cases funded by governments through a variety of subsidies, closed markets, cartels, and other private anticompetitive behavior."[42] The industry is asking for a sustained period of steel import stability as a solution to its problems.[43] Steel imports would be discouraged under the plan sought by domestic steel producers.[44] This would give the industry time to restructure itself without fear of lower prices from foreign competitors.[45] The domestic steel industry has lobbied the President for relief to get the leave of absence from foreign competition it desires.[46]

B. THE PRESIDENT'S STEEL INITIATIVE

President Bush has responded to the steel lobby[47] by proposing an initiative to bail out the domestic steel industry.[48] The initiative was "designed to restore market forces to world steel

beneficial international trade decreases the chances of war); U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY 292 (Robert M. Stern ed., 1987) (arguing that erecting trade barriers can depress national economies and lead to a greater likelihood of war); AM. INST. FOR INT'L STEEL, INC., AIIS PRESIDENT DAVID PHELPS URGES PROPONENTS OF FREE TRADE IN STEEL TO TAKE ACTION, *at* http://www.aiis.org/release/?file=release79.htm (Oct. 1, 2001) (arguing that the United States will be able to meet its steel needs in times of war without resorting to protectionist policies).

40. *See* JACKSON, *supra* note 5, at 1196 (noting that the steel industry has been given help before and has not used the opportunity to return to profitability); McGee, *supra* note 26, at 549 (giving an industry temporary breathing room usually does not work in practice); Matthews, *supra* note 12 (reporting that domestic steel producers desire a temporary break from foreign competition in order to return to profitability).

41. Solarz, *supra* note 3.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. The domestic steel industry has a very strong lobby. David Wessel, *Big Steel Still Enjoys Outsized Clout on Trade*, WALL ST. J., Dec. 6, 2001, at A1. This is because the domestic steel industry has a lot to gain by lobbying for trade restraints that raise prices, while no individual consumer has much of an interest in opposing them. *Id.* Another big factor is that most of the steel industry is in swing vote states, such as West Virginia, Pennsylvania, and Ohio, that are considered essential for President Bush to win reelection. *Id.*

48. *Bush Statement on Steel Negotiations, Import Investigation*, *supra* note 4.

markets and eliminate the practices that harm our steel industry and its workers."[49] The initiative consists of three steps.[50] First, the President directed the U.S. Trade Representative to enter into negotiations with U.S. trading partners in order to reduce worldwide excess steel capacity,[51] which would constitute a VER.[52] Second, the President asked the U.S. Trade Representative to enter into negotiations with steel producing nations to promulgate rules that will govern the steel trade and eliminate the underlying market-distorting subsidies.[53] Third, the President initiated an ITC Section 201 Investigation to determine if the domestic steel industry has been harmed by steel imports.[54]

The President's plan to protect the domestic steel industry from foreign competition is starting to take shape.[55] President Bush completed the first step of his Steel Initiative by entering into a VER agreement with countries that export steel to the United States.[56] Most of the world's steel exporters agreed to cut a total of 97.5 million tons of steel capacity[57] by 2010.[58]

---

49. *Id.*

50. *Id.*

51. *Id.* This part of President Bush's plan is similar to President Clinton's 1993 effort to return the domestic aluminum industry to profitability. David Givins, *Stealing an Idea From Aluminum, at* http://www.dismal.com/thoughts/article.asp?aid=1300 (July 24, 2001). To achieve that end, the United States brokered a worldwide aluminum cartel to raise prices and save the domestic producers. *Id.* This pact was between the United States, European Union, Norway, Australia, Russia, and Canada. Matthews, *supra* note 1. It was estimated that fewer than 5,000 jobs were saved by the production quotas, at a cost of close to $500,000 per job. C. Fred Bergsten, *Aluminum Tests Clinton's Mettle*, WALL ST. J., Jan. 12, 1994, at A10. Although some countries exceeded their quota limits, the aluminum production agreement was successful in raising prices and returning the U.S. aluminum industry to profitability. *See* Givins, *supra.* Prices jumped as much as thirty-five percent. Matthews, *supra* note 1. The agreement dissolved as world demand rose to support capacity. *See* Givins, *supra.* Although the industry is now profitable, some have questioned whether the benefits outweigh the costs. *See* Bergsten, *supra.*

52. *See* JACKSON, *supra* note 5, at 597.

53. *Bush Statement on Steel Negotiations, Import Investigation, supra* note 4.

54. *Id; see also supra* note 5 and accompanying text (explaining the ITC and Section 201 investigation).

55. Robert Guy Matthews, *Steelmakers Set Pact to Reduce World Capacity*, WALL ST. J., Dec. 19, 2001, at A3.

56. *Id; see also supra* notes 51-52 and accompanying text.

