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Standing Up for Steel

When President George W. Bush took office in January 2001, a messy trade issue landed on his desk that had bedeviled the administration of President Bill Clinton for the previous three years. Since 1998, the domestic steel industry had experienced two distinct downturns, resulting in depressed prices, falling profits, a stream of bankruptcies, and job losses numbering in the tens of thousands. According to the United Steelworkers of America (USWA), a coalition of powerful members of Congress, and most US steelmakers, unfairly priced foreign imports had caused the alarming declines. To restore the industry's profitability, steel representatives repeatedly called for the Clinton administration to seek a trade ruling—known as a section 201 action—that, if successful, would allow the president to impose a steel quota or other form of far-reaching relief.

But a range of critics claimed that such a measure would be misplaced and that the relief it would bring was unjustified. Foreign steelmakers insisted that US firms were struggling because of increasing domestic competition and a lack of consolidation at home; many steel analysts said that falling steel profits were the inevitable result of excess capacity worldwide, including in the United States; and a number of US steel consumers and economists argued that cheap foreign steel was actually good for the country, and that quotas would inevitably spur trade retaliation. If the government imposed a steel quota, many observers agreed, it would unnecessarily harm foreign countries dependent on steel exports, while benefiting one narrow product sector at the expense of the broader US economy.

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The Clinton administration ultimately left office without bringing a section 201 case. But as the health of the domestic steel industry continued to deteriorate in 2001, the Bush administration faced increasingly urgent pleas to open a comprehensive 201 trade investigation. Whatever Bush decided would likely have far-reaching consequences for the domestic steel industry, the US economy, and the nation's relationships with its foreign trading partners.

A History of Trade Remedies

The steel industry's quest for trade relief was not new. For much of the 20th century, the US steel industry had served as the nation's industrial backbone; it had provided jobs for generations of workers and in the process it became a potent symbol of the country's industrial might. But since the 1960s, when foreign steel first entered the US market in significant quantities, domestic companies and steelworkers had complained of unfairly priced imports and an uneven playing field.

While market conditions had changed over the years, and the number of steel-producing countries had grown, many of the fundamental issues remained the same. According to US industry, domestic companies could not compete effectively against most imported steel because of pervasive market-distorting practices overseas. These practices included closed markets that permitted few imports, such as Japan's protected domestic market; nonmarket economies in which steel enterprises were state-owned and supported, such as in the former Soviet Union; and reliance on government subsidies, such as the assumption of pension costs by European governments to aid restructuring during the 1980s and 1990s. In addition, US steelmakers said, production costs in the United States were generally higher owing to more stringent regulation of labor and the environment.

Because foreign steelmakers enjoyed such home-market advantages, US companies claimed, they often could afford to sell steel in the United States at prices well below what US steelmakers needed to charge to remain profitable. To be sure, domestic steelmakers did not compete directly with imports for all their business. Large steel consumers, such as the major auto manufacturers, met most of their steel needs through contracts with US companies. By contrast, most foreign steel was imported by metal-trading companies or steel service centers that sold the steel on the so-called commodity-grade spot market. But even the large contract sales were affected when cheap imports forced down overall prices, industry representatives said.

In order to protect profitability and market share, the US steel industry and its workers had repeatedly appealed to the government for protection from foreign imports, claiming that without relief the domestic industry would be unable to compete. The government had been unusually responsive, in large part because of the clout of the steelworkers' union, the United Steelworkers of America, and the strength of the Congressional Steel Caucus, a powerful bipartisan group of lawmakers who represented districts and states containing steel manufacturers.

Four administrations in a row imposed import restraints, beginning with President Richard Nixon, who in 1969 established quota-like voluntary restraint agreements that lasted five years and affected steel from Japan and Europe. In the late 1970s, Jimmy Carter's administration devised a "trigger price mechanism" that allowed a certain amount of steel imports into the country if sold at or above a set price. After that expired, President Ronald Reagan negotiated a new round of voluntary restraint agreements (later renewed by President George H. W. Bush) that apportioned shares of a limited import pool among foreign steel-producing countries. Many critics pointed to this series of import restraints as evidence of undue government protectionism. "Beginning with import quotas in 1969, protection has been the rule rather than the exception for the steel industry," according to Daniel Griswold, associate director of the Cato Institute's Center for Trade Policy Studies.[1]

By the time Bill Clinton assumed the presidency in 1993, the voluntary restraint agreements of the Reagan and Bush era had expired. Domestic steelmakers continued to make aggressive use of the US trade laws at their disposal, however.

Antidumping and Countervailing Duty Laws

The antidumping and countervailing duty laws dealt specifically with unfair trade. Most frequently brought were antidumping cases, often referred to simply as dumping cases. If a union or group of domestic steel companies believed that a steel product was being imported at an unfair price, or "dumped," it could request that the US Commerce Department initiate an investigation.[2] If Commerce concluded that unfair pricing had occurred, by finding that the import price was lower than the home-market price or than the cost of production, it then determined the margin of dumping (that is, the difference between the chosen basis of comparison and the US

1. Daniel Griswold, "Counting the Cost of Steel Protection," House Committee on Ways and Means, Subcommittee on Trade, Hearing on Steel Trade Issues, 106th Congress, 1st session, February 25, 1999, www.freetrade.org.

2. The Treasury Department had originally overseen dumping cases but Commerce assumed responsibility in 1979, a move that most observers agree has contributed to the process becoming more responsive to industry.

import price). Finally, the petitioners went before the International Trade Commission (ITC), an independent, quasi-judicial federal agency,[3] to try to prove that the dumping had caused injury or threat of injury to the industry. If the ITC reached a positive finding, the importer had to pay duties equal to the dumping margin. Issuance of a final ruling could take 12 to 18 months, but importers had to post a bond to cover estimated duties as soon as a preliminary positive finding had been reached, a process typically completed within about six months.

Countervailing duty cases were brought when domestic companies believed a government subsidy in a foreign country was giving a foreign industry an unfair advantage. Unfair government subsidies could include the granting of interest-free loans and the assumption of pension and health care costs. If the ITC found injury, Commerce would have the US Customs Service impose a "countervailing" or offsetting duty on the imports equal to the estimated subsidy.

Section 201 of the Trade Act of 1974

Unlike antidumping and countervailing duty investigations, a Section 201 case did not rely on proof of unfair trade practices. Rather, if the ITC determined that the volume of a particular import constituted a substantial cause or threat of serious injury to a domestic industry, the president could impose temporary import relief without violating the rules of the World Trade Organization (WTO). Once initiated, usually by the industry in question, the case went straight to the ITC, which ruled on the case and, if it found for the industry, made a recommendation to the president, all within six months. The president then had 60 days to come up with a remedy, which could be no action at all, a tariff, a quota, a tariff-rate quota, or some form of trade adjustment assistance.

Section 201 actions had the potential to provide a more comprehensive remedy than did dumping investigations. In the case of steel, for example, a 201 investigation could target all steel imports from all countries, while a dumping or countervailing duty investigation dealt only with one product and one country at a time (e.g., hot-rolled steel from Japan). But in part because the injury standard was higher for a 201 than for a dumping or countervailing duty case, and thus harder to prove, and in part because the outcome was entirely at the president's discretion, 201 cases were far less common.

Critics of the dumping laws insisted that they were too plaintiff-friendly. Indeed, from 1980 to 1997, 80 percent of all dumping cases brought in the

3. ITC regulations require that no more than three of the six commissioners be of the same political party. In practice, this has usually resulted in a commission split between Democrats and Republicans.

United States—including steel actions—were successful. According to William Barringer, a partner at Willkie Farr & Gallagher who had long represented Japanese and Brazilian steelmakers, foreign countries were so convinced of the slim chances of prevailing that they often did not even bother to respond to dumping cases.[4] But industry representatives in the United States maintained that the dumping laws were a completely legitimate and necessary tool for combating surges of unfairly priced imported steel. The number of successful cases, they contended, merely demonstrated the prevalence of dumping and subsidization.

In either case, many economists noted that all steelmakers periodically engaged in dumping because in a cyclical and capital-intensive industry it was more profitable to sell below cost during a downturn than not to sell at all, as long as revenues covered variable costs. While it was legal to sell below cost in a home market, something US firms did regularly, to do so overseas was dumping (US steelmakers exported very little steel). "This is completely economically rational behavior in a period of excess capacity," observes one economist, "but it runs afoul of the dumping laws." Because selling below cost was so common in the industry, and because the domestic industry was aggressive in seeking protection, steel companies historically had used the dumping law more than any other industry: They were responsible for about a third of all cases brought between 1980 and 1995.

History of Restructuring

Although the US steel industry continued to seek relief from what it deemed unfair imports, foreign steelmakers and some other industry observers argued that most of the steel industry's problems were the result of internal decisions and conditions at home. US steel companies—loath to make the huge capital investments required—had taken longer than many of their foreign competitors to upgrade their outdated open-hearth blast furnace technology to more cost-efficient basic oxygen furnaces, critics said. Not until the 1980s did serious industry reinvestment begin, and the last open-hearth furnace in the United States did not close until 1991.

The older integrated steel mills—so called because they relied on a vertically integrated process to turn raw inputs such as iron ore into finished carbon flat-rolled steel products—also faced growing competition domestically from mini-mills, many of which began operating in the 1970s. These faster and more flexible companies typically had far lower costs than the integrated mills did: They produced finished steel from abundant scrap

4. Unless otherwise noted, all quotes from William Barringer are from a September 2001 interview with the author.

metal melted in highly efficient electric-arc furnaces; their workforces were often non-union; and because they had been in business only a few years, they did not have to pay benefits to large numbers of retired workers. Although the steel produced by the early mini-mills was mostly low-grade, the product improved with the technology. By 1998, the mini-mills were competing directly against the integrated mills in certain product areas, and their share of US production had increased to almost 40 percent.

Some critics also claimed that US companies had not done enough to consolidate, particularly compared to European and Latin American firms. According to Barringer, efforts by the USWA to keep all plants in operation—regardless of their performance—had constrained restructuring and had resuscitated entire companies that should have been allowed to fail. By 1997, Barringer says, the industry could be broken into three distinct segments: the large integrated steelmakers, such as AK Steel, Bethlehem Steel, and U.S. Steel, most or all of whose operations were cost-competitive; globally competitive mini-mills, such as Nucor and Steel Dynamics; and the second-tier integrated mills, such as Weirton, Wheeling-Pittsburgh, and Geneva Steel, which, he claims, were "on the verge of bankruptcy, have been on the verge of bankruptcy, and will continue to be on the verge of bankruptcy."

Consolidation efforts were hampered as well by the so-called legacy costs borne by the older integrated firms. In the 1970s, even as industry and union representatives decried the market incursions of steel from abroad and appealed to government to protect the domestic industry, wages for steelworkers grew more rapidly than wages in any other industrial sector—increasing not only current worker benefits but also the benefits that would be paid out as workers retired or were laid off during subsequent plant closures. Such generous wage policies, negotiated during a period of industry decline, had contributed by the 1990s to soaring legacy costs in the form of pension, health, and severance benefits that drove down company profits, raised the cost of restructuring, and made steel companies unattractive as potential acquisitions.

