

June 28, 2004

**BY HAND DELIVERY**

Ronald Lorentzen  
Acting Director, Office of Policy  
Import Administration, Room 3713  
Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, DC 20230

RE: Request for Public Comment – Unfair Trade Practices  
Task Force

Dear Mr. Lorentzen:

These comments are filed on behalf of United States Steel Corporation, in response to the Request for Public Comment ("Request") issued by the Department of Commerce ("DOC") on May 20, 2004.<sup>1</sup> The Request seeks comments on the work of the Unfair Trade Practices Task Force, which was recently established within the Import Administration at DOC "to pursue the elimination of foreign unfair trade practices that prejudice or adversely affect U.S. commercial interests."<sup>2</sup> The Request asks "the public and representatives of the manufacturing sector to identify those unfair trade practices of greatest concern and impact" including "those practices which currently may not be subject to specific or adequate trade disciplines."<sup>3</sup> The Request also welcomes "any suggestions on the most effective ways in which the Task Force can assist in addressing the particular unfair trade practices identified."<sup>4</sup>

We appreciate the opportunity to comment on such an important issue at a critical moment in the history of U.S. manufacturing. While it has long been clear that American companies were being harmed by foreign unfair trade practices, current conditions can

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<sup>1</sup> See Request for Public Comment – Unfair Trade Practices Task Force, 69 Fed. Reg. 30285 (Dep't Commerce May 27, 2004).

<sup>2</sup> Id. at 30286.

<sup>3</sup> Id.

<sup>4</sup> Id.

only be described as a crisis. The U.S. trade deficit in goods has exploded in recent years, skyrocketing from \$198.1 billion in 1997 to \$547.6 billion last year.<sup>5</sup> And the deficit continues to soar. Last year, U.S. trade in goods for January to April reflected a deficit of \$184.1 billion; data from the corresponding period this year show a deficit of \$203.9 billion.<sup>6</sup>

Under these circumstances, it is hardly surprising that U.S. manufacturers are suffering. Beginning in August 2000, U.S. manufacturers shed jobs for 42 months in a row. According to the most recent available data, almost 3 million manufacturing jobs have been lost since mid-2000.<sup>7</sup> This extraordinary figure – roughly equal to the population of the entire Cleveland metropolitan area – underscores the magnitude of the crisis faced by U.S. manufacturers. Time is of the essence, and we cannot afford to wait any longer to implement an effective program to address foreign unfair trade practices.

This paper does not attempt to exhaustively identify and address all of the unfair trade practices currently affecting U.S. manufacturers, but rather highlights some of the most critical and pressing issues on which the Task Force should focus as it begins its work. We look forward to cooperating with the Task Force to further these efforts in the future.

#### **A. Dumping**

Dumping – along with the closed foreign markets that foster the practice – remains a serious problem for U.S. manufacturers. Recent cases and administrative reviews in the steel sector have shown the continued presence, and indeed repeated surges, of dumped goods in this market, often at incredible margins of unfair trade and demonstrably causing material injury to the impacted U.S. industries. Dumping not only robs U.S. industries of the chance to compete on fair terms in their own market, but has a dramatic effect on the ability of industries to earn a reasonable return on capital, make needed investments, and preserve jobs in the United States.

Our existing trade remedy laws are the only proven and effective response to dumping, and represent by far the most effective method of encouraging foreign countries to address the underlying distortions that lead to dumping. Foreign governments often allow, or even cultivate or implement, these practices in violation of their obligations under the WTO – and yet, forcing these governments to honor their obligations has proven problematic. The fact is that the underlying market distortions that foster dumping are often very difficult to isolate and address – given that they typically involve non-

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<sup>5</sup> Trade data taken from U.S. Census Bureau, Foreign Trade Division, available at <http://www.census.gov>.

<sup>6</sup> Id.

<sup>7</sup> See Bureau of Labor Statistics, Series ID CES3000000001, available at <http://www.bls.gov>.

transparent practices and complicated relationships among both commercial enterprises and governments. The U.S. antidumping law remains an absolutely essential tool to help take away the advantage that foreign governments and companies receive from market-closing practices and unfair pricing. In this way, the United States can provide a disincentive for market-distorting behavior abroad, and practices that injure U.S. producers and workers can be minimized.

There is no more important area that the task force could focus on than preservation and enhancement of existing antidumping remedies. To do so, it must recognize and address the numerous challenges that currently exist in this area.

First, escalating attacks on U.S. antidumping laws in international trade negotiations – including the Doha Round, the proposed Free Trade Agreement of the Americas, and the Organization for Economic Cooperation and Development ("OECD") steel talks – are perhaps the gravest threat facing these laws, and one of the most important issues for all of U.S. manufacturing. Ironically, the effectiveness and continued importance of our antidumping laws is nowhere shown more clearly than in these systematic efforts to weaken it by the world's most notorious unfair traders. Preventing any weakening of U.S. law in current or future trade negotiations must be an absolute top priority of our government.