57. Since the agreement is to cut capacity and not production, countries, such as Japan, that planned to produce under what the capacity cuts will allow will not be affected. Matthews, *supra* note 55.

58. *Id.* This is half as much as President Bush wanted, but is still significant. *Id.* President Bush wanted to cut capacity by 200 million tons and achieve those cuts on a faster time frame than that which was agreed upon. *Id.* The long time frame is also a concern because government officials in signatory countries are likely to change and may be less willing to strictly enforce an agreement they did not

Although the President has stated that his initiative will comply with WTO obligations, [59] the VER agreement may be a violation of U.S. commitments to the General Agreement on Tariffs and Trade (GATT). VERs were brought into the purview of GATT[60] during the Uruguay Round.[61] The Uruguay Round Agreement on Safeguards[62] requires that virtually all VERs be eliminated.[63]

Progress is also being made on the third part of the President's steel initiative. On June 22, 2001, the U.S. Trade Representative formally requested the U.S. ITC to conduct a Section 201 investigation under the Trade Act of 1974.[64] The ITC's objective in a Section 201 investigation is to determine whether "an article is being imported into the United States in such increased quantities as to be a substantial cause[65] of serious injury,[66] or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article."[67]

On October 22, 2001, the ITC reached an affirmative deci-

---

make. *Id.* In addition, some of the countries agreed because they hoped to avoid even more protectionist measures, which President Bush is still pursuing. *Id.* President Bush used the threat of closing off U.S. markets to persuade countries to agree to the VER. Matthews, *supra* note 12.

59. *Bush Statement on Steel Negotiations, Import Investigation*, *supra* note 4.

60. *See infra* notes 96-97.

61. *See* JACKSON, *supra* note 5, at 597. A VER is also called a "gray area measure," because it was unclear whether they were subject to GATT before the Uruguay Round. *See id.* It was thought that reliance on a VER undermines the safeguard provision, Article XIX, of GATT. *See id.* Now that VERs are prohibited, it is expected there will be an increased reliance on Article XIX. *See id.; see also infra* note 96 (describing the WTO).

62. *See infra* note 96.

63. *See* JACKSON, *supra* note 5, at 597. The agreement stipulates that a "member shall not seek, take, or maintain any voluntary export restraints. . .or any other similar measures on the import side." *Id.* at 609 (quoting GATT Focus Newsletter, Dec. 1993, at 11).

64. U.S. DEP'T OF STATE, U.S. TRADE REPRESENTATIVE ZOELLICK REQUESTS COMPREHENSIVE STEEL INVESTIGATION, *at* http://usinfo.state.gov/topical/econ/group8/summit01/01062502.htm (June 22, 2001); *see supra* note 5 and accompanying text (explaining Section 201). The ITC must submit a report of its investigation within 180 days of the President's request. 19 U.S.C. § 2252(f)(1) (2000).

65. Substantial cause means "a cause which is important and not less than any other cause." 19 U.S.C. § 2252(b)(1)(B).

66. Serious injury means a "significant overall impairment in the position of a domestic industry." 19 U.S.C. § 2252(c)(6)(C).

67. *Id.* § 2252(b)(1)(A). The threshold issue is whether imports of the competitive merchandise have increased. Kevin C. Kennedy, *Presidential Authority Under Section 337, Section 301, and the Escape Clause: The Case for Less Discretion*, 20 CORNELL INT'L L.J. 127, 136 (1987).

sion that steel products[68] are "being imported into the United States in such increased quantities that they are a substantial cause of serious injury or threat of serious injury to the U.S. industry."[69] The ITC further recommended that President Bush adopt tariffs and quotas on imported steel to protect the domestic industry.[70] The ITC recommended additional tariffs[71] ranging from five to forty percent on sixteen key steel products for four years.[72]

Pursuant to the Trade Act of 1974, the President makes the

---

68. The ITC divided steel products into thirty-three product categories and made a specific finding for each category. U.S. INT'L TRADE COMM'N, ITC DETAILS ITS DETERMINATIONS CONCERNING IMPACT OF STEEL ON U.S. INDUSTRY, *at* http://www.usitc.gov (Oct. 23, 2001). The ITC made an affirmative finding of harm for the following steel products: carbon slabs, carbon plate, hot-rolled, cold-rolled, coated, hot bar/light shapes, cold bar, rebar, welded, carbon flanges, bar/light shapes, and rod. *Id.* The ITC had a tie vote on a finding of harm for the following steel products: tin, tool steel, wire, and stainless flanges. *Id.* In the case of a tie, the ITC will proceed to a remedy phase with respect to those products. *Id.* The President may consider either decision as the determination of the ITC. *Id.* The ITC found that imports of the following products had not harmed the domestic industry: GOES, ingots, rails, wire, strand, nails, heavy shapes, fabricated units, seamless OCTG, stainless slabs, stainless plate, cloth, rope, stainless pipe, and welded pipe. *Id.*