But US industry and union representatives painted a very different picture. A two-decade period of comprehensive restructuring, they insisted, had by 1997 created a world-class industry characterized by quality, efficiency, and productivity. Dozens of inefficient mills closed, and employment fell from more than 547,000 workers in 1980 to about 236,000 in 1997—a more than 50 percent drop in the labor force. In fact, the very real burden of legacy costs, US steelmakers argued, was painful proof of the industry's aggressive consolidation. Over the same period, domestic steelmakers—with the federal government's encouragement—invested more than $50 billion in updated facilities and equipment, including more than $7 billion in environmental controls. Productivity increased at twice the average rate of all US manufacturing, helped by the more productive mini-mills; indeed, at less than four man-hours per ton of steel, it was among the highest in the world.

However, even some analysts who conceded that US steelmakers had made great strides over the previous two decades questioned whether government policies supporting widespread reinvestment had been wise. The reason steelmakers were struggling both in the United States and abroad, they argued, was global overcapacity, caused by quickly rising worldwide productivity and relatively sluggish growth in demand. Despite the domestic plant closings and layoffs, total shipments of steel products in the United States had risen from about 84 million tons in 1980 to about 105 million tons in 1997. Thus, as more developing nations became steel producers and countries such as the United States increased production, excess global capacity, which in the last few decades had often topped 20 percent of production, would only get worse. "Why would we try to force an industry that is in decline and supposed to be reducing its capacity to actually take money and invest it in the steel industry?" asks one former government official.

In addition, some industry observers questioned whether the US government should protect the domestic steel industry at all. Cheap foreign imports, after all, lowered the cost of steel for downstream users, who by the 1990s far exceeded steel producers in employment and capitalization. Moreover, given the growing strength of the mini-mills and the number of new steel-producing entrants worldwide, the risk of a single foreign country or company driving all US firms out of business, taking control of the steel market, and then raising prices was negligible. "If the United States adjusted out of steel and we ended up producing only 20 percent of our steel needs, would we be in deep trouble, and unable to have our manufacturing sector produce the kind of machinery we need?" asks one economist. "The answer is no."

But most Americans still believed in the importance of a vital US steel industry. While steel-consuming businesses wanted access to imports, they also wanted a reliable and accessible domestic supply. In addition, despite deep layoffs and numerous plant closings, steel was still a highly visible industry, and regional pockets around the country depended on steel mills to keep their economies afloat. Finally, even some economists who considered themselves supporters of free trade argued that simply allowing market forces to work was not fair in a global industry so skewed by foreign subsidies. "It has been distorted by so much government intervention on so many different levels for so long," says Greg Mastel, trade counsel and chief economist for the Senate Finance Committee, "that it's a marketplace where it is hard to say 'Just let the market operate.'"[5]

5. Unless otherwise noted, all quotes from Greg Mastel are from a September 2001 interview with the author.

The 1998 Steel Crisis

Despite ongoing restructuring, the 1990s were a period of recovery for much of the US steel industry. The nation's strong economy created a ready market for steel, as domestic demand increased by about 7 percent a year. Steel imports accounted for 20 percent of the US market in 1997, but much of that was needed, since domestic demand exceeded what US companies could supply by more than 15 percent. Moreover, about a quarter of the imports consisted of semifinished steel brought in by the domestic steel industry itself for further finishing. US steel shipments were at a record level, and domestic steel mill capacity utilization—a key measure of industry health—was above 90 percent.

By the fall of 1997, however, George Becker, president of the United Steelworkers of America, was becoming uneasy about how the domestic industry would be affected by the growing financial crisis in Asia. Demand for steel in Asia had collapsed, making the US market more than usually attractive, and regional currency devaluations in such steel-making countries as South Korea and Japan were resulting in even cheaper foreign steel. Becker met with members of the Clinton administration to voice his concerns, but the data did not yet support his contention that rising imports and falling prices might spiral out of control. After all, the steel industry's 1997 financial results were the best in more than 15 years.

By the summer of 1998, though, the Asian crisis, coupled with an economic collapse in Russia, began to have a serious impact on the global steel market. As there accumulated a backlog of steel, much of which formerly would have gone to Asia, prices fell worldwide and a huge volume of low-priced steel—in particular, hot-rolled steel from Japan, Russia, Korea, and Brazil—poured into the US market.[6] Imports in a few categories rose to nearly 40 percent of the US market, about double what they had been the year before. Despite a booming domestic economy, US steelmakers faced the choice of following prices down or giving up market share. Even Nucor, the mini-mill whose low-cost production had helped to make it the nation's second-largest steelmaker, wrote to Commerce Secretary William Daley in August to warn that unfairly priced imports were taking a dangerous bite out of the US industry's profitability. "When Nucor came and said it was hurting," one former official says, "that got the attention of people in the administration."

To combat the sudden surge of imports, the steelworkers union began to work several fronts simultaneously. In September, it launched "Stand Up for Steel," a $4 million advertising and public relations campaign designed to identify steel imports as the cause of industry disruption and to

6. US imports of Japanese hot-rolled steel for the year would eventually show a 381 percent increase over 1997.

exert pressure on political representatives. "In this great economy when everybody else was doing well, we had to penetrate and push through with the message that there was a major American industry and a lot of employees that weren't sharing in the good fortune," says William Klinefelter, legislative and political director for the USWA. "We had to say that we were under attack. We had to get that message home."[7]

That same month, the union began bombarding Congress and the Clinton administration with requests for legislative and executive action.[8] According to Klinefelter, the union was convinced that only a comprehensive solution could provide the quick and far-reaching action that the steel industry needed to avoid plant closures and job losses. While a legislative quota limiting imports was its clear first choice, the union also considered the likely effectiveness of a section 201 trade case. "I think we all realized that the dumping cases were not going to be enough, that we had to shut off more products from every place," Klinefelter explains. "So that's when the idea of the 201 case came up among us." In particular, the union wanted the Clinton administration to self-initiate a 201 case. If the administration brought the case, union officials reasoned, the president would be more likely to grant significant relief should it succeed.[9]

But the US steel industry disagreed with the union position on quotas and 201.[10] Since the end of Reagan- and Bush-imposed voluntary restraint agreements in the early 1990s, dumping cases had become the main remedy for industry. Section 201 cases, while more comprehensive than dumping cases, carried a number of risks, steel representatives say. They were difficult to bring; the injury standard was high; and relief was at the discretion of the president, who was often constrained by foreign policy considerations. "In the last 20 years, no major industry had gotten relief under 201," says Alan Wolff, a partner at Dewey Ballantine who represented a group of major US integrated steel firms.[11]

Industry did not speak out against the union's efforts, since it did not want to sour relations with the union, but it also did not directly support

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7. Unless otherwise noted, all quotes from William Klinefelter are from a September 2001 interview with the author.

8. Although the crisis had become apparent the previous month, Klinefelter says, the union delayed the letter-writing campaign because "nothing happens in Washington in August."

9. Industries most commonly requested a 201 investigation, but unions, the president, the USTR, the House Committee on Ways and Means, and the Senate Finance Committee were all authorized to initiate one.

10. According to William Barringer, the second-tier firms were the only ones pushing for a 201 action along with the unions because they were desperate for any form of comprehensive relief: "At the end of the day, what they were really looking for was a political solution—a bailout."

11. Unless otherwise noted, all quotes from Alan Wolff are from a September 2001 interview with the author.

them. At the same time, it pursued its preferred course: On September 30 a dozen steel companies filed dumping cases on hot-rolled steel against Japan, Russia, and Brazil, as well as a countervailing duty case against Brazil. The union, which was also hedging its bets, joined in the filings.

Becker and Klinefelter met repeatedly with leading members of the Congressional Steel Caucus through the fall. Although the steel crisis hit late in the year, making it difficult for Congress to react, the House approved a nonbinding resolution calling for a one-year ban on unfair steel imports from 10 countries, including Japan, Russia, and Brazil. In addition, Senators John Rockefeller (D-WV) and Arlen Specter (R-PA) introduced a bill that would make it easier to bring a section 201 case. "What I was trying to tell the administration with these resolutions," says Klinefelter, "was that if you don't do something, don't think that Congress won't act, because the Congress will act."

The administration had its own reasons to take action. "There is a lot of merit to the argument that foreigners have subsidized their steel industries," says one former Clinton official. "While there is a huge amount of latent political support for free trade, the Republicans and the Democrats also compete in being tough against unfair trade."

The Early Clinton Administration Response

During the fall, as the steel crisis worsened, the Clinton administration tried to reduce the onslaught of imports without resorting to market-closing measures. US Trade Representative (USTR) Charlene Barshefsky in October urged the European Union to accept more Russian steel and pressured Japan, which was responsible for almost half the import surge, to begin cutting its steel exports.[12]

In addition, Commerce streamlined its dumping investigations and instituted a new "critical circumstances" policy that allowed it to impose duties retroactively on whatever preliminary margins were eventually determined, rather than waiting until the margins had been assessed for duties to take effect. On November 23, after the ITC found injury in the dumping cases filed against Japan, Russia, and Brazil, Commerce announced that it would apply retroactive duties to affected imports that had entered the United States beginning November 12; this policy helped to stop importers from rushing products targeted by a dumping action into the United States before duties had been assessed and imposed. The threat of dumping duties helped drive December steel imports down by one-third from the previous month.

But such actions did not constitute a policy. Since August there had been frequent interagency meetings of top officials involved in the steel

12. Although the EU talks were largely fruitless, imports of Japanese steel fell by almost 50 percent in December in response to the dumping case and administration negotiations.

issue to discuss what to do. In particular, administration representatives debated the wisdom of bringing a 201 case, the only comprehensive import remedy the administration could impose that was WTO-compatible. Principals' meetings—chaired by National Economic Council head Gene Sperling, who coordinated steel trade policy—consisted of cabinet-level officials such as Treasury Secretary Robert Rubin, Commerce Secretary William Daley; USTR Charlene Barshefsky, Chairman of the Council of Economic Advisers (CEA) Janet Yellen, and White House Chief of Staff Erskine Bowles, usually accompanied by their deputies. But much of the real work occurred in the deputies' meetings, chaired by Deputy Assistant to the President for International Economics Lael Brainard. These sessions normally included Deputy Secretary Lawrence Summers; Under Secretary of Commerce for International Trade David Aaron, backed up by Assistant Secretary for Import Administration Robert LaRussa; USTR General Counsel Susan Esserman; State Department Assistant Secretary Alan Larson; Deputy National Security Adviser James Steinberg; and CEA member Robert Lawrence.

