American Iron and Steel Institute

May 10, 2001

Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Preparations for the Fourth Ministerial Conference of the World Trade Organization, November 9-13, 2001 in Doha, Qatar

Dear Ms. Blue:

The American Iron and Steel Institute (AISI), on behalf of its U.S. member companies who together account for approximately 70 percent of the raw steel produced annually in the United States, is pleased to provide comments to the Trade Policy Staff Committee (TPSC) on U.S. objectives for the November 9-13 World Trade Organization (WTO) Ministerial Conference in Doha, Qatar in response to the *Federal Register* notice, 66 Fed. Reg. 18,142, published on April 5, 2001.

Rules-Based Trade:
Message in Seattle; Same Message in Qatar

For many years, the bipartisan position of the U.S. government has been to support continued multilateral trade liberalization, based on no further weakening of the WTO's antidumping (AD) and anti-subsidy rules. AISI and other U.S. industries continue to support this position because, to open these agreements up in WTO negotiations would lead to certain weakening of the WTO's fair trade rules.

In the months leading up to the December 1999 Seattle WTO Ministerial, against strong foreign government pressure to place AD rules on the table, the U.S. government held firm. The position then was that, in the national interest of the United States - and in the interest of trade liberalization and the global trading system - the United States would not allow the WTO's antidumping and anti-subsidy rules to be the subject of new negotiations.

Administration hold firm. We urge the Administration not to fall, either for the revisionist history on what happened in Seattle, or for the threats of other governments not to enter into a new WTO round unless AD law is on the table. As to the AISI position in Qatar: We and our U.S. members remain committed in support of trade liberalization, provided – and only if – there is no further weakening of fair trade rules.

Weaker WTO Rules – and Ineffective U.S. Laws – Against Unfair Trade: Foreign Governments' Goal at Seattle; Also at Qatar

As the steel crisis has shown, antidumping and countervailing duty (CVD) laws are America's last line of defense against surging unfair trade. Foreign unfair traders view the AD/CVD laws as the only remaining major obstacle to their unfettered abuse of the open U.S. market. They do not want to see usable U.S. laws against unfair trade. To attack this obstacle head on, foreign governments and producers are employing three main ways to achieve their goals.

- International Negotiations. In Seattle, foreign governments sought, and in Qatar they will seek again, to weaken U.S. trade laws through multilateral negotiations. Thanks to the firm position maintained by the U.S. government in Seattle, the forces of trade law weakening did not achieve their goal... then. Now, however, these forces have redoubled their efforts to try to weaken U.S. trade laws through multilateral negotiations – whether in the WTO in Qatar, the Free Trade Area of the Americas (FTAA) negotiations or the Asian Pacific Economic Cooperation (APEC) process. Therefore, the Bush Administration and the 107th Congress must remain vigilant and strongly opposed to all such efforts.

- WTO Dispute Settlement. Having failed to achieve trade law weakening at the WTO Ministerial in Seattle, Japan, Korea and other countries whose producers have engaged in unfair trading have tried to achieve through the WTO dispute settlement system what they could not achieve through multilateral negotiations. Thus, Japan – the country that still refuses to import steel, and which continues to under-perform dramatically as an importer of manufactured goods in general – tried to use WTO dispute settlement procedures to get a WTO panel to overturn U.S. AD duties on hot rolled steel, notwithstanding that what Japan did in 1998 in its hot rolled exports to the U.S. was arguably the most egregious case of dumping ever. In addition, Japan, Korea and the EU have all filed other WTO appeals to try to overturn U.S. steel trade relief in cases decided under WTO-consistent U.S. laws. The Bush Administration should defend aggressively the trade laws enacted by Congress from this ongoing effort by unfair traders to use the WTO dispute settlement process to undermine America's fair trade rules.

- Trade Law Changes. In addition to using multilateral negotiations and WTO appeals of U.S. trade laws and trade law application, counsel for foreign

governments and producers have drafted trade law weakening legislative proposals. On this, both the Congress and the Bush Administration also need to send a very clear signal. Instead of trade law weakening, Congress should ensure that U.S. trade laws are as strong as what the WTO allows. In this regard, AISI urges prompt enactment of proposals advocated by Rep. Phil English (R-OH) and others to strengthen U.S. trade laws consistent with WTO rules.