69. U.S. INT'L TRADE COMM'N, *supra* note 68.

70. Robert Guy Matthews, *Commission Recommends Steel Tariffs*, WALL ST. J., Dec. 10, 2001, at B6. The Commission may recommend an increase in duty, imposition of a quota, trade adjustment assistance, or any combination of such actions. 19 U.S.C. § 2252(e)(2) (2000). The ITC may also recommend that the President enter into negotiations with trading partners to find and eliminate the cause of the increased imports. *Id.* § 2252 (e)(4)(A).

71. A tariff will usually raise the price a consumer must pay for a good. *See* JACKSON, *supra* note 5, at 16. This is because the tariff acts as an artificial cost to the foreign producer. *See id.* In addition, domestic manufacturers will often raise the price of their goods because they no longer have to compete against the foreign producer. *See id.* Tariffs and other like measures have been estimated to raise the cost of imported goods in the United States by twenty percent and raise the price of similar domestic goods by ten to fourteen percent. McGee, *supra* note 26, at 553. The government will also get revenue from the tariff. *See* JACKSON, *supra* note 5, at 16. Therefore, domestic producers "gain" from tariffs because of higher sale prices, and the government "gains" in the form of higher revenues. *See id.* The foreign producers "lose" from tariffs because they have to overcome artificial costs to be competitive, and domestic consumers "lose" because they have to pay higher prices. *See id.* The sum of these gains and losses will be negative, indicating a real economic loss. McGee, *supra* note 26, at 553. However, tariffs are a preferred method of protectionism compared with VERs because the importing nation's government will get added revenue instead of foreign firms getting added profits. *See* JACKSON, *supra* note 5, at 17.

72. Matthews, *supra* note 70; *see also* U.S. INT'L TRADE COMM'N, INVESTIGATION NO. TA-201-73, VOLUME I: DETERMINATIONS AND VIEWS OF COMMISSIONERS, at 2, *available at* www.usitc.gov (Dec. 2001).

final decision on what type of relief,[73] if any, will be granted.[74] This Act[75] provides that "the President. . .shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition[76] and provide greater economic and social benefits than cost."[77]

On March 5, 2002, President Bush signed a proclamation enacting tariffs up to thirty percent on certain steel products.[78] The tariffs will last approximately three years.[79] The President exempted Canada, Israel, Jordan, and Mexico from the tariffs.[80] The Proclamation gives President Bush the power to reduce, modify, or terminate the tariffs.[81] In addition, the President may grant exclusions to certain producers.[82] As a result of the tariffs, supply is shrinking and steel prices are already starting to rise.[83]

---

73. The President may "proclaim an increase in, or the imposition of, any duty on the imported article; proclaim a tariff-rate quota on the article. . .; negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such an article. . .; [and] initiate international negotiations to address the underlying cause of the increase in imports. . . ." 19 U.S.C. § 2253(a)(3) (2000).

74. *Id.* § 2253(a)(1)(A). The President is to take into account several factors in deciding what relief to provide. *Id.* § 2253(a)(2). These include: "the recommendation and report of the Commission; the extent to which workers and firms in the domestic industry are benefiting from adjustment assistance. . .; the efforts being made, or to be implemented, by the domestic industry. . .to make a positive adjustment to import competition; the probable effectiveness of the actions. . .; the short- and long-term economic and social costs of the actions. . .relative to their short- and long-term economic and social benefits. . .; [and] the national security interests of the United States. . . ." *Id.*

75. *See supra* note 5 and accompanying text.

76. A positive adjustment to import competition occurs when the domestic industry is able to compete successfully with imports after actions taken terminate, or the domestic industry experiences an orderly transfer of resources to other productive pursuits, and dislocated workers in the industry experience an orderly transition to productive pursuits. 19 U.S.C. § 2251(b)(1) (2000).

77. *Id.* § 2251(a).

78. Robert Guy Matthews, *U.S. Steelmakers Increase Prices as Supply Tightens*, WALL ST. J., Mar. 27, 2002, at A2; *see Steel Products Proclamation, at* www.whitehouse.gov (Mar. 5, 2002).

79. *Steel Products Proclamation, supra* note 78.