According to inside observers, the policy positions of agencies and individuals were largely predictable. Officials at the Commerce Department and the USTR, who were meeting regularly with industry lawyers and officials, wanted to pursue all legal mechanisms that might help the troubled steel industry; they were considering both the union's request for a section 201 action and regulatory changes that might make it easier for the industry to win trade relief. While the USTR thought industry should bring the 201 case, some Commerce officials felt that the administration should consider self-initiating an investigation. "It was an emergency measure—that's what it was designed for," says David Aaron, then commerce undersecretary. "We were in an emergency, and I felt that was the right way to go."[13]

Officials at the White House, meanwhile, including President Clinton; Chief of Staff Bowles, later replaced by John Podesta; and Deputy Assistant to the President Karen Tramantano, were sympathetic to the steelworkers' plight. But the White House was also very concerned about the message that self-initiating a section 201 case would send. "If we did this, it would be interpreted that we had gone protectionist," Aaron explains. "The Democrats felt vulnerable [to that charge] as a national party. They kept saying, 'We have the right to do this, it's accepted in the WTO, and maybe it's even the best solution, but it would send a terrible signal.'" Adds Klinefelter: "We had tremendous access to the administration. But the philosophical mind-set was for free trade. They did not want to send any signal that they were deviating from that."

Not surprisingly, most of the economists—members of the National Economic Council, CEA, and the Office of Management and Budget—and

13. Unless otherwise noted, all quotes from David Aaron are from a September 2001 interview with the author.

agencies concerned with foreign policy, such as the State Department and the National Security Council, wanted to support free trade to the greatest extent possible. But the most powerful voice was that of Treasury Secretary Robert Rubin. Rubin's handling of national and international economic issues over the past four years had given him a "stature within the administration that was beyond anything the other members of the cabinet could possibly reach," according to one well-placed observer. In the midst of the deepening Asian financial crisis—considered by many officials to be the world's worst financial crisis in 50 years—Rubin's paramount concern was to avoid any action that could further destabilize financial markets and lead to inevitable repercussions within the US economy. Part of that effort was keeping the United States open to steel. "Any signals we sent that we would be closing our markets could really destabilize the markets, especially in Asia," says one former White House official. "The US was the importer of first and last resort during that time period, so we recognized the problem in steel could have much larger ramifications."

Rubin's conviction that the United States needed to keep accepting steel imports set him solidly against a section 201 action, whether self-initiated by government or filed by industry. "You have to give him credit for the way in which he handled the whole crisis, and the way the people on the Hill and the people overseas had confidence in his ability to handle it," the union's Klinefelter says. "But we were coming to him and saying, 'Mr. Secretary, what you're doing may be good for the overall economy, but it's going to have a flashback on us.'"

The widely differing administration perspectives made reaching consensus on a cohesive steel policy difficult. One official remembers appearing along with USWA head George Becker before the Senate Steel Caucus on November 30 and worrying because the administration did not have a comprehensive strategy to announce, beyond promising a steel action plan by early January, as requested by a congressional resolution. "At the time, we were saying vigorous trade law enforcement, immediate forays with countries around the world, and bilateral initiatives to have them keep down their exports," the official recalls. "I was quite concerned at the time that it wasn't sufficient, but there were a lot of debates within the administration about what to do."

During this time, the union and the second-tier steel companies continued to press for comprehensive relief. According to the American Iron and Steel Institute, the average price per metric ton for all steel imports had dropped more than 20 percent between January and October to $400, the industry had lost 10,000 jobs over the previous year, and steel mill capacity utilization had fallen to 74 percent. Alarmed by the continuing slide, USTR Counsel Susan Esserman called industry representatives into her office. "I said, 'Let's go over a 201 case. If you're interested in a 201 case, we're interested in working with you.'"[14] But the response, she says, was decidedly unenthusiastic. Lawyers for the integrated steelmakers, on the other hand, say they felt that it was up to the Clinton administration to take the lead. "We met with Sue Esserman and our feeling was it's a wholly discretionary statute, and the president can do what the president wants to do," recounts the lawyer Alan Wolff. "If the president was not committed to the notion that relief was warranted, it would be something of a fool's errand to go ahead."

Perhaps more to the point, the steelmakers' lawyers did not believe that a comprehensive 201 case was winnable at the time, both because the import surge was most pronounced in just a few categories, such as hot-rolled steel and wire rod, and because the history of import penetration and injury was not long enough. Although overcapacity had forced prices and profits down, and US steel imports for the year had increased 37 percent over 1997, domestic companies had shipped 102 million tons of steel in 1998 despite lower overall employment—a production level that was topped in the previous 20 years only by the peak year of 1997—and 11 of the top 13 steel companies were still profitable. "If you have diminished profits in a cyclical, capital-intensive industry during the peak of the business cycle, is that injury?" asks Wolff. "The ITC has never found that. So our feeling was that the statutory criteria as interpreted by the ITC could not be met." He adds, however, that had the Clinton administration chosen to self-initiate, it would have improved the case's chances "significantly."

Although the Clinton administration continued to debate the merits of a 201 case through the end of 1998, Rubin's opposition to market restraints carried the day. "Clearly he did not want to send any signals to our Asian trading partners," the union's Klinefelter recalls. "Their economies were in danger of serious collapse. If we could absorb some of that pain, he felt our economy was strong enough and we were robust enough that we could do it." He adds: "I think they felt that we'd weather it. The world economy would stabilize, the imports would go down, and we'd be back to normal."

The January Steel Plan and the Negotiated Agreements

On January 7, 1999, the Clinton administration delivered the steel action plan promised the previous year. Titled *Report to Congress on a Comprehensive Plan for Responding to the Increase in Steel Imports,* the program included a demand that Japan cut steel exports to the United States back to precrisis levels; a system of earlier import monitoring, since, as one former administration official says, "There was the sense that somehow this

14. Unless otherwise noted, all quotes from Susan Esserman are from a September 2001 interview with the author.

crisis had occurred and we hadn't known it was happening;" $300 million in tax relief for steelmakers, spread over five years; financial adjustment assistance for out-of-work steelworkers and hard-hit steel mill communities; and a continued commitment to strongly enforce all US trade laws. "The Clinton administration's posture could be characterized as 'We will aggressively implement the laws, but we are not going to go beyond them,'" says Robert Lawrence, then one of two members of the Council of Economic Advisers chaired by Janet Yellen. "We will neither change the laws nor violate them."[15]

Klinefelter, who says the January steel plan "was not considered a bold new way to go," met with John Podesta and Karen Tramantano to reiterate the union's strong support for a 201 action. Although he got no definitive answer, it was clear to him that the administration would not self-initiate.[16] Nor were steelmakers pleased. Instead of better import monitoring, industry for months had been lobbying for a system similar to Canada's, which did not restrict imports but required a license or permit to import, allowing faster and more accurate tracking of products entering the country.

Industry also objected to the import agreements that the Clinton administration announced one month later. Since September 1998, Russian steelmakers and government officials—alarmed by the sharp industrial and economic declines in that country—had been pleading with the administration not to impose dumping orders on Russian steel, even going so far as to publish a full-page letter to Vice President Al Gore in the *Washington Post*. In February, Commerce announced two tentative deals with Russia: an agreement suspending the dumping case on hot-rolled steel, and a comprehensive agreement covering all other steel exports. Hot-rolled imports were to be cut back to 750,000 tons a year, with a minimum price ranging from $255 to $280 per metric ton. Both agreements, which were to remain in effect for five years, returned steel exports to precrisis levels.

Former assistant secretary for import administration Robert LaRussa, who led the Russian negotiations, says the deals were designed to protect US steel companies while still giving Russia more access to the US market—and to much-needed foreign currency—than it would have had under the dumping order.[17] According to foreign steel attorney William Barringer, the US government had another strong motivation in negotiating: "Russia can export three things: weaponry, oil, or steel. There was a lot

15. Unless otherwise noted, all quotes from Robert Lawrence are from a September 2001 interview with the author.

16. According to Klinefelter, "The Clinton administration had a way of never saying no, but never saying yes."

17. Unless otherwise noted, all observations by Robert LaRussa are from a September 2001 interview with the author.

of pressure within the administration not to shut the Russians out of this market for fear that they would ship other products."

But the US steel industry saw the agreements as another example of the Clinton administration's willingness to sacrifice steel to some other agenda. "Suspension agreements are always done to help the foreigner," says one US steel lawyer. "They are never done to help the domestic industry." In a May 24 letter to Commerce Secretary Daley, almost two dozen steel executives expressed their opposition to the agreements. "Foreign policy and other objectives do not have a place in the administration of the antidumping laws," they wrote, adding later: "If foreign aid is to be granted to Russia, it should not be at the expense of a single American industry."

Ironically, LaRussa says, because steel prices did not rebound as much as expected after 1998, the minimum prices set as part of the suspension agreement effectively excluded Russian hot-rolled steel from the US market, contrary to administration intentions. Nevertheless, the US steel industry challenged both the Russian agreements and a similar suspension agreement negotiated with Brazil, charging that they allowed imports in at dumped prices and questioning Commerce's commitment to enforcing the dumping laws. The administration's actions apparently pleased almost no one; Russian steelmakers and American steel users also attacked the agreements, calling them too restrictive to allow needed trade.

The 1999 Steel Legislation

As the administration worked with foreign trading partners—negotiating agreements with Russia and Brazil, pressuring Japan and Korea to cut exports and correct market-distorting practices, and appealing again to the European Union to buy more Russian steel—the steelworkers union was tackling a separate set of initiatives. In a January 8 letter to President Clinton, the union's president wrote that given the limitations of the January steel plan, "we now have no choice but to work with our supporters in Congress, of which there are many, to pass into law the absolutely vital relief which the Administration is apparently unwilling to provide—legally binding quantitative restraints which reduce steel imports to their pre-crisis levels."

George Becker could confidently speak of congressional support. Much of the union's clout came from its close ties to the more than 120 House and Senate members of the Congressional Steel Caucus. More important than their numbers was their seniority: Committed caucus members such as Congressmen Peter Visclosky (D-IN), Jack Quinn (R-NY), and Philip English (R-PA), and Senators Arlen Specter, John Rockefeller, and Robert Byrd (D-WV), were in a position to cast swing votes on key pieces of legislation. "We have people in the right places to deliver a message and to deliver members when you have a vote," says Klinefelter. "I talked with Rockefeller's office and Visclosky's office every day. That's how a union with less than 200,000 members could be as effective as we were."

Starting in January, both the House and the Senate debated several pieces of union-backed steel legislation. Key among these was the Steel Recovery Act, introduced by Peter Visclosky and Jack Quinn. While the bill included a number of measures, its main provision was a quota cutting all steel imports over a three-year period to the average monthly volume during the three years preceding July 1997. The administration immediately spoke out in opposition. To impose a quota unilaterally without an injury determination was a violation of the rules of the WTO and, as Commerce's David Aaron says, "was completely antithetical to the administration's philosophy of more liberalized trade." A former White House official adds: "The president and the vice president felt it was important to use the trade remedies we had negotiated assertively, but that we should make it clear that we were operating within WTO consistency, and that we expected other countries to do the same." The House, however, seemed to feel no such compunction. As one former official puts it: "One of the marvels of the American system of government is that we can sign an international agreement, the Congress can implement that agreement, and the Congress can violate that agreement. Domestic law has precedence over international treaties."

