THE HILL

Leveling the playing field for U.S. manufacturers

By Dan Pearson

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The Senate Finance Committee added Sen. Sherrod Brown's (D-Ohio) poorly named "Leveling the Playing Field Act" to the customs reauthorization bill it passed on April 22. The stated purpose of Brown's provisions is to "restore strength to antidumping and countervailing duty laws" via a "crack down on unfair foreign competition." Among other things, Brown's proposal seeks to change procedures used by the U.S. International Trade Commission (ITC) in deciding whether domestic industries have been "materially injured" by imports. The intent of this legislation is to take a playing field that already is slanted in favor of domestic firms and tilt it even further toward protectionism. It should be rejected.

The existing antidumping and countervailing duty (AD/CVD) statutes instruct the ITC to "evaluate all relevant economic factors" that relate to the effects of imports on the domestic industry under consideration. A number of those factors are specifically mentioned, including the industry's profits. Not being satisfied with that, the Brown bill adds, "gross profits, operating profits, net profits, [and] ability to service debt." As a practical matter