80. *Id.*

81. *Id.* The Proclamation provides, "If I determine that further action is appropriate and feasible to facilitate efforts by the pertinent domestic industry to make a positive adjustment to import competition and to provide greater economic and social benefits than costs. . .I shall reduce, modify, or terminate the action established in this proclamation accordingly." *Id.*

82. *Id.*

83. Robert Guy Matthews, *Foreign Steelmakers Increase Prices*, WALL ST. J.,

This initiative is strongly opposed by domestic industries that use steel.[84] These industries include metal fabrication, transportation, industrial machinery, and construction.[85] Combined, these industries employ many more workers than the steel industry.[86] Representatives of these industries argue that low prices caused by steel imports improve the profitability of their companies[87] and paying more for steel will make them uncompetitive in the world market.[88] They also argue that jobs in steel consuming industries will be lost if the steel industry is relieved from foreign competition.[89]

Many countries and organizations that sell steel in the United States could also be affected by President Bush's steel initiative.[90] Trading partners are concerned because international trade increases the wealth of trading partners.[91] The American Institute for International Steel (AIIS),[92] the United

---

May 10, 2002, at A2.

84. *Steel Bailout Idea Draws Foes Among Longshoremen, Big Ports, Farmers*, WALL ST. J., Feb. 1, 2002, at A1.

85. *The Report*, *supra* note 11, at 12.

86. *Id.*

87. *Id.*

88. Robert Guy Matthews, *EU Plan on Steel Imports Gets Bush Veto*, Feb. 8, 2002, WALL ST. J., at A2.

89. *Id.*

90. *EU/US: Bush Threatens Steel Import Barriers*, *supra* note 12, at 508. These countries include Japan, Brazil, South Korea, Mexico, China, Indonesia, Ukraine, India, South Africa, and Australia. *Id.* The world's largest steel producer, the European Union, will also be affected. *Id.*

91. *See* JACKSON, *supra* note 5, at 597. The President's proposals would interfere with free trade and are, therefore, undesirable from an economic perspective. *See* SAMUELSON, *supra* note 38, at 692. Free trade "promotes a mutually profitable regional division of labor, greatly enhances the potential real national product of all nations, and makes possible higher standards of living all over the globe." *Id.* One argument against restraints on trade is that they cause inefficiency. *See* JACKSON, *supra* note 5, at 16. There are many forms of economic waste that arise from protectionist measures, such as allocative inefficiencies and rent-seeking behavior. *See id.* There will be allocative inefficiencies because domestic producers will divert resources to make the protected product that would have been allocated to another product if not for the tariff. *See id.* There will be waste when domestic industries spend resources lobbying the government for protection and foreign industries spend to defeat proposed protectionist measures. *See id.* at 17. These "rent seeking" costs may be significant. *See id.* In addition, some consumers will be "priced out" of the market by the higher prices the protectionist measures promulgate. *See id.* at 16.

92. AM. INST. FOR INT'L STEEL, INC., AIIS: BUSH ADMINISTRATION'S STEEL PLAN WILL ONLY SUCCEED IF SOLUTIONS ARE MARKET-BASED AND ELIMINATE U.S. NON-ECONOMIC STEELMAKING CAPACITY, *at* http://www.aiis.org/release/?file=release71.htm (June 6, 2001). AIIS is a trade association "committed to economic growth through competition in steel trade." *Id.* The AIIS applauds the President's plan to eliminate inefficient steel capacity and subsidies, but vehemently opposes any addi-

Kingdom Steel Association (UKSA), and the European Commission have strongly criticized the President's proposals.[93] The position of the UKSA is that "it is clear the 'injury' being suffered by some segments of the U.S. steel industry is as a result of their inefficiency and failure to restructure and consolidate over the past decades."[94] The international community has mobilized against the tariffs.[95] A coalition of ten countries led by the European Union, has petitioned the World Trade Organization (WTO)[96] to determine whether the President's actions were consistent with WTO obligations.[97] The WTO is expected to rule on the petition in 2003.[98]

II. SPECIAL PROTECTION FOR THE STEEL INDUSTRY IS NOT WARRANTED AND PRESIDENT BUSH SHOULD ONLY PURSUE HIS PLAN TO NEGOTIATE AN END TO GLOBAL PROTECTIONIST PRACTICES

A. COMMON ARGUMENTS FOR STEEL INDUSTRY PROTECTION DO NOT JUSTIFY A DEPARTURE FROM FREE TRADE PRINCIPLES

The initial question of whether the domestic steel industry

---

tional protection for the United States steel industry. *Id.*

93. U.K. STEEL ASS'N, UK STEEL INDUSTRY DEPLORES BUSH MOVE ON STEEL, *at* http://www.uksteel.org.uk/nw73.htm (June 6, 2001).

94. *Id.*

95. Geoff Winestock, *EU Delay on Steel-Tariff Reprisal May Boost Cooperation with U.S.*, WALL ST. J., July 22, 2002, at A2.