In place of the quota bill, the USTR and the White House worked quietly with Representative Sander Levin (D-MI) on legislation that would change section 201—making it easier for petitioners to prove injury—and charge the ITC with addressing the problem of anticompetitive practices in foreign steel markets. The purpose of Levin's bill, says the attorney William Barringer, "was to try to give Congress an alternative to a quota bill, so members could still say, 'We're helping steel.'" The administration was not united in support of the bill, however. According to one insider, some officials argued that the 201 injury standard should be lower, so that dumping cases would not be overused relative to 201; others argued that it was appropriate for dumping standards to be lower, since the standards dealt with unfair trade; and some insisted that "any rewriting of our laws to look less pro-trade would be a very bad thing for world confidence and stability."

While the union supported Levin's bill, it threw its real weight behind the quota legislation, working the issue hard. "We had 1,000 or more members in 150 congressional districts," Klinefelter explains. "If we have 1,000 or more members in any congressional district, we're going to be a factor." Industry, which did not want to support legislation in violation of the WTO, remained quiet.[18] The administration, for its part, spoke out against the quota bill, one official recounts, but did not expect to prevail. Although

18. Weirton Steel, a struggling second-tier integrated mill, was one of the only companies to publicly endorse the bill.

the pro–free trade Republican leadership might ordinarily have been expected to block quota legislation, congressional sources say, Speaker Dennis Hastert (R-IL) asked that the act be allowed to come to a vote in order to put Clinton in the awkward position of opposing a union-backed bill.

On March 17 the House passed the quota bill by a vote of 289 to 141, short of the two-thirds majority needed to override a presidential veto. Though Klinefelter calls the vote a significant victory, others describe it as more symbolic than substantive. "The union's hope was that the votes in Congress, especially the House, would push the ITC, the Commerce Department, and others to consider their trade actions more favorably," says Greg Mastel, the Finance Committee's economist. William Barringer observes, "It was a free vote for House members, because they felt it probably would be blocked in the Senate, but if it wasn't blocked in the Senate, it would be vetoed by the president."

As administration officials were quick to point out, however, the last thing President Clinton wanted was to have to veto legislation backed by key Democratic allies and a powerful constituency like the steel union. Democratic Senator John Rockefeller of West Virginia, who had been a close friend of Clinton's since the two were governors, had been pushing the president to self-initiate a 201 case since the previous fall.[19] According to Ellen Doneski, Rockefeller's legislative director, the senator was opposed to WTO-incompatible quotas and had earlier refused to back such legislation. When it became clear that Clinton would not bend on 201, though, Rockefeller introduced a Senate version of the House quota bill.[20]

This time, the administration launched a serious assault, holding press conferences, courting the members of the steel caucus, and meeting with individual senators and lobbyists. "After the vote in the House, the administration was all over the Hill," recalls Klinefelter. In making its case against trade barriers, the administration was joined by free trade advocates in Congress, domestic steel users concerned about quota-induced steel shortages and inflated prices, and even a coalition of farm groups, which sent a letter to the Senate in mid-June warning that a steel quota would likely spur foreign retaliation against US agricultural exports.

Even during the earlier House bill debate, the administration had been poring over import figures, looking for evidence that the already-imposed dumping penalties and bilateral negotiations had ended the import surge, thus making a quota unnecessary. "The questions we kept asking were 'Will the industry recover, and when will the industry recover?'" says then Council of Economic Advisers member Robert Lawrence, "hoping that

19. West Virginia–based Weirton and Wheeling-Pittsburgh, the eighth and ninth largest of the integrateds, were two of the steelmakers most in danger of failing, and Rockefeller believed that only a comprehensive solution could save them.

20. Like the House, the Senate considered several steel bills, including a measure similar to Levin's bill, but the quota bill garnered the most attention.

would take off the political pressure and, indeed, help the industry." Because of a buildup of inventories, Lawrence says, the domestic industry did not bounce back as quickly as some had expected. But by May, Commerce Secretary Daley was able to announce an encouraging drop in imports and an increase in domestic prices. By mid-June, although Klinefelter insists "there was not much truth to it," Daley was declaring at every opportunity that the crisis was over.[21]

On June 22 the Senate effectively killed the quota bill in a procedural vote. Improved import levels were only part of the story. Senators generally were more attuned to foreign policy considerations and less likely to pass this kind of special interest legislation than were representatives, observers say, in part because they had to report to broader constituencies (even senators from strong steel states also typically represented exporting businesses or major steel users). "It is a much more difficult place for us to operate," acknowledges Klinefelter, "because we just don't have enough people in enough states to control the Senate." Indeed, some of the bill's staunchest supporters admit that they never expected it to pass in the Senate. Instead, they say, the attempt was a necessary exercise to show the union and concerned companies that a quota bill was not doable, and that it was time to try something else.

Although the quota effort died and none of the measures proposed in the House or Senate to change section 201 advanced, one piece of legislation went through that summer that pleased the union and at least a segment of the domestic steel industry. Senator Robert Byrd, a senior member of the Appropriations Committee, attached an amendment to an emergency appropriations bill allocating $1 billion to a measure that became known as the Emergency Steel Loan Guarantee Act. Under the act, troubled steelmakers that met certain requirements could obtain loans from private lenders that Treasury would guarantee for up to 85 percent of the loan amount. Critics charged that Byrd's amendment, backed as well by his fellow West Virginia Democrat Senator Rockefeller, was a blatant effort to bail out failing steel mills in West Virginia, particularly Weirton. "Senator Rockefeller has two major steel manufacturers," says his legislative director, Ellen Doneski, "and what he didn't want to have occur was for the steel market to stabilize after one or two bankruptcies in West Virginia."[22]

The Clinton administration did not like the amendment, but it also did not go out of its way to fight it. Ironically, the Byrd amendment may have been most unpopular among segments of industry. The better-performing mini-mills and those companies that had undergone successful restructur-

21. Although import levels had not returned to 1997 levels, they were well below the surge that began in August 1998.

22. Unless otherwise noted, all quotes from Ellen Doneski are from a September 2001 interview with the author.

ing did not want to see uneconomic competitors kept afloat by government subsidies and thereby add to the problem of excess inefficient capacity.

With a recovery in steel apparently under way, calls for a government-launched 201 investigation mostly subsided. A flurry of trade cases worked through the system, as industry had filed dumping cases in cold-rolled steel, steel beams, and two different sizes of pipe, as well as two section 201 cases in pipe and wire rod. Such cases continued to generate friction. Some observers blamed the failure of that fall's WTO ministerial in Seattle in part on the unwillingness of the United States to allow discussion of dumping laws. LaRussa and Aaron of Commerce, however, say that countries opposed to launching a new trade round called for new dumping negotiations, knowing that the United States would refuse and that they could then blame the collapse of the ministerial on US intransigence.

A Brief Recovery—A Further Fall

For the steel industry, the year 2000 began with some promise. Imports had fallen, at least in some key categories, and the US economy was strong. Domestic demand for steel in autos and construction was booming, and steel mill capacity utilization had increased markedly from the 1998 slump. Still, steel industry profits remained low. Prices had not fully recovered, nor did imports drop to their pre-1998 level.

In July, Commerce released the "Global Steel Trade Report," a study of the steel market that had been promised the previous year after the quota legislation failed. Because the report had been modified during an interagency review, with particular care not to include anything that could harm the presidential candidacy of Vice President Gore, the final recommendations were "pretty limp," says David Aaron, who left Commerce in April. "I would have liked to have seen them recommend a 201 and an international initiative. I felt that having talked to some of the foreign steel people and countries that they would not take us seriously without at least starting a 201." He adds: "Once we got to this report, all the easy things we could do ourselves, apart from 201, had been exhausted."

Nevertheless, industry and the union embraced the document, which summarized unfair and uneconomic practices in other countries and described their effects on the US steel industry and the problems of global overcapacity. Klinefelter, who calls the report "an incredibly valuable document," says, "It was the first time that our government had ever laid out what our trading partners were doing to us in a systematic fashion in regard to steel."

By the time the report came out, however, another downturn had begun. In part because of price increases announced by domestic producers earlier in the year, steel imports had risen in early 2000. After the nation's industrial sector began to slow in May, steel buyers cut back on imports, but even so, weakened domestic demand for steel drove down plant capacity utilization rates once again. Excess inventory and flagging sales soon took a toll on prices: By the fall, hot-rolled steel was selling for only $180 a ton, about half what it had gone for in the early spring. Steel company stock prices also plummeted, drying up available sources of capital.[23] The steel slump, coming as it did just two years after the surge of imports in 1998, hit manufacturers particularly hard. "You had them getting absolutely hammered in '98, you had a little bit of a recovery going into 2000, then the bottom fell out, so [the integrated steelmakers] didn't really have any reserves left," says a former Senate Finance Committee staffer.

By the beginning of October, with Gore and Texas Governor George W. Bush running neck-and-neck in their presidential campaigns, and both candidates struggling to lock in key constituencies, the USWA's George Becker began meeting with Karen Tramantano and John Podesta, pleading for the Clinton administration to self-initiate a 201 case.[24] In an October 16 letter to President Clinton, the union and more than 70 representatives of steelmakers and related firms wrote: "We need a clear public recognition that once again there is a crisis devastating the domestic steel industry and that the existing orders affecting the industry must remain in place. We need you to immediately impose meaningful restraints on steel imports from offending non-WTO countries. Finally, given this extraordinary circumstance, we need the Administration to immediately initiate a comprehensive case under Section 201 of our trade laws. Only through these actions can we stop the onslaught we are facing." Members of Congress began working on legislation to support this effort.

The chorus of calls for the administration to self-initiate was understandable. Although some Clinton representatives had insisted all along that a section 201 case brought by industry would have as much chance of success as one brought by government, that view was shared by virtually no one in the union or in industry. Instead, most observers agreed, action by the administration changed the equation in important ways. First, self-initiation demonstrated that the president had already concluded that imports were the cause of serious injury. "It's a signal to the trading partners, it's a signal to the ITC, it's a signal to the courts who may be looking at an appeal," says former ITC commissioner Thelma Askey. "It's a lot dif-

23. One former administration official recalls the head of a major steel firm shouting in a meeting that the value of a share of stock had fallen to less than a cup of latte.

24. In an indication of the union's desperation, Becker even appealed to the administration to provide steel industry protection under a national security provision—but that, one official says, "didn't have a chance in hell," since only a fraction of US steel capacity went to the military.

ferent when the administration says, 'We think that given all the considerations of the broader economy, this warrants our backing.'"[25]

Second, if a case brought by the administration was successful, industry presumably could count on the president to use his discretion to impose a significant trade remedy. Finally—and perhaps most important, according to some observers—if the ITC ruled against the 201 action, the president might still feel bound to provide industry with some meaningful relief. "What it all boils down to was putting the president on the hook for a comprehensive solution," says William Corbett, then on the staff of the National Economic Council, "so that regardless of the outcome at the ITC, the president of the United States is responsible for assisting the industry out of its crisis."[26] Given how few comprehensive solutions existed, Corbett notes, any such relief could easily run afoul of WTO rules concerning quotas or subsidies.