Second, the use of dispute settlement processes – both within NAFTA and the WTO – as fora to attack and weaken U.S. laws is reaching a crisis point. With respect to the WTO in particular, the litany of cases that create new obligations in this area, or second-guess the factual and legal interpretations of U.S. administrators, are particularly well known. Critical decisions in this area include those striking down the Continued Dumping and Subsidy Offset Act, overturning the practice of "zeroing," calling into question the U.S. methodology for determining material injury, and weakening numerous aspects of the administration of the antidumping law. These outrageous decisions are only compounded by the obvious procedural shortcomings – whereby hearings are closed to the public, transcripts of such hearings are never released, and U.S. companies (including those companies who were petitioners in the underlying trade action and who are directly impacted by the unfair trade practices at issue) have no right to participate in – or even attend – the proceedings, or to read briefs filed by foreign countries. This problem is not only a threat to our laws but to the credibility of the entire WTO system.

Third, problems with circumvention and evasion of existing laws must be addressed. These concerns relate to numerous practices, including the widespread practice of "absorbing" antidumping duties through related importers, evasion of orders through use of new shippers, persistent dumping facilitated by trading companies, and outright customs fraud.

Fourth, our own government needs to redouble its enforcement efforts. While the Administration has made clear that American manufacturers "are entitled to the aggressive

investigation of unfair trade practices that undercut {trade} agreements,"<sup>8</sup> and while its enforcement efforts have been aggressive in certain areas, there is room to strengthen our implementation of these critical laws. A recent decision not to deduct Section 201 duties from the U.S. price in antidumping investigations,<sup>9</sup> the possibility of a similar decision with respect to countervailing duties ("CVD"), as well as talk of reconsidering China's non-market economy status, have given rise to concern in this and other industries about the government's commitment to strong enforcement going forward. The task force can play a critical role in helping to identify areas for strengthened enforcement.

### **Recommendations**

- The Task Force should look for ways in which the government can reiterate and publicize its stated commitment to aggressively enforce U.S. antidumping laws – something that in and of itself has a strong deterrent effect on market-distorting practices abroad that foster dumping.
- The Task Force should work with industry and Congress to identify areas where existing laws and enforcement can be strengthened (consistent with WTO norms), and ways in which circumvention – e.g., with regard to duty absorption, new shippers, persistent dumping, narrowly-modified products, customs fraud, etc. – can be better addressed.
- The Task Force should help facilitate efforts to immediately get a strengthened and expanded steel import licensing system up and running – something that is long overdue and will be critical to effective trade law enforcement.
- The Task Force should examine ways in which dumping in other parts of the NAFTA region affects the U.S. marketplace – e.g., through the dumping of input products that are later traded as finished goods in the region. The Task Force should also look for ways to build on existing efforts to better cooperate with Canada and Mexico to defend antidumping laws in trade negotiations.
- The Task Force should examine the growing problem of rogue WTO and NAFTA dispute decisions and their implications for U.S. manufacturers. It should also help develop a program – through legal, government-to-government, and public efforts – to make clear that the United States will no longer accept the abuses in the current dispute settlement systems.

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<sup>8</sup> U.S. Department of Commerce, Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers at 77 (Jan. 2004) (hereinafter "DOC Manufacturing Report").

<sup>9</sup> See Stainless Steel Wire Rod from the Republic of Korea, 69 Fed. Reg. 19153 (Dep't Commerce April 12, 2004) (final results).

- The Task Force should play a role in an expanded government effort and strategy to ensure that U.S. laws are not weakened in ongoing trade negotiations, and – to the extent substantive talks in this area do occur – to ensure that only strengthening measures are accepted (i.e., provisions that will regain many of the provisions lost through rogue WTO decisions).

## **B. Subsidies**

The global market for steel has long been plagued and distorted by foreign government subsidies, and the cycles of crisis and overcapacity that these practices fostered. Indeed, it is estimated that more than \$100 billion was spent on steel subsidies abroad between 1980 and 2000.

Ironically, the most recent steel crisis seems to have finally brought to bear – at least as a theoretical matter – the conviction of government around the world that steel subsidies are a problem for everyone. This led, of course, to serious discussions at the OECD relating to the potential development of tighter disciplines in this area. Unfortunately, the theoretical understanding of the problem does not seem to be yet accompanied by a will on the part of all to actually give up on the public dole. In this regard, major loopholes have been proposed for a whole range of new subsidies – including those relating to energy/environment, government-backed loans, tax abatements, plant modernization, privatization, and near-wholesale exemptions for so-called "developing" industries, which of course include some of the most competitive industries in the world.