96. The WTO is a global trade governance body that was created in the Uruguay Round of trade negotiations in 1994. *See* JACKSON, *supra* note 5, at 289. It was established to replace GATT, which had been the primary international trade treaty since 1947. *See id.* The Uruguay Round was the eighth major trade negotiation session in the history of GATT. *See id.* at 147.

97. Winestock, *supra* note 95. If a member country claims another has acted inconsistently with WTO treaty obligations a panel is convened that hears both sides' arguments before making a determination. *See* JACKSON, *supra* note 5, at 327. A safeguard provides an industry temporary protection from imports that are fairly traded. *See id.* at 596. Safeguard provisions are authorized and governed by Article XIX of GATT. *Id.* Article XIX allows a country to temporarily rescind its responsibilities under the GATT when imports are found to be a substantial cause of serious injury. *See id.* at 596-97. This is also called an "escape clause," because it allows member nations to "escape" their GATT commitments. Alan O. Sykes, *Protectionism as a "Safeguard": A Positive Analysis of the GATT "Escape Clause" with Normative Speculations*, 58 U. CHI. L. REV. 255, 256 (1991). Safeguards are designed to protect industries that cannot compete in the international markets. *See* JACKSON, *supra* note 5, at 598.

98. Winestock, *supra* note 95.

deserves any form of special protection should be explored before analyzing President Bush's steel initiative as a potential solution to the steel industry's problems. Given the U.S. commitment to free trade principles,[99] the burden should be on those seeking protectionist measures to justify a departure from these principles. Many common arguments for trade restrictions, regardless of the form the protection takes, can be applied, some with special force, to the domestic steel industry.[100] These include preventing job losses and wage decreases, protecting industries deemed essential to our national defense, and giving a troubled industry "breathing room" to return to profitability.[101] Unfortunately, each of these arguments provides insufficient justification for protecting the domestic steel industry from international competition.

1. Protecting Labor

One common argument is that since restraints protect the domestic industry, more jobs are saved or created in the protected industry.[102] Jobs may be created or saved in the protected industry, however, there are also significant costs.[103] It has been estimated that President Reagan's 1984 Steel VER saved 16,900 jobs in the steel industry, but destroyed 52,400 jobs in industries that use steel;[104] the VER, therefore, gives steelworkers preferential treatment over workers in other industries.[105] Industries that use steel oppose the President's plan for this reason.[106] They worry that higher steel prices caused by import restrictions will cause them to be uncompetitive in the world market and force them to reduce employment.[107] It makes little sense to destroy more domestic jobs than would be saved in the name of helping U.S. workers.[108]

Another common argument is that artificial restraints on trade are needed to protect laborers in a developed nation from

99. *See supra* note 91 and accompanying text.
100. *See supra* notes 35-40 and accompanying text.
101. *See supra* notes 35-40 and accompanying text.
102. *See supra* note 38 and accompanying text.
103. McGee, *supra* note 26, at 545.
104. *See supra* note 30 and accompanying text.
105. One explanation why they are given special treatment is because domestic steel has a particularly strong lobby. Wessel, *supra* note 47. However, this does not answer whether they deserve this preferential treatment.
106. *See supra* notes 84-89 and accompanying text.
107. *See supra* notes 84-89 and accompanying text.
108. *See supra* note 30 and accompanying text.

competition from low wage "pauper labor" in developing countries.[109] However, this argument ignores the reality of comparative cost advantages.[110] If a country has low labor costs, that country should specialize in the production of labor intensive goods, while their trading partners should specialize in goods that require more capital, skilled labor, or technology.[111] This principle explains why workers in Europe and Asia beg their own governments for protection from "high-paid, efficient U.S. workers."[112] Workers in the United States have high wages because they are more efficient than workers from unindustrialized countries, not because of tariff protection.[113]

Domestic steel workers may see heightened unemployment if the protectionist measures are not enacted.[114] The competition from imports, especially if they are subsidized, may lead to economic hardships for workers and their families.[115] However, the hardships suffered at the hands of imports, even if subsidized, are no different than hardships suffered by other forms of competition.[116] Therefore, the displaced workers should only be entitled to the protection that all displaced workers get, such as unemployment benefits.[117] Protection is simply an inefficient way to alleviate the distributional effects of increased competition.[118] At a cost of approximately $750,000 per domestic steel job saved,[119] there are better, more efficient ways to help displaced workers.[120] Between the two possible options of industry protection and unemployment benefits, unemployment benefits are more favorable from an efficiency viewpoint because they are more targeted to the problem of alleviating distributional effects on unemployed steel workers.[121] Therefore, protecting U.S. workers cannot be used as a justification for a departure from a commitment to free trade to protect the domestic steel industry from foreign competition.