The union appeal, coming as it did just weeks before the presidential election, put the administration on the spot—as it was no doubt intended to do.[27] "We could say, 'No, we won't initiate,'" says the former CEA economist Robert Lawrence, "but that would put a big wedge between Gore and the steelworkers. But if we said 'Yes,' we would be labeled protectionists." In mid-October, the principals began meeting again in earnest on the steel issue, and Gene Sperling convened meetings with Becker, various steel industry CEOs, and the major economic policymakers in the administration to further analyze the crisis. In an October 25 letter to Becker, John Podesta assured the union head that the president was still reviewing section 201 relief, and that the USTR was simultaneously consulting with countries including Ukraine, Taiwan, India, and China about moderating their steel exports.

But in a letter to Clinton the following day, the Executive Committee of the Congressional Steel Caucus complained that the time for more studies was over. "As you know, a Section 201 action would result in a comprehensive investigation of steel imports, similar to the investigation you already propose," the letter read in part. "Any remedy proposed at the end of this investigation would be implemented at the discretion of the President. If the next President feels action is unwarranted, he could choose not to act." Yet in another letter to Clinton written on the same day, the Consuming Industries Trade Action Coalition, a group of steel-using

25. Unless otherwise noted, all quotes from Thelma Askey are from a September 2001 interview with the author.

26. Unless otherwise noted, all quotes from William Corbett are from a September 2001 interview with the author.

27. The economist Greg Mastel notes that elections had played an important role in past steel trade policy decisions. President Reagan, for example, endorsed voluntary restraint agreements during his reelection campaign. "Unions and companies are both aware in elections that they have some unique influences," Mastel says, "and they use them."

companies formed in 1999, argued that the steel industry had exaggerated the impact of imports, and that severe trade restraints would hurt far more companies and employees than it would help.

According to White House insiders, the ensuing administration debate on immediate self-initiation of a 201 centered on three main areas of concern: the political ramifications of any decision for the upcoming election, the likelihood of the ITC reaching a positive finding, and the broader economic impact—both in the United States and abroad—of such a trade-limiting measure. While those involved say the short-term political effect was given the least attention, administration strategists concluded there was more to lose than gain by initiating. "We had the steelworkers on our side in the campaign already," points out David Aaron, formerly of Commerce, "so we weren't going to get anything out of it, except that we would hand Bush an issue to say that we were protectionist."

A more critical question, insiders say, was whether a 201 case would even be winnable. According to Robert Lawrence, because imports were subsiding, it would be hard to prove they were the major cause of the industry's distress. Moreover, just six months earlier, the ITC had ruled against the industry during the injury part of a dumping case on cold-rolled steel—and the injury standards for a 201 case would be considerably higher.[28] Given that a few steel product areas were still doing reasonably well, that industry had only posted one quarter of bad economic results, and that certain product segments were already protected by dumping orders, winning a comprehensive case appeared unlikely. "It seemed to me that the immediate problems of the steel industry were caused by a combination of too much capacity and a slowdown domestically," Lawrence recalls. "The biggest source of their injury was not imports."

Perhaps most important, however, was that industry had also apparently concluded that the case was not ripe. Despite the steel company signatures on the letter to Clinton calling for self-initiation of a 201 action, soon thereafter industry lawyers at a USTR meeting that included Esserman, Lawrence, and Klinefelter "spent most of the time saying there was no case to be made," recalls one participant. Esserman, who says she would have had to rely on steel company data to judge whether a 201 case could succeed, notes that government would not have considered self-initiating without the full support of industry. She adds, "It was disquieting to know that the industry lawyers most familiar with the facts did not think it was a good option. There was an immense interest coming from

28. The ITC decision provoked outrage among industry and union representatives, who claimed that in making its decision, the commission had relied on an inappropriate econometric model rather than the usual analysis of market conditions. In a letter of complaint to President Clinton, Becker and three steel executives pointed out that Commerce had already found dumping margins ranging from 16 to 80 percent, and that the volume of cold-rolled imports had doubled between 1996 and 1998 to 2.2 million tons.

the White House and from various agencies to do something that would be genuinely helpful, and not simply a political stunt."

Moreover, although Robert Rubin had left Treasury, his successor, Lawrence Summers, was equally adamant that a section 201 action, even though temporary, would be bad for the US economy and would send the wrong message to foreign trading partners, possibly spurring retaliatory trade-restricting measures. "If you looked at US economic interests overall in the eight years under the Clinton administration, it was pretty clear that regular predictable access to foreign markets was an enormous part of our economic success," explains one administration official. "As the world's largest exporter, our vulnerability to retaliation was very high in a lot of industries that employ as many or many times more workers than steel."

One final issue influenced the decision. According to many observers, Bill Clinton was acutely aware of his legacy. While he was proud of his trade record in general and such significant accomplishments as winning approval of the North American Free Trade Agreement (NAFTA), the president had been discouraged by his failure to get fast-track negotiating authority, which would have strengthened his ability to negotiate trade agreements.[29] Self-initiating a 201 case, in the eyes of some, would have further sullied Clinton's free-trade credentials. "He didn't want to add another black mark to his second term record on trade," says one insider.

Election Day arrived November 7 without a decision to self-initiate. "We were pushing them, pushing them, pushing them, trying to get Al Gore elected," says Klinefelter. "We were telling them that they had to do something very visible for Gore for us to bring back to those steel states. They wouldn't do it."

A New Administration

The results of the 2000 presidential election were mired in controversy over vote-counting irregularities in Florida. Even after it became clear that George W. Bush would be the next president, the section 201 debate lingered on. Klinefelter, who notes that Bush narrowly won normally Democratic West Virginia, believes that the results might have been different if the Clinton administration had self-initiated a 201. "It would have gone a long way if he could have walked into West Virginia saying that this administration has initiated a 201 to save the basic steel industry," he says. Although industry remained ambivalent about the trade case, union and steel caucus representatives who had Clinton's ear still hoped they might persuade the president to self-initiate. "We pushed on 201 with Clinton right up to the end," recalls Rockefeller's legislative director, Ellen Doneski.

29. Fast-track negotiating authority gave the president the ability to negotiate trade agreements that Congress could either vote down or approve, but not amend. The authority increased the willingness of foreign governments to negotiate with the United States.

Within the administration, there were also still a few individuals who believed Clinton should bring a 201 action. The domestic steel industry, after all, had continued to deteriorate. Wheeling-Pittsburgh filed for bankruptcy in November, followed by LTV, the nation's third-largest steel producer, at the end of December (a number of smaller companies had already filed). Moreover, some 201 supporters claimed that self-initiating would be a politically astute move—an argument that Senator Rockefeller made repeatedly. "We could easily have used the logic that we will show our friends in the steel industry that we care about them," says Robert Lawrence. "We will send this thing to the ITC and put huge pressure on the next Republican president to give them protection."

In the final analysis, however, many of Clinton's top policymakers still did not believe that a section 201 action was a legitimate response. Although the steel industry was unquestionably suffering, Lawrence says, the downturn was primarily due to the weakening US economy. "We thought it wasn't good policy, because we thought we couldn't make the case that these people merited it," he explains. "Our hearts bled for the steel industry, but we didn't think they were being damaged by imports."

The union never stopped pushing. According to Klinefelter, on January 19, six hours before the administration left office, he and Becker went to the White House to make a final pitch to Summers, Podesta, and a few others. But all the union won, Klinefelter says, was a letter from Clinton to the chairman of the ITC, urging him to look hard at the merits of a 201 case. In the letter, Clinton summarized the administration's steel initiatives, noting that it had processed more than 100 dumping and countervailing duty cases involving steel products since 1998; negotiated agreements with Russia; initiated consultations with Japan, Korea, and other significant steel exporters; and completed the global steel study, among other measures. "In spite of these efforts, however," the president concluded, "our analysis of the current and prospective import situation and recent events in the steel industry lead us to believe that Section 201 relief may be warranted in the near future. Therefore, I urge the International Trade Commission to proceed urgently, on its own motion or upon the motion of industry, union, Congressional or Executive Branch petitioners, to provide effective relief for the US steel industry."

For the union, it was too little, too late. According to one outgoing administration official, George Becker was particularly bitter, declaring, "You didn't give us any help at all."

The Case for a 201 Action

Although many Democratic members of the steelworkers union and Congressional Steel Caucus did not have established relationships with the newly inaugurated President George W. Bush or his cabinet, the change of administration did not slow their efforts to win protection from steel imports. Senator John Rockefeller, for example, wrote to President Bush within days of his inauguration urging him to self-initiate a section 201 case, and soon met with Vice President Dick Cheney, Commerce Secretary Donald Evans, and White House political staff. "The senator has made the case to those who he thought would be sensitive not just to the economic or the business or the trade argument, but the political argument," says Ellen Doneski. "They're certainly interested in winning West Virginia again."

The quickly worsening condition of the steel industry also spurred a new round of legislation. On March 1 Representatives Peter Visclosky and Jack Quinn introduced the Steel Revitalization Act of 2001, a sprawling four-pronged bill that dwarfed the quota bill they had submitted in 1999. In addition to incorporating a more restrictive quota provision, the act increased the funds available under Senator Byrd's loan guarantee program to $10 billion and upped the government-guaranteed percentage from 85 to 95 percent,[30] set a 1.5 percent surcharge on all steel to bankroll a legacy cost fund that companies could draw on for retirees' health care, and established a $500 million grant program to encourage consolidation within the domestic steel industry by funding environmental cleanups and restructuring.

Finally, in a reversal of its former position, the steel industry joined the union and Congress in calling for comprehensive relief. "One is driven by the circumstances in which one finds oneself—the factual and policy bases for getting relief in a section 201 case were now satisfied," sums up Alan Wolff, a lawyer for steel companies. In March, a broad-based coalition of steel associations called for the administration to self-initiate a 201 case or to find some other WTO-compatible way to restrict imports.[31] While mini-mills and integrated steel companies still disagreed about whether government should help with legacy costs and restructuring, they were united on the need for protection from excess global steel.

Driving industry to unify was an accelerating decline that went well beyond the bad news of 1998, as the slowing of the domestic economy dried up demand for steel. Even with imports down, capacity continued to exceed demand, and hot- and cold-rolled sheet prices fell that spring to their lowest point in 20 years. A total of 18 steel companies had filed for bankruptcy since the end of 1997, and about 23,500 workers had lost their jobs. Moreover, between November 2000 and June 2001, more than 7 million net

30. Only one company, Geneva Steel, had received funds under Byrd's original loan guarantee program, in part because applicants looked like such bad risks that commercial banks did not want to assume responsibility for even 15 percent of a possible loan.

31. The coalition included the American Iron and Steel Institute, the Cold Finished Steel Bar Institute, the Committee on Pipe and Tube Imports, the Specialty Steel Industry of North America, and the Steel Manufacturers Association.

tons of capacity in the United States shut down. "It's a fair assessment to say that the domestic industry was being absolutely devastated," says one insider. "You can argue about whose fault it was, but the reality is you had a quarter of the industry in bankruptcy, you had 7 million tons of it shut down as a result of actual liquidations, and you had stock valuations that had fallen through the floor."