Steel Crisis and Steel Example:
Need for Strong Remedies Against Unfair Trade

Over the past 30 years, the U.S. steel industry has faced a world of pervasive trade and market-distorting practices offshore, including:

- foreign government "targeting" and subsidization of steel;
- foreign government market barriers to imports of steel and steel-containing products;
- foreign government toleration of private cartels, other private anticompetitive behavior and corruption in the steel sector.

These trade-distorting practices are examined in detail in the July 2000 excellent study by the Department of Commerce entitled "Global Steel Trade." Unfair trade practices have enabled less efficient foreign steel companies to produce at levels not supported by market forces, to maintain artificially high steel prices in their home markets and to dump large quantities of steel in the U.S. and North America as a whole.

Our steel industry is very familiar with the challenge of having to compete against pervasive unfair trade. However, no one was prepared for the crisis that has engulfed the U.S. steel industry and market since 1998. This has been a transplanted crisis caused by global excess steel capacity, market-distorting practices and major structural economic failures elsewhere. The result has been an unprecedented surge of imports, which has turned the U.S. and NAFTA region into the World's Steel Dumping Ground.

The past three years should have been the best of times for an American steel industry restored to world class status, which in recent years has added over 20 million tons of new, state-of-the-art steel capacity. Instead, we have a national steel emergency. Its main cause is the record three-year surge of dumped, subsidized and disruptive finished steel imports. The last three years have been the three highest steel import years in U.S. history. A tidal wave of unfairly traded and disruptive finished steel imports from non-NAFTA countries has led to serious import injury. Its effects include:

- a record 18 steel company bankruptcies since December 1997;
- record low steel prices;
- scores of facility shutdowns;

- the loss of over 23,000 good jobs;
- reduced shipments;
- large financial losses;
- a lack of access to capital;
- unprecedented market instability.

Today, more than 21 percent of total U.S. steel capacity is under Chapter 11 bankruptcy, with still more bankruptcies threatened.

This is not the way market-based trade is supposed to work. Between 1980 and the onset of the steel crisis, the U.S. steel industry literally reinvented itself. By 1998, we had become a new industry producing new steels, using new equipment and employing new processes. Thanks to over $60 billion in modernization investments since 1980 and a costly and painful restructuring of all aspects of steel operations, a new U.S. steel industry had by 1998 emerged as a highly competitive, technologically advanced, low cost, environmentally responsible and customer-focused industry.

In contrast, the steel industries of many other countries - especially in Asia, the former Soviet Union and Central Europe - did not make the adjustments the U.S. industry made in the 1980s and 1990s. They maintained substantial excess capacity, and this excess found a destination in the past three years to the large and open U.S. steel market. There remains about 275 million metric tons of world steel overcapacity and, in recent years, this excess has led to record levels of unfair and disruptive steel imports in the United States sold at cut-throat prices in violation of U.S. laws and WTO rules.

Competitive U.S. steel producers have learned important lessons from the steel crisis. They are that:

- A surge of unfair and disruptive imports causes lasting damage;
- The damage can extend to all segments of the U.S. steel community, and affects even the most competitive producers;
- Current trade laws are inadequate and are not designed to address the kind of major shifts in trade flows that result from un-addressed structural problems, market distortions or structural economic failures offshore;
- Yet, at present, these laws are the only effective WTO-consistent defense that exists to counter surging unfair and disruptive imports.

Therefore, steel producers in the United States, now more than ever, support:

- prompt and strict enforcement of U.S. trade laws;
- modernization and enhancement of these laws in a WTO-consistent manner;
- preservation of effective international disciplines against unfair trade.

Today, notwithstanding lower import levels in recent months, serious import injury and significant unfair trade are continuing in the U.S. steel market. In fact, recent rulings by the Commerce Department have revealed the highest margins of unfair trading of steel in U.S. history, with AD margins (preliminary) ranging up to 240 and 278 percent on imports of hot rolled and rebar, respectively. Another important point, often overlooked, is that the injury from unfair trade constitutes long-term damage for which competitive U.S. steel producers will never be compensated.

The long-term damage to the U.S. steel industry caused by unfair trade should also be of concern to steel's U.S. customers. Dumping robs U.S. steel companies of the ability to generate internally the capital needed for research and modernization so that they can continue to reduce costs, improve quality, compete against other materials and serve customers. It is not in the long-term interest of customers to see competitive U.S. suppliers undermined by unfair or disruptive imports from less efficient foreign firms.