109. *See* JACKSON, *supra* note 5, at 18.
110. *Id.*
111. *Id.*
112. *See* SAMUELSON, *supra* note 39, at 696.
113. *Id.* at 697.
114. Sykes, *supra* note 38, at 210-11.
115. *Id.* at 211.
116. *Id.*
117. *Id.*
118. *Id.* at 211-12.
119. *See supra* note 32 and accompanying text.
120. Sykes, *supra* note 38, at 211-12.
121. *Id.* at 212.

2. National Defense

Another common argument for protecting the domestic steel industry is that, since steel is a product essential to our national defense, we should protect it by limiting imports.[122] This contention rests on a number of questionable premises, including "that the domestic industry will really 'disappear' absent protection rather than simply contract and remain capable of filling emergency needs; that imports cannot continue in times of armed conflict;. . .and that stockpiling of supplies is not cheaper than protection most of the time."[123]

Analyzing these assumptions shows that the national defense argument is particularly flawed when applied to the steel industry. First, it is unlikely that the entire domestic steel industry would disappear if all trade barriers were eliminated.[124] Domestic steel shipments for military use only totaled 0.03 percent of total shipments in 2000.[125] Even if many unprofitable steel companies failed, it is likely that the remaining domestic companies will be able to meet military needs for steel.[126] Second, imports could continue in times of an armed conflict, especially from countries such as Mexico, with which the United States is unlikely to go to war and from which shipments would not require overseas travel.[127] Third, steel is a product that can be safely stored at a low cost. Therefore, protecting the entire domestic steel industry is not required to meet our national defense needs.

Moreover, enacting barriers to trade may increase the chances of armed conflict with certain countries. Protectionist measures reduce trade, which can depress national economies.[128] Economic depression can increase the chances of war.[129] In addition, mutually beneficial trade between countries promotes international understanding and unity, which make it less likely that trading countries will go to war.[130] Therefore, the national defense argument cannot justify enacting protectionist meas-

122. *See* JACKSON, *supra* note 5, at 18-19.
123. *Id.* at 19.
124. AM. INST. FOR INT'L STEEL, INC., *supra* note 39.
125. *Id.*
126. *Id.*
127. *See supra* note 90 and accompanying text.
128. U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY, *supra* note 39, at 292.
129. *Id.* Some historians contend that President Hoover's signing of the Smoot-Hawley Tariff Act set the stage for World War II. *Id.*
130. *See* SAMUELSON, *supra* note 39, at 693-94.

ures because the United States will be able to supply its steel demand in times of an armed conflict even if many domestic firms fail due to international competition. In addition, restricting international trade may actually increase the chances of an armed conflict.

3. *Breathing Room*

The breathing room argument suggests that the government should temporarily protect certain industries from competition until the industry has time to restructure and become competitive.[131] This is an argument that many in the domestic steel industry make and is the driving force behind President Bush's Section 201 investigation.[132] There is historical evidence to suggest that giving ailing industries temporary protection does not work.[133] For example, the U.S. steel and auto industries have both been given temporary protection before, and neither has used the opportunity to successfully restructure itself in order to compete effectively with foreign producers.[134] A possible reason that this does not work is that the protected industry, free from competition, has no incentive to become competitive.[135] More likely, powerful industries, such as steel, use their resources to lobby the government to keep the special protection instead of using these resources to restructure the industry.[136] Abandoning free trade principles cannot be justified by the breathing room argument because the historical evidence shows that the steel industry will likely squander the opportunity to successfully restructure itself.[137] The steel industry should not be given special protection, and, therefore, President Bush's efforts to shield the industry from competition are misguided.

B. CRITIQUE OF PRESIDENT BUSH'S STEEL INITIATIVE

President Bush's Steel Initiative consists of entering into a VER agreement with steel producing countries to restrict output, negotiating an agreement to eliminate underlying market distorting subsidies, and enacting tariffs pursuant to an ITC

---

131. McGee, *supra* note 26, at 549.
132. Matthews, *supra* note 12.
133. McGee, *supra* note 26, at 549.
134. *Id.*
135. *Id.*
136. *Id.*
137. *See* JACKSON, *supra* note 5, at 1196.