The range and scope of exemptions sought in the OECD talks bring home one essential point: the appetite for government support has not weakened (and may in fact have grown) and major new subsidies are currently being contemplated abroad. This makes clear that continued strong enforcement of existing CVD remedies – and defense of those rules in ongoing negotiations – will be absolutely critical going forward.

In terms of the future of the OECD negotiations, the government should continue to explore the possibility of gaining agreement to meaningful new, across-the-board commitments – but always with the recognition that a bad agreement in this area would be worse than none at all.

### **Recommendations**

- As with the antidumping laws, the Task Force should analyze threats to – and how best to defend – CVD laws, both in dispute settlement processes and in trade negotiations.
- The Task Force should build on the information gained as part of the OECD steel talks in terms of potential new subsidies abroad – researching the magnitude and trade-distorting potential of these proposals and ways to combat them.

- The Task Force should work with other government agencies to craft a plan from the OECD talks to build on the work that has been done, to determine whether meaningful new disciplines are possible, and the consider the best way and venue to pursue such efforts.
- As with the antidumping law, the Task Force should work with industry and Congress to help identify and implement measures to strengthen existing law and enforcement efforts – e.g., through application of the CVD laws to non-market economy countries.

### **C. Currency Manipulation**

In recent years, countries like Japan and China have engaged in massive currency manipulation to support their exporters. China keeps the yuan pegged to the dollar, making it literally impossible for the dollar to fall vis-à-vis the yuan, despite a huge and ever-growing trade imbalance between the two nations. Economists have estimated that the Yuan is undervalued by between 15 percent and 40 percent.<sup>10</sup> Meanwhile, Japan has spent immense sums to keep the dollar's value artificially high. Press reports indicate that Japan spent a record 20 trillion yen (\$183 billion) on currency manipulation in 2003 and spent an additional 15 trillion yen (\$137.3 billion) in the first three months of 2004.<sup>11</sup>

Currency manipulation means that U.S. manufacturers lose market share both here and abroad – not because they cannot compete, but because foreign governments are spending enormous amounts to give their home companies an advantage. Unfortunately, the events of the last few years show that countries like China and Japan are deeply committed to this form of aggressive mercantilism, and that efforts by the U.S. government to merely "jawbone" them have little prospect of success.

Currency manipulation constitutes a major trade distortion and unfair trade practice that is continuing to have a significant adverse effect on all U.S. manufacturing. Helping to develop creative ways to address this problem should be a priority for the Task Force.

### **Recommendations**

- While we support ongoing efforts by the U.S. government to address this issue through negotiations, tough talk alone will not be sufficient to persuade countries like China and Japan to change their policy. The Task Force should work with other agencies to examine leverage the United States has to elicit change in this area. In this regard, the government should aggressively consider means by which

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<sup>10</sup> "Snowe Urges Bush Administration to Expand Pressure on China, Combat Unfair Currency, Trade Tactics Costing Jobs," U.S. Newswire (June 15, 2004), available at 2004 WL 78579880.

<sup>11</sup> "Japan says 'smoothing' FX intervention justified," Reuters News (April 25 2004).

the United States could raise the stakes – including limiting access to the U.S. market if necessary – if other countries continue to pursue currency manipulation as a trade strategy.

- Despite recent statements, the Administration should not give up on the possibility of using legal action to address this issue – including through potential initiation of an investigation under Section 301 of the Trade Act of 1974 – to respond to this problem. The Task Force could play a productive role in working with U.S. manufacturers to support this or other bilateral efforts to address currency manipulation.

#### **D. Unfair Tax Rules**

Tax rules in the global trading system – and in particular those relating to the so-called "border adjustability" of taxes – represent one of the most obvious disadvantages facing U.S. companies. These rules allow countries that employ a value added tax ("VAT") – like almost all of our trading partners – to rebate the VAT on exports, while imposing this tax on imports. Meanwhile, the United States is prohibited from rebating income taxes paid by its exporters, or from imposing such taxes on imports. As a result, U.S. producers are essentially subjected to double taxation, while foreign producers sell here tax-free. This disparity alone can account for a significant difference between foreign prices and U.S. prices in the U.S. market.<sup>12</sup>

There is no legitimate economic basis for this distinction – it is simply a bad deal that the U.S. government agreed to decades ago, and that has never been fixed. For years, Congress has identified this issue as a key priority for our trade negotiations, but nothing has ever been done about it. Earlier this year, the DOC's Manufacturing Report stated that this issue should be addressed in future trade negotiations.<sup>13</sup> The Task Force could play a valuable role in helping to publicize this issue and craft strategies to address it – either internationally or domestically, or both.