Global Trading System:
Effective Fair Trade Rules Are Essential

In a July 1998 submission to the WTO Working Group on the Interaction between Trade and Competition Policy, the U.S. government said that antidumping law remains:

> *"necessary to the maintenance of the multilateral trading system. Without this and other remedial safeguards, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections which remain in the multilateral trading system. ... [T]he antidumping rules represent an effort to maintain a "level playing field" between producers in different countries ... [and] are a critical factor in obtaining and sustaining necessary public support for the shared multilateral goal of trade liberalization."*

It is no surprise that the countries that repeatedly engage in unfair and disruptive trade are the most vocal critics of U.S. trade laws. Japan and other governments, whose domestic markets remain largely closed, went to Seattle and they will go to Qatar to open up – in order to weaken – the WTO's fair trade rules. Other governments would like to take away the only effective tools the United States has to counter unfair trade. It is no accident that the countries with closed markets and which tolerate cartel behavior want to weaken the WTO's antidumping rules, or that the countries which continue to subsidize their inefficient industries want to weaken the WTO's anti-subsidy rules.

However, this effort to weaken disciplines against unfair trade is a direct threat not just to steel and other competitive U.S. industries. It is also a direct threat to further progress on global trade liberalization. Effective rules against dumping and trade-distorting subsidies are an essential element of the multilateral trading system. These rules are what enables the public here and elsewhere to support open trade.

It is the failure to counter injurious dumping and other unfair trade practices that undermines public confidence in free trade and public support for further multilateral trade liberalization. For more than 50 years, multilateral trade rules have allowed the U.S. and other countries to counter injurious dumping. There is clear recognition that, over time, there can be no free trade unless it is fair and rules-based.

When the public believes that existing trade rules are ineffective or are not being enforced, support for open trade begins to erode – and support for more restrictive, sometimes less transparent, solutions starts to grow. This is what has occurred in the United States in recent years, and the only way to reverse this trend is to improve and enforce U.S. laws against unfair trade.

Only a few years ago, the Uruguay Round of trade negotiations led to weaker international disciplines – and national laws – against dumped and subsidized imports. In late 1999, U.S. negotiators, to their credit, went to Seattle determined to maintain the effectiveness of current international disciplines against unfair trade. Japan and other governments went to Seattle determined to discipline not the underlying trade-distorting practices, but the WTO-consistent laws used in response to those practices.

What the Bush Administration should consider carefully is that public support for the WTO is already weak and is not unconditional. It will not withstand another assault on the system's basic fair trade rules. The real problem in international trade is not the antidumping remedy. It is dumping, closed markets and other trade-distorting practices. If the public is again to support trade liberalization, we need to build a new trade consensus in the United States around effective trade rules, effectively enforced. By contrast, if Japan and other governments get their way and U.S. trade laws are further weakened, what remains of public support for open trade will evaporate.

It took nearly eight years in the Uruguay Round to re-negotiate the current international regime of antidumping and anti-subsidy rules. These rules have yet to be tested adequately and have not proven defective. What the global trading system needs is proper compliance with the current rules – not new negotiations, with new and confusing rule changes that could threaten all WTO members' exports.

Message to Other Nations in Qatar:
WTO Is at Risk

Many developing countries and others are continuing to demand far-reaching changes in the WTO Antidumping Agreement (and U.S. law), e.g., to –

- require that duties generally be lower than calculated margins;
- slant the criteria on product comparisons and exchange rate shifts;

- exempt developing countries from subsidy disciplines;
- increase sharply the threshold levels;
- impose lengthy bans on AD action in certain sectors, such as textiles.

The clear message that should be sent in Qatar on these and other trade law weakening proposals is that they are putting the WTO and continued U.S. support of the WTO at risk. Already, public support for the WTO is fast eroding because the current WTO dispute settlement system threatens U.S. trade laws and sovereignty. Under the existing dispute settlement system, foreign panelists who are often hostile to U.S. trade laws have routinely rejected U.S. trade remedies and have imposed new and, in some cases, very severe limits on the use of trade laws. No challenged safeguard measure, for example, has ever been upheld by the WTO. Similarly, countries have mounted repeated successful challenges to U.S. AD/CVD measures, obtaining through the back door of dispute settlement what the U.S. refused to give up front in negotiations. In fact, even when a country fails to achieve all it seeks in its appeal of U.S. trade law relief, there is often a further net weakening of U.S. law. This is just what occurred in Japan's appeal of U.S. AD duties on hot rolled steel - in spite of this being arguably the worst case of dumping ever.