Section 201 investigation.[138] Parts of the President's plan are already in place.[139] The President has entered into a VER agreement to reduce steel-making capacity.[140] In addition, the President has enacted tariffs of up to thirty percent on certain steel imports.[141]

President Bush should not have entered into the VER agreements with other steel producing countries to reduce global steel-making capacity. Past U.S. experience with VERs shows that although the VER might help the targeted industry, they are too costly to justify.[142] It was estimated that the steel VER agreement President Reagan entered into in 1984 increased the price of domestic steel by twelve percent and cost U.S. consumers between $1.1 and 6.8 billion.[143] In addition, although 16,900 jobs were saved in the steel industry, 52,400 jobs were lost in industries that consume steel.[144] More recently, the aluminum VER agreement brokered by President Clinton cost $500,000 per aluminum industry job saved.[145] These numbers show that while VERs do help the targeted industry, the benefits received are much smaller than the costs. Even assuming that an industry deserves protection, a VER is not a preferable way to provide it.[146] A VER, unlike a tariff, does not raise revenue for the restricting government.[147]

Although President Bush did get over forty steel producing countries to agree on capacity reductions, this coalition is not strong.[148] Because the capacity cuts are spread over ten years, many of the agreeing governments will have changed leaders by the time the restraints are in place.[149] Many new leaders might be reluctant to enforce agreements made by past administrations because the export restrictions are politically unpopular at home.[150] Another weakening factor is that many countries agreed to the VER to retain access to U.S. markets and to avoid

138. *See supra* notes 47-54 and accompanying text.
139. *See supra* notes 55-83 and accompanying text.
140. *See supra* notes 55-58 and accompanying text.
141. *See supra* notes 78-83 and accompanying text.
142. *See supra* notes 29-32, 51 and accompanying text (explaining the costs of President Reagan's steel VER and President Clinton's aluminum VER).
143. *See supra* notes 26-27 and accompanying text.
144. *See supra* note 30 and accompanying text.
145. *See supra* note 51 and accompanying text.
146. *See supra* note 71 and accompanying text.
147. *See supra* note 71 and accompanying text.
148. *See supra* note 58 and accompanying text.
149. *See supra* note 58 and accompanying text.
150. *See supra* note 58 and accompanying text.

even more restrictions, such as increased tariffs, on their steel exports to the United States.[151] Thus, these countries may not be genuinely committed to reducing the steel output of their own countries.[152] Their commitment to the VER may falter now that President Bush has followed the recommendation of the ITC and enacted tariffs on steel imports.[153]

Moreover, the steel VER agreement violates the U.S. obligations under GATT.[154] After the Uruguay Round of trade negotiations, no member country is allowed to enter into a VER.[155] President Bush has said that his proposal will not violate GATT,[156] which may explain why the administration is not calling its actions an attempt to enter a VER, but instead an attempt to "reduce worldwide excess capacity."[157] The VER, therefore, should be eliminated from the Bush proposal to avoid direct contravention of the mandates of GATT.

The only part of President Bush's steel initiative that should be pursued is its attempt to reach an agreement to reduce tariffs and subsidies worldwide.[158] This part of the plan will increase economic efficiency globally by reducing artificial barriers to trade.[159] With the benefits of free trade, each country's steel industry will prosper or fail according to its own merits, and capital and resources will flow to more productive uses.[160] This will ultimately benefit the citizens of each country by reducing the total amount they, as consumers, pay for goods and their tax burden by removing subsidies for their steel industries.[161]

The President should rescind the additional tariffs on key steel imports he enacted pursuant to the ITC's recommendations.[162] Section 201 of the Trade Act of 1974 is meant to give temporary relief from foreign competition to a struggling indus-

151. *See supra* note 58 and accompanying text.
152. *See supra* note 58 and accompanying text.
153. *See supra* notes 68-72 and accompanying text (explaining the ITC recommendation).
154. *See supra* notes 59-63 and accompanying text.
155. *See supra* notes 59-63 and accompanying text.
156. *See supra* note 59 and accompanying text.
157. *See supra* note 51 and accompanying text.
158. *See supra* note 91 and accompanying text (explaining the benefits of free trade).
159. *See supra* note 91 and accompanying text.
160. *See supra* note 91 and accompanying text.
161. *See supra* note 91 and accompanying text.
162. *See supra* notes 78-83 and accompanying text.

try until it can positively adjust to the import competition.[163] The domestic steel industry has been under some form of protection for the past twenty-five years.[164] The industry has not used this time to reorganize itself so it can successfully compete with foreign competition.[165] There is no reason to think it will be able to turn itself around in the next four years.

Further, the President may not have satisfied his statutory obligation by enacting the tariffs.[166] The President is supposed to take into account several factors when deciding what type of relief to give.[167] These include the probable effectiveness of the actions and the economic and social costs and benefits.[168] Given the long history of providing protection to the steel industry, three years of tariffs are unlikely to allow it to make a "positive adjustment to import competition."[169] Likewise, it is unclear whether economic and social benefits would outweigh the costs.[170] Tariffs only add artificial costs, which steel-consuming industries must pay and which are ultimately borne by U.S. consumers and taxpayers.[171] Many domestic industries that use large amounts of steel, such as automobiles and appliances, are seriously injured by artificially high steel prices.[172] The cost to these industries may outweigh the benefits to the steel industry.[173] Although the tariffs have temporarily helped the domestic steel industry, the President should rescind the tariffs because the countervailing costs are too great.