Adding to industry's interest in a section 201 action was the reality that simply mounting cases against dumping no longer seemed adequate to stem imports. As quickly as a dumping order shut off supply from one country, another steel entrant stepped up exports of the same product to fill the gap. Despite the earlier successful hot-rolled steel dumping cases brought against Japan, Russia, and Brazil, for example, imports of hot-rolled steel crept up again in 2000; eventually, a group of companies led by Nucor filed a second round of cases against 11 countries, including India, South Africa, China, and Ukraine. "The global steel market is much more elastic than it used to be," says Klinefelter. "People know how to shop around, and these items can be made in any country in the world where there is a steel mill, so things move much more quickly than they used to."

Industry may also have felt that the ITC would be more receptive to a 201 case then than it had been in recent history. At the end of his tenure, President Clinton had decided not to renominate Commissioner Thelma Askey at the urging of the United Steelworkers of America and the Congressional Steel Caucus, whose members claimed that Askey's aggressive free trade stance had earned her the commission's worst voting record on trade relief for steel. Although President Bush had attempted to reappoint Askey, he withdrew her nomination after encountering opposition from legislators whose support was critical to moving his tax bill through the House Ways and Means and Senate Finance committees.[32] According to many observers, Askey's replacement, Dennis Devaney (a recess appointment made by Clinton), was seen as a more reliable vote for protection. "The union has changed the complexion of the commission sufficiently so that it is very difficult for them to lose," says one critic.

A Plan for Steel

The steel industry's clear sense of desperation put the steel issue "up front and center" for the new Bush administration, according to one official, who says there was also "intense pressure from the Hill"—even from legislators who had always opposed the idea of a quota. Commerce Secretary Evans, Treasury Secretary Paul O'Neill, and USTR Robert Zoellick

32. Bush instead nominated Askey to be director of the US Trade and Development Agency, a government agency dedicated to encouraging US exports to developing and middle-income countries.

took the lead, aided by CEA Chairman Glenn Hubbard, spending hours with Wall Street analysts to study the industry.[33] Meanwhile, the National Security Council and the National Economic Council doled out research assignments to the various agencies.

At first glance, steel's chances of getting the Bush administration to act on a 201 claim might have seemed low: Historically, the Republican Party supported free trade principles, and Bush had specifically focused on issues of free trade and noninterference in markets during his campaign. But some observers, noting that the Republican administrations of Reagan and George H. W. Bush had implemented the arguably protectionist voluntary restraint agreements, claimed that Bush might feel free to act precisely because of his free trade reputation. "After all, it took Nixon to go to China," says Peder Maarbjerg, legislative director for Representative Peter Visclosky. "It took Clinton to reform welfare. Bush already had all the business people on his side."[34] Rockefeller's aide Doneski adds, "The Republicans weren't afraid to look like they were willing to use our trade laws, because nobody is going to accuse them of being anti–free trade."

Even with industry's support, the administration's ability to make a case that imports were the primary cause of injury, as required under section 201, remained in question. Preliminary Commerce figures at the end of May showed that steel imports through March were 6.2 million metric tons, a more than 30 percent decrease from a year earlier. In order to implicate imports in the current industry slide, a 201 case would have to employ a five-year trend line encompassing the earlier 1998 import surge. But since steelmakers had never fully recovered from the 1998 crisis, 201 supporters argued that linking the two downturns was legally sound.

By May, the Bush administration—convinced that the steel industry needed some kind of intervention—was seriously grappling with the possibility of self-initiating a 201 action. To do so could bring significant political rewards. USTR Robert Zoellick believed a 201 case could serve as an olive branch to the steel union and the Congressional Steel Caucus, insiders say, improving the president's chances of winning trade promotion authority (formerly known as fast-track authority). With trade promotion authority, Bush would be in a better position to pursue two key goals: negotiating a Free Trade Area of the Americas, which would lower tariffs and encourage open borders within the Western Hemisphere, and launching a new WTO trade round. "His hope was not to get the support of the unions for either of those endeavors," says foreign steel attorney

33. Steel received unusual high-level attention, some insiders say, because few subcabinet-level positions had been filled.

34. Unless otherwise noted, all quotes from Peder Maarbjerg are from a September 2001 interview with the author.

William Barringer, "but to make steel a non-issue in at least launching those initiatives."[35]

White House Senior Adviser Karl Rove and other political strategists were also reportedly pushing for a 201 case, arguing that it would help Bush promote nontrade issues—such as tax cuts and education reform—as well as build support in key electoral states in preparation for the next presidential election. Klinefelter says the strategy was sound: "In 2004, Bush could go into Pennsylvania, Ohio, Indiana, Illinois, and West Virginia and say, 'I'm the president who saved your job.' Now it doesn't make any difference what the leadership of the steelworkers union says about the next Democratic presidential candidate. If Bush comes through on this 201, he's going to get our guys."

But insiders insist that political motives were taking a backseat to policy considerations. Evans, O'Neill, and Zoellick were more interested in tackling the global steel industry's chronic issues of subsidies and inefficient excess capacity than they were in blocking imports, observers say. But the members of the new administration reasoned that a 201 case could provide temporary relief, while helping to persuade steelmakers—both domestically and abroad—to address the industry's deeper problems. Officials were not sure what form such discussions should take, or whether they should be bilateral or multilateral, but they resolved to pursue some form of international steel negotiations. "People realized that if we didn't act, there was a good chance we were going to get steel quotas or something else that was going to gum up the works in terms of a broader trade agenda," one official remarks.

While still deliberating at the end of May, the White House got an unexpected prod. Rockefeller and other steel-supporting members of the Senate Finance Committee had wanted the committee to take the initiative and launch a 201 action since the beginning of the year, but Chairman Charles Grassley (R-IA) had blocked progress on the motion. After Senator James Jeffords (R-VT) defected from the Republican Party, however, giving control of the Finance Committee to the Democrats, the new chair, Montana Democrat Max Baucus, vowed to move ahead. Had the Finance Committee taken the initiative, many observers say, the Democrats would have grabbed much of the political capital to be gained from the action.

The administration, however, moved first. In a step that took industry, the union, and Congress by surprise, President Bush announced on June 5 that his administration would self-initiate a 201 investigation for 33 types of steel imports.[36] After declaring that "the US steel industry has been af-

35. The likely impact of a 201 self-initiation on long-held congressional stands on trade was debatable, however. As one former Clinton official notes, "The Democrats in Congress still have to work with the unions. I don't know that the unions are just going to roll over and say, 'Go ahead and get your fast track and sign your WTO agreement.' "

36. The Senate Finance Committee later filed a 201 case structured on the administration's case to demonstrate Hill support.

fected by a 50-year legacy of foreign government intervention in the market and direct financial support of their steel industries," Bush announced that his administration would conduct two sets of international steel negotiations—one to eliminate inefficient excess global capacity, and a longer-term effort to reduce market-distorting subsidies.[37] "They sat down and they actually came up with a coherent plan, not all of which we had suggested," says Alan Wolff. "The Clinton administration really never came to grips with what could be done, although, to be fair, its options were more limited. By the time the Bush administration acted, the crisis had fully arrived, and more tools were clearly available."

A Measure of Protection

President Bush's unanticipated announcement elicited an immediate and powerful response. "It is an important message that the United States will not allow its steel industry to be destroyed by illegal steel imports," declared James G. Bradley, president of Wheeling-Pittsburgh.[38] For the union and steel caucus representatives who had invested so much time and energy during both the Clinton and Bush administrations, the action was a long-awaited payoff and a welcome sign of the new president's receptiveness to steel concerns. "I was so frustrated with the Clinton people, and disappointed in the way that they dealt with this," says Klinefelter. "I've got to say, this Bush administration seems to care more about working people. They care more about jobs, and that's what working people are about."

But those opposed to trade barriers and special protection for steel reacted with anger and concern, accusing the Bush administration of caving in to union and industry pressure. "A Section 201 investigation is a very serious step," Janet Kopenhaver, executive director of the Consuming Industries Trade Action Coalition—a steel users group—asserted in a written statement. "If it results in restricting steel imports, it could severely impact US consumers and steel consuming industries, but won't solve the US industry's basic problems." Similarly, in letters sent to Zoellick, Evans, and O'Neill, the president of the American Institute for International Steel wrote, "Our firm belief is that the current difficult conditions the US steel industry finds itself in stems from living in a protected steel market for over 30 years and benefiting from subsidy programs provided by federal, state and local governments. Simply put, protectionism and subsidies do not create competitive industries."

37. "Statement by the President Regarding a Multilateral Initiative on Steel," White House press release, June 5, 2001, www.whitehouse.gov.

38. Bradley, quoted in Leslie Wayne, "A Significant Lift for a Long-Ailing US Industry," *The New York Times*, June 6, 2001, C4.

Foreign trading partners also expressed their strong displeasure—particularly EU representatives, who blamed US steel woes on the industry's having shirked the painful and across-the-board consolidation undertaken by European steel firms over the past two decades. Five EU steelmakers were among the world's 10 largest steel producers, EU officials noted as proof of European industry reform, while the largest American producer, U.S. Steel, came in at number 11. In a prepared statement, European Trade Commissioner Pascal Lamy declared: "The cost of restructuring in the US steel sector should not be shifted to the rest of the world. The imposition of safeguard measures would risk seriously disrupting world steel trade."[39]

On June 22 Robert Zoellick formally self-initiated the 201 action on behalf of the administration, with an ITC decision expected four months later. How the ITC would rule was debatable, particularly since many observers in mid-2001 still questioned whether the proper conditions existed to bring a 201 case. Nevertheless, in October 2001 the ITC gave a clear vote in favor of safeguards, ruling that imports were injuring US steel producers in 16—or almost half—of the 33 categories under investigation. In December, the commissioners recommended remedies ranging from moderate quotas to prohibitive tariffs of 30 to 40 percent.[40] It would be up to the president to decide on the exact remedy, if any.

During January and February, the Bush administration was flooded with appeals. These ranged from an EU proposal that, in lieu of tariffs, the United States impose a tax on both domestic and imported steel shipments, which would help to cover industry legacy costs and aid in restructuring, to a letter signed by 140 Congress members advocating across-the-board tariffs that would run a full four years. On March 6, 2002, after intense consultations with political and economic advisers, President Bush announced what many observers termed a carefully balanced compromise. The United States would impose three-year safeguards on 10 of the 12 categories of steel imports, with tariffs ranging from a low of 8 percent for stainless steel rod to a high of 30 percent for flat-rolled and 3 other categories of steel. The tariffs, which went into effect on March 20, were slated to drop each year of the three-year remedy period.

A number of exceptions softened the blow. All countries with free trade agreements with the United States—most notably Canada and Mexico—were excluded, as were developing nations with imports to the United States totaling less than 3 percent of the domestic market.[41] In certain cat-

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39. Lamy, quoted in Alan Cowell, "Swift Condemnation of US on Steel," *The New York Times*, June 7, 2001, W1.