This encroachment - really, outright attack - by the WTO dispute settlement system on U.S. laws and rules to address unfair and disruptive trade must stop. We believe the time has come for Congress to re-examine the fundamental issue of U.S. commitment to binding dispute settlement. So far, the experiment has proved a disaster for U.S. trade laws. The recent U.S.-Jordan free trade agreement includes non-binding dispute settlement. We think Congress should give serious consideration to expanding this approach.

It is important for TPSC members to know that AISI has suggested that the Congress insert itself into the WTO dispute settlement process to protect the sovereignty of the United States and to ensure that the positions the U.S. negotiated - and that Congress subsequently enacted into law - are not further eroded by WTO dispute settlement bodies. We have suggested that the Congress can help in three ways to address the problem of a WTO dispute settlement system that is undermining our trade laws.

- First, it can support WTO dispute settlement reform, including making the process more transparent and open to participation by concerned private parties.

- Second, it can support the provision of more government resources and resolve to defend U.S. trade laws in WTO appeals.

- Third, it can support prompt enactment of legislation to establish a WTO Dispute Settlement Review Commission. First proposed in 1995 by Senators Dole and Moynihan, such a Commission would be an important first step in reining in the

WTO dispute settlement system and ensuring that future WTO panels do not exceed or abuse their authority.

If, in addition to the ongoing trade law weakening through WTO dispute settlement, trade laws were to be further weakened in WTO negotiations, the Congress should oppose such an agreement if brought back to it for approval.

Conclusions

Laws against unfair trade, especially the AD/CVD laws, are necessary to offset foreign unfair trade and market-distorting behavior, level the playing field and restore public confidence in free trade. Such laws help ensure that more efficient domestic producers are not weakened or destroyed by less efficient foreign firms. Because these laws serve the interest of customers, consumers and the economy as a whole, successive U.S. Administrations and Congresses have taken the position that it is essential to preserve effective U.S. laws against unfair trade and effective international fair trade rules. This was the position that the U.S. government and AISI both took to Seattle -- and this is the position we hope and expect the Bush Administration to take to Qatar.

The key message coming out of Seattle was that it is essential to build a new trade consensus in the United States around the concept of RULES-BASED TRADE. The best way to maximize support for new Trade Promotion Authority and to begin building this consensus is for Congress and the Administration, both before and after Qatar, to:

- work together to strengthen U.S. trade laws in a WTO-consistent manner;
- continue to resist foreign government efforts to weaken further existing U.S. and WTO fair trade rules - whether through international negotiations, WTO dispute settlement or trade law changes.

One final point is this: The AISI position on the WTO and trade laws is supported not just by other U.S. steel associations and dozens of other U.S. industries, but by steel producers in Canada and Mexico as well. In an AISI statement on the FTAA submitted in February 2001, we said with one North American steel industry voice that:

> *"the real issue in international trade is dumping, closed markets, trade-distorting subsidies and private cartel practices - not the AD/CVD laws that NAFTA governments have enacted to counter foreign unfair trade. In this regard, NAFTA governments should insist that... [other] countries:*
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> - *open up their home markets;*
> - *eliminate their trade-distorting subsidies; and*
> - *end their private anticompetitive practices in sectors such as steel.*

In addition, if any... [other] country does continue to press NAFTA governments to agree to eliminate, weaken or amend in any way their AD law, the only acceptable response of NAFTA governments should be that:

- *There will be no substantive changes of any kind in AD/CVD laws in the NAFTA region; and*
- *The only subject with respect to trade laws where there is something to talk about is the need for greater transparency and due process in the way other countries ... administer their AD/CVD laws.*

....the position of NAFTA steel producers on the FTAA and AD/CVD laws applies as well to any effort to launch a major new World Trade Organization (WTO) round of international trade negotiations.

In this regard, NAFTA steel producers will continue to:

- *support free trade and open markets;*
- *support the effective fair trade rules that make them possible; and*
- *oppose all efforts to put AD rules on the negotiating table of a new WTO round."*

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AISI appreciates this opportunity to provide comments to the TPSC on U.S. negotiating objectives at the WTO Ministerial in Qatar.