C. PROPOSED COURSE OF ACTION

President Bush should help the domestic steel industry by working to eliminate subsidies on steel production worldwide. This is the second part of President Bush's proposal[174] and the

163. *See supra* note 97 and accompanying text.
164. *See supra* note 22 and accompanying text.
165. *See supra* note 22 and accompanying text.
166. *See supra* note 74 and accompanying text (setting forth a partial list of the factors the President is supposed to consider when deciding on a remedy).
167. *See supra* note 74 and accompanying text.
168. *See supra* note 74 and accompanying text.
169. *See supra* note 22,74 and accompanying text (explaining the history of steel industry protection and stating the statutory requirements).
170. *See* JACKSON, *supra* note 5, at 1196.
171. *See supra* note 71 and accompanying text.
172. *See supra* notes 84-89 and accompanying text.
173. *See* JACKSON, *supra* note 5, at 1195-96.
174. *See supra* note 53 and accompanying text.

only part of it that does not create artificial barriers to trade.[175] If worldwide artificial restraints on trade are eliminated, the normal laws of supply and demand will take effect and consumers will reap the benefits of a competitive market.[176] Ending subsidies will also placate some in the domestic industry that complain they cannot compete internationally because foreign governments subsidize their own industries more than the United States.[177] Although achieving this commitment from other countries may be difficult, the harsh reception that the international community has given the President's plan may imply that foreign countries would cooperate.[178]

The average U.S. consumer would benefit from the elimination of steel import quotas and tariffs because prices would not be artificially inflated.[179] However, if the United States lifted its tariffs and quotas on steel, more domestic steel companies would likely fail, which could have serious redistribution effects and cause significant hardship on the individual steel laborer.[180] Protecting the industry, however, is not the best way to protect the workers.[181] There are better ways, such as standard unemployment and retraining, which are much cheaper and more economically ways to alleviate distributional inequities.[182]

The steel industry does not deserve special protection from foreign competition.[183] Common arguments such as protecting labor, national defense, and giving the industry temporary relief to allow it to reorganize were found insufficient to compromise the U.S. commitment to free trade principles.[184] President Bush's steel VER agreement and tariffs should be rescinded because the benefits do not outweigh the costs.[185] Only the President's proposal to negotiate an end to steel industry protection worldwide should be pursued because ending protection would allow each country's steel industry to adjust to competitive pressures and give consumers and taxpayers the benefits of a com-

175. *See supra* note 92 and accompanying text.
176. *See supra* note 91 and accompanying text.
177. *See supra* notes 41-43 and accompanying text.
178. *See supra* notes 90-98 and accompanying text.
179. *See supra* note 91 (explaining the benefits of free trade); *see* JACKSON *supra* note 5, at 1195-96 (stating the past costs).
180. Sykes, *supra* note 38, at 210-11.
181. *Id.* at 211.
182. *Id.*
183. *See supra* notes 99-137 and accompanying text.
184. *See supra* notes 99-137 and accompanying text.
185. *See supra* notes 138-57, 163-73 and accompanying text.

petitive international steel market.[186]

CONCLUSION

The domestic steel industry is failing. Half of the domestic steel industry has filed for bankruptcy within the last four years, and thousands of workers have lost their jobs.

President Bush has proposed a three-part Steel Initiative to remedy the problems that the domestic steel industry faces. First, the President is negotiating with trading partners to enter into a VER agreement to reduce steel imports into the United States. The President has entered into VER agreements with several steel producing countries. Second, the President is working with foreign countries to eliminate the market distorting subsidies that have helped cause the domestic steel industry's problems. Third, the President enacted additional tariffs on certain steel imports based on the results of an ITC Section 201 investigation.

President Bush should not have enacted tariffs on steel imports or entered into voluntary restraint agreements on steel exports to save the domestic steel industry. Domestic steel companies do not deserve protection from foreign competition any more than other industries. Failure to let domestic steel companies compete in the international markets costs U.S. consumers and taxpayers, who must ultimately pay for the subsidies. Although a smaller domestic steel industry may cause hardship for individual laborers, trade barriers are an especially inefficient and costly way to help them.

The President should focus his energies on eliminating tariffs and quotas on steel globally. Only then can domestic steel reorganize and adapt itself to competitive pressures, thereby promoting efficiency, respecting international free trade agreements, and avoiding costly, ineffective measures.

---

186. *See supra* notes 158-61, 174-82 and accompanying text.