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<sup>12</sup> Consider, for example, a German good that sells in Germany for \$100 – a price that covers both the underlying cost of the good (\$86.21) and a 16 percent VAT ( $86.21 * 0.16 = 13.79$ ;  $86.21 + 13.79 = 100$ ). If this good is exported to the United States, the VAT is rebated to the German producer, thus allowing the German producer to sell the good in the United States for \$86.21. Assuming that the comparable U.S. good must be sold at \$100 to cover all U.S. taxes, the difference in tax treatment alone results in a difference of almost 14 percent in price. ( $100 - 86.21 = 13.79$ ;  $13.79 / 100 = 0.1379$  or 13.79 percent).

<sup>13</sup> DOC Manufacturing Report at 75.

### **Recommendations**

- The Task Force should consider gathering information and/or conducting research to assess the magnitude and nature of the disadvantage currently suffered by American manufacturers due to the disparity in the treatment of "direct" and "indirect" taxes in international trade. This information could be very useful in publicizing the problem and in making the case abroad about the fundamental unfairness in current rules.
- The Task Force should examine ways to better publicize this critical issue and ensure that it becomes a central priority in ongoing WTO trade negotiations. Given the trade deficit we currently run, and the blatant unfairness of these rules, there is absolutely no reason to sign on to any new multilateral agreement that does not solve this issue once and for all.
- The Task Force should also consider, either now or in the context of future changes to U.S. laws or new trade agreements, how we could take steps domestically – potentially even through U.S. CVD laws – to prevent foreign producers from obtaining the benefits of this subsidy.

### **E. Regulatory Disparities**

As the DOC recently recognized, "U.S. manufacturers face considerably higher compliance costs in labor, environmental, and other regulatory areas than do many of America's trading partners, particularly in the developing world."<sup>14</sup> These significant costs plainly put U.S. manufacturers at a disadvantage in the global market place. It certainly seems unfair that U.S. companies should lose market share to a foreign company that takes advantage of weak labor and environmental rules to exploit our markets.

While this is a controversial area, new trade agreements around the world have given rise to concerns that countries may actually lower their standards or weaken enforcement of core regulatory standards as a means to enhance trade or attract investment. This is an important issue – one that the Task Force can and should take part in considering.

### **Recommendations**

- The Task Force should consider gathering information on regulatory disparities here and abroad, particularly as these may impact individual industries or manufacturing sectors in the United States. Indeed, DOC has a unique role and position that would likely allow it to obtain particularly useful information in this regard.

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<sup>14</sup> DOC Manufacturing Report at 27.

- The Task Force should consider potential changes – both to U.S. law and to current international trade agreements – to reduce these regulatory disparities, and allow U.S. manufacturers to compete on a more even playing field.

#### **F. Export Restrictions Abroad**

Export restrictions – particularly with regard to steelmaking inputs like metallurgical coke and ferrous scrap – have gotten quite a bit of attention in recent months, as the cost of these critical inputs has risen and foreign countries have taken steps to limit exports. While these restrictions take a number of forms, they are all designed to give steel producers in the home market the opportunity to purchase steel inputs at a lower price than steel producers in other markets – and also potentially raise concerns about whether any export restrictions are being equitably applied vis-à-vis third party countries (including the United States).

This is another area where the Task Force can and should play a role in identifying unfair foreign practices and the means to address them.

#### **Recommendations**

- The Task Force should consider collecting and analyzing information on major export restrictions abroad and the effects of such restrictions on manufacturing activities in the United States.
- The Task Force should consider how best to work with industry and other government agencies to respond to such practices – including through potential WTO or other legal action.

#### **G. Closed Foreign Markets**

This heading obviously involves an enormous number of current and potential practices around the world to shut off foreign markets to U.S. or other exports – often with dramatic effects on U.S. producers. As noted above, many of these practices are difficult to nail down and prove with precision, despite the obvious evidence of their existence and deleterious effects. As such, and as discussed above, the antidumping law in many ways remains the best tool to respond to and deter such practices.

Having said that, there certainly are practices that can and should be addressed directly by the government – e.g., where trade remedies may not be the most feasible or effective response. The Office of the U.S. Trade Representative ("USTR"), of course, already collects information in a systematic manner on trade barriers and other major distortions abroad. The Task Force should consider whether the unique position and relationships of DOC could be used to enhance this effort – e.g., through developing more specific information on the impact of such practices on individual U.S. industries.

**Recommendation**

- The Task Force should consider ways in which DOC could further assist existing efforts at USTR to identify and respond to closed markets abroad – including through development of additional information on the effect of such barriers on individual U.S. industries.

Respectfully submitted,

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On behalf of United States Steel Corporation