40. The actual recommendation covered 12 rather than 16 categories, since the ITC combined 5 into 1.

41. In addition to Canada and Mexico, Israel and Jordan had free trade agreements with the United States, and more than a dozen developing countries qualified for the exclusions.

egories of steel, these exclusions amounted to as much as 35 percent of imports. Also not covered were certain steel products that US manufacturers did not make or were not interested in making themselves. Over the next few months, the Bush administration promised to evaluate the many hundreds of further requests for exclusions it had received, both from domestic steelmakers and steel users and from foreign petitioners.

The World Reacts

The reactions of various constituencies to the tariffs were, for the most part, predictable. Though the remedies were not as extreme as most of the domestic steel industry had desired, and though the decrease in tariffs during years two and three of the 201 action would reduce the impact of the safeguard remedy, the majority of US steel producers—in particular integrated mills and mini-mills, who benefited most from the trade restraints—declared themselves satisfied. "This is protection in substance as well as appearance," said Robert Miller, chief executive of Bethlehem Steel.[42]

However, domestic steel consumers and free trade advocates—including many conservatives normally supportive of Bush and his policies—charged that the tariffs were blatantly protectionist, would damage US steel-using industries more than they would help steel producers, and were adopted for purely political reasons (notably, gaining support prior to the November midterm elections and positioning Bush for the 2004 presidential election).[43] "Sometimes politics dominates good economic decision-making in the best of administrations," said Gerald O'Driscoll, director of the Heritage Foundation's Center for International Trade and Economics. "This is purely a political decision. There is no economic justification for it."[44]

Moreover, many observers claimed that since every safeguards measure challenged in the WTO to that point had been declared illegal, the Bush administration knew full well that the 201 action eventually would be rejected by the organization. However, the almost two years likely needed for the dispute settlement process to reach any conclusion would give the tariffs ample time to block steel imports to the clear benefit of the domestic steel industry.

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42. Miller, quoted in David E. Sanger, "Bush Puts Tariffs of As Much As 30% on Steel Imports," *The New York Times*, March 6, 2002, A1.

43. The 201 action appeared to bring quick and concrete political dividends for the administration. In July 2002 Congressional Steel Caucus support helped the administration to win trade promotion authority—perhaps its top trade goal—by a narrow margin; the law took force in August 2002.

44. O'Driscoll, quoted in Richard W. Stevenson, "Steel Tariffs Weaken Bush's Global Hand," *The New York Times*, March 6, 2002, C1.

Foreign trading partners, meanwhile, expressed outrage. The WTO Safeguards Agreement permitted a country to impose tariffs without retaliation as long as the claimed increase was documented and the tariffs were limited to three years. But according to the European Union, steel exports to the United States had fallen over the previous eight years, and it declared its intention either to get immediate compensation from the United States to account for lost trade or to begin its own retaliation against US exports. Japan and other countries also announced plans to retaliate. In early June, as predicted, the European Union requested the formation of a WTO dispute settlement panel to consider its complaint against the 201 action, and it was soon joined by seven other countries.[45]

Over the next few months, as domestic steel-using companies appealed to the administration for relief and foreign governments accused the United States of being anti–free trade, the USTR continued to consider requests for exclusions. The European Union was particularly assertive, and it backed up its requests with an ongoing threat to impose tariffs worth $335 million on a select list of US exports in advance of any WTO decision (an interim panel decision was not expected until late that year at the earliest). In part to ease cross-Atlantic tension and to make it less likely that the European Union would retaliate early, the USTR over the summer excluded a significant number of EU products from tariffs, as well as granting requests from Japan, US steel producers and users, and others. By the time a large batch of exclusions was announced in August 2002, about a quarter of the steel that could have been affected by the 201 action had been exempted, according to US officials. Largely because of the exclusions, the European Union in the fall of 2002 agreed to postpone retaliation until the WTO dispute panel issued its ruling.

A Period of Consolidation

In first announcing the section 201 action, the Bush administration had insisted that any industry protection would be accompanied by parallel efforts to pare down excess global capacity and reduce market-distorting subsidies. With the tariffs in place, serious questions remained about what the three prongs of the administration's plan might achieve and how they would interact. For example, while the ostensible purpose of the 201 case was to provide the domestic steel industry with comprehensive, short-term relief from imports, allowing it a period of recovery, Bush administration officials also hoped to use the case as a lever to encourage steel companies to take a hard look at their own operations and pursue restructuring at home. "Before they actually did this, Evans, O'Neill, and

45. The complainants, in addition to the European Union, were Brazil, China, Japan, New Zealand, Norway, South Korea, and Switzerland.

Zoellick sat down with the CEOs and the unions and said, 'Look, if we do this, you guys have to make good on the restructuring element of this,'" says one close observer. "We're not in this for market protection; we're in this to solve the fundamental underlying problem that has brought us here in the first place."

In June 2002, USTR Zoellick and Commerce Secretary Evans sent a letter to domestic steelmakers asking them to submit consolidation progress reports in September as well as the following March, at which point the 201 action would have been in place one year. The reports, wrote the officials, should include "measures to consolidate and rationalize operations, reduce costs, enhance efficiency, increase productivity, improve quality and service, and develop new products and markets."[46]

Meanwhile, even before the ITC ruled on section 201, the United States had brought the twin problems of global overcapacity and market-distorting practices before the steel committee of the Organization for Economic Cooperation and Development (OECD). The committee took up the issues during the fall of 2001, but some foreign participants complained that the timing of the meetings, which took place as the Bush administration was debating the extent of 201 remedies, was intended to enable the Americans to use the threat of high tariffs to force international compliance. Even so, the group produced a communiqué in mid-December 2001 declaring that governments of steel-producing countries should initiate policies supportive of restructuring and consolidation. The recommendation was purely voluntary, however, and did not hold participants to any specific course of action.

The effort to address subsidies was even less productive. Though the steel committee met several times during 2002, a US proposal at a September 2002 meeting to draw up an international agreement curbing subsidies met with widespread resistance—in part because representatives of other countries insisted that the United States' antidumping and countervailing duty laws would need to be part of that discussion, a move that the United States refused to consider.[47]

In the United States, the steel industry appeared to agree on the need for restructuring, but called for more government help to make it possible. In September 2002, steel companies began submitting reports on the impact of the 201 action on their operations and on their current and future plans for restructuring, as USTR Zoellick had requested. But companies also used the reports as an opportunity to criticize the number of tariff exclusions granted by the government, and to restate the importance of keeping

46. Letter quoted in "Administration Sets Mileposts for Steel Industry Restructuring," *Inside US Trade*, June 28, 2002.

47. The OECD committee kept meeting into 2004; but after members were unable to overcome key differences, participants eventually dropped the steel subsidies talks in favor of informal consultations.

the section 201 tariffs in place for a full three years, declaring that corporate consolidation efforts—while promising—had barely gotten under way.[48] Moreover, integrated steelmakers continued to request government help with legacy costs; they also stressed the need for new labor agreements with steelworkers that would aid in cost cutting and consolidation.

In fact, though, because of a number of factors, the US steel industry was restructuring, consolidating, and—for most of those companies that survived—becoming more profitable. In the year and a half following the announcement of the 201 action in March 2002, nine more US steel companies went bankrupt, taking at least some inefficient capacity off the market.[49] At the same time, steel prices were rising worldwide as the global economy recovered and as demand for steel grew, particularly in China. In the United States, overall steel imports dropped by about 30 percent during 2003 alone, both because of the section 201 tariffs and because the weak US dollar made the domestic market less attractive to foreign producers.[50] Another critical development, observers say, was the government's assumption of the legacy costs of some key companies. In March 2002 the Pension Benefit Guaranty Corporation, the federal agency that insures private pension plans, took over pension obligations for LTV Steel, and in December it assumed the obligations of the failing Bethlehem and National Steel companies (at a cost of $7.1 billion).

Higher steel prices, the federal agency's assumption of crippling legacy costs, and, in some cases, cost-cutting new labor agreements with the steelworkers union made the assets of many of these bankrupt steel companies attractive to profitable steel producers;[51] the result was a wave of consolidations. The newly formed International Steel Group bought LTV's assets as LTV's pension obligations were lifted in early 2002, and in 2003 it went on to buy the assets of Bethlehem, Weirton, and Georgetown Steel. U.S. Steel bought National Steel's assets, and Nucor bought the assets of Birmingham Steel as well as Trico Steel, which was a joint venture between LTV and two international steel companies (Hufbauer and Goodrich 2003).

48. There was a real chance that the Bush administration would lift the tariffs at the halfway point, particularly if the WTO panel ruled against the section 201 action and the European Union began retaliations.

49. Two companies, National Steel and Calumet Steel, were teetering on the edge and fell over even before the 201 action was formally initiated. The other seven were Birmingham Steel, Cold Metal Products, Bayou Steel, Kentucky Electric Steel, EvTac Mining, Weirton Steel, and WCI Steel (Hufbauer and Goodrich 2003).

50. Ron Scherer and Adam Parker, "Big Steel's Surprise Comeback: A Bush Decision to Lift Tariffs on Cheap Imports Could Nonetheless Have Big Political Consequences," *The Christian Science Monitor*, December 5, 2003, 1.

51. The union struck new labor agreements with the International Steel Group and U.S. Steel, for example, to aid the companies in acquiring bankrupt steel company assets and salvage jobs that might otherwise be lost.

Postconsolidation, the three newly expanded companies were expected to be more productive and better able to compete against large foreign producers in Europe and Asia. Indeed, by late 2003, the US steel industry seemed to be on its best footing in years.

Supporters of section 201 attributed much of the domestic steel industry's gains to the breathing room provided by the safeguard action, insisting that without the stability, increased investor confidence, and subsequent access to capital markets made possible by the tariffs, US companies would not have been able to make such progress in eliminating old facilities, consolidating, and reinvesting. But free trade advocates argued that there was no direct causal relationship between the 201 action and the industry's restructuring. Consolidation, they insisted, happened only in the face of bankruptcy, and the tariffs, if anything, had slowed that process by contributing to higher steel prices that might have helped some weak companies to stay afloat.

The WTO Rules

As the US steel industry underwent a recovery, the case against the section 201 action was working its way through the protracted WTO dispute settlement process. In May 2003, as many observers had predicted, the WTO dispute panel ruled that the safeguards imposed by the United States in all 10 steel categories were illegal. According to the almost 1,000-page report, the ITC in reaching its conclusions had failed to meet four main conditions required under WTO rules. For the top import category of flat-rolled steel and four other kinds, for example, the report claimed that the United States had not shown import increases since 1998; in fact, it found that there had been a general downward trend. Also inadequately documented by the ITC, according to the panel, was the claim that increased imports were the result of unforeseen developments. In every category but one, the WTO concluded that import surges were not the primary cause of the industry's malaise. Finally, the panel ruled that in reaching its injury findings, the ITC should not have included imports from countries—such as the NAFTA partners—whose products ultimately were excluded from the safeguards.

In August the United States appealed the ruling, attacking both the WTO's findings and, in some cases, the procedures the panel had used to reach them. A decision on the appeal was expected in October. Meanwhile, in September the ITC issued a midterm assessment—a requirement of the 201 process—on the impact of the measure on steelmakers. To the dismay of the steel industry, the ITC simultaneously issued a report examining how the safeguard action had affected steel users, as requested by House Ways and Means Committee Chairman Bill Thomas (R-CA).

These two assessments agreed on the difficulty of weighing the tariffs' exact impact on either steel users or producers independent of other economic factors. However, both supporters and opponents of the 201 action welcomed the reports' conclusions as validating their positions. Although steelmakers complained, USTR Zoellick indicated that the president would consider both reports in determining whether to continue the 201 case for its full three-year term or to conclude it early. Pressure was building to make such a decision soon. Although the European Union had held off on retaliation, in large part because many EU exports were covered by exclusions, it had made it clear that if the US appeal before the WTO failed and the tariffs remained in place, the European Union would retaliate in December with $2.2 billion in tariffs on US goods.[52]

In November, the WTO Appellate Body finally issued its ruling, upholding almost all of the major findings of the initial panel ruling. It was not immediately clear how President Bush would react. Though the administration was bombarded by appeals from members of Congress, foreign trade officials, steel users, steelmakers, and steel union representatives, it stayed largely silent on its plans. But on December 4, as the European Union prepared to start its retaliation, Bush announced he was terminating the 201 action at its midpoint, ending some 20 months of steel import tariffs. According to Bush's written statement, the tariffs had "now achieved their purpose, and as a result of changed economic circumstances it is time to lift them."[53]

Most observers concluded that the adverse WTO Appellate Body ruling and the prospect of punishing EU tariffs on US exports killed administration enthusiasm for the tariffs. But USTR Zoellick claimed that the decision was based instead on changed global economic circumstances, including higher steel prices in the United States brought about in part by increased demand in Russia and China, as well as by a drop in imports. In addition, Zoellick said, the September ITC report indicated that continuing the 201 action would begin to harm steel-using companies in the United States. In any event, with the tariffs lifted, the European Union and others dropped their retaliation plans.

The section 201 case remained controversial to the end. "The American steel industry and its workers were depending on President Bush for the chance to complete its restructuring and consolidation," declared Repre-

52. Particularly targeted on the tariff list were products from politically important states, such as textiles from the Carolinas and Florida orange juice. Although the United States claimed there could be no retaliation until an arbitration panel ruled on the timing and amount of the retaliation, the European Union claimed it could act immediately if and when the WTO ruled that the safeguards were illegal.

53. Bush's statement on steel, quoted in "U.S. Promises Self-Initiation of Trade Cases After Steel Tariff Repeal," *Inside US Trade*, December 5, 2003.

sentative Peter Visclosky, one of the most influential members of the Congressional Steel Caucus. "Unfortunately, his December 4 decision will not allow that to happen and further clouds the future of the domestic steel producing industry." But an editorial in the *Independent* of London, which credited the EU retaliation threat and criticism from US steel-using industries with having forced Bush's hand, sounded a very different note: "Mr. Bush's retrograde measure will surely be looked back on as a 20-month aberration in the long story of progress towards global free trade."[54]

54. "The Steel Victory Must Open Up Fair Trade As Well As Free Trade," *The Independent*, December 6, 2003.

Case Analysis

This case deals with the most basic issue in trade policy: When, if ever, should domestic industries that experience difficulties be granted protection from import competition? The answer involves economic, political, and legal considerations.

Free Trade Versus Protection

Economic theory tells us that in an economy with full employment, the nation as a whole gains by buying cheaper imports regardless of whether the low prices reflect foreign productivity or foreign subsidies. The key notion is that price signals will lead countries to specialize in the activities that bring them the highest rewards. While it may be true that domestic firms that compete with imports lose, under competitive conditions the gains to domestic consumers will outweigh those losses.

We know, however, that in the short run, there may be adjustment costs as workers lose their jobs and they, together with other resources, need to shift to alternative employment. In addition, price signals may fail to accurately capture social costs, and "market failures" may follow. For example, domestic steel production could be required to promote national defense, a consideration that a private market system will not automatically take into account. Similarly, allowing imports to enter freely could create problems if foreigners engage in predatory behavior that triggers the exit of domestic firms, thereby setting the stage for the importers to exercise monopoly power in the future. But even when these problems arise, it does not necessarily follow that trade protection is the best approach. In this instance, we could permit free trade and directly help affected workers to engage in retraining, subsidize the mills we really need for national defense, and use antitrust policies rather than protection to deal with emergent monopolies.

Although reliance on adjustment would result in superior long-term economic outcomes, domestic political realities make calls for protection difficult to resist. Political decision makers are forced to grapple with "two-level" game dynamics in dealing with trade issues—they have to simultaneously seek to advance national interests in external negotiations while balancing the competing demands of domestic winners and losers. The winners from cheaper steel imports, for example, will be consumers and those who manufacture goods that use steel as an input; the losers could be owners of steel mills, workers with steelmaking skills, and regions with steelmaking facilities.

The protection decision becomes even more charged when there are perceptions that competition is unfair, either because of the pricing behavior of foreign firms or because of subsidies and other forms of assistance given by foreign governments. Though the nation as a whole may well gain from such behavior, the perception that domestic firms are unfairly treated by foreign subsidies may make it very difficult for domestic policymakers to resist responding in kind. An international agreement or at least some defense against subsidized imports may be needed to protect a government from being compelled to undertake equally undesirable policies in order to avoid severe electoral setbacks.

Thus, offering an industry short-term protection from foreign competition can serve as a safety valve that releases domestic political pressure. The design of the dispute settlement system of the WTO makes recourse to it an attractive option, because the parties bringing suits cannot recover damages for losses incurred while the case is being processed. Powerful players in the trading system, in this case the United States, can therefore take actions to placate powerful domestic political constituencies—knowing full well that their actions will eventually be found to be noncompliant with WTO rules—at relatively little cost. In this way, the actions of the Bush administration in this case exemplify one form of "rational breach."

At its most basic level, then, the questions in this case are, why might an industry be given temporary protection? And what are the implications for the design and operation of the WTO dispute settlement system? Because of its economic and political importance, steel provides an excellent lens through which to explore the interplay of economic, political, and legal issues in the context of the two-level game.

Steel is produced in large plants, and the industry wields considerable political clout. The United Steelworkers of America is a powerful and effective union, and steel operations are an important part of the economy in many congressional districts. Steel is seen by many as being a key industry strategically, both for national defense and for the economy more generally. The industry is also a source of high-paying jobs, particularly for workers with relatively low levels of education. Proponents of steel protection frequently stress these attributes. On the other hand, opponents of protection point to the importance of steel inputs in the production of other goods and the employment that such manufacturing provides. They voice concerns that while protection may save steel jobs, it could lead to layoffs elsewhere.

The debate over steel protection is also affected by the behavior of foreign governments, many of which—for some of these same reasons—have protected, subsidized, and nationalized their steel production. American steel companies often call for a level playing field and have become skilled in the use of countervailing duties rules to provide themselves with relief. As participants in a highly capital-intensive sector, steel firms often find themselves selling below cost during cyclical downturns, and they are thus very vulnerable to the laws that regard selling below cost as dumping.

Rules

The WTO rules aim at achieving freer trade, and they require countries to bind their tariffs at agreed-on rates. But these rules do allow for protectionist responses in the face of trade that is deemed either unfair or highly disruptive.[55] Unfair trade is dealt with through provisions that allow the imposition of countervailing duties in response to foreign subsidies that "cause or threaten to cause" injury and the imposition of antidumping duties if imports cause injury as a result of being sold at "less than normal value." In addition, even without evidence of unfair trade, safeguard actions that involve temporary protection may be undertaken if imports cause injury.

In both the WTO agreements and in US law, imports that are being unfairly traded are treated more severely than those that occasion a safeguard response. While the standard for imposing antidumping or countervailing duties is "material injury," the standard for taking safeguard actions—"substantial injury"—is harder to meet. In addition, under US law, offsetting remedies must be implemented if dumping or subsidies are found; the president has no discretion. However, even if evidence of substantial injury is found by the ITC, safeguards can be implemented only if the president agrees; thus the president may choose not to act if that course is deemed to be in the national interest. It should also be noted that while safeguards must be applied irrespective of source—that is, on all imports—antidumping and countervailing duties are applied selectively, affecting only those products being unfairly traded.

A key idea in the WTO is reciprocity, and the balance of concessions between members may be disturbed when a safeguard is implemented. Accordingly, the rules state that if a country implements safeguard measures and does not offer affected countries compensatory relief, affected WTO members can suspend concessions that are substantially equivalent.

Under the original GATT agreement, this retaliation could be speedily implemented. However, Article 8 of the Safeguards Code, negotiated in the Uruguay Round, states that the right of suspension "shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this agreement." Therefore, assuming they were legal, any US safeguard actions to protect steel could likely affect US and world markets for at least three years without any retaliation being allowed.

55. Responses to unfair trade are covered in GATT Article VI (Anti-dumping and Countervailing Duties) and the Agreement on Subsidies and Countervailing Measures (SCM); responses to injurious imports are covered in GATT Article XIX (Emergency Action on Imports of Particular Products) and the Agreement on Safeguards.

In this case, we see how these rules were used to provide the industry with some measure of protection; but we also see that selective application to just a few production sources may simply induce more supplies from others and not provide much relief. At the end of the day, therefore, the industry will likely seek comprehensive safeguard relief.

The case also brings out a number of interesting features of the US and WTO systems for providing trade protection. The safeguards implemented by President George W. Bush followed US law. The bipartisan ITC unanimously acceded to the president's request to find injury, and the president followed its recommendation for protection. Nevertheless, the European Union was able to challenge this action at the WTO, since the ITC had not reached its conclusions in accordance with WTO rules. First, imports in some of the steel categories given protection had not actually increased in absolute volume, as is required to avoid retaliation for three years; second, the ITC failed to make the case that the import surge reflected "unforeseen developments," another requirement in the GATT rule; and third, the ITC had excluded imports from certain countries (such as Mexico, Canada, and some developing countries) from protection even though it had used them in considering the source of injury. In response to these findings, with its appeal lost and threatened by retaliation, the United States removed the protection. Clearly, the US ITC had problems drafting a finding that would stand up to a WTO challenge.

Key Questions

What should we learn from this case? Is protection ever justified? Should the trade rules permit safeguard protection? Are the rules as currently implemented in the United States and at the WTO effective and appropriate?

The domestic political behavior in the case is unexpected. Bill Clinton, the Democrat with strong labor support, reject steelworkers' requests for help. George Bush, the Republican, was more responsive. What do their actions tell us about politics, principles, and the driving force behind trade policy?

The case also provides insights into the WTO. On the one hand, the United States resorted to protection and got away with its illegal action for several years; on the other hand, the United States was successfully challenged and induced to change its policies when they were found in violation of the rules. Does this outcome show that the international rule of law operates effectively through the WTO dispute settlement system, or does it show that the rules are too weak? There is much here to ponder and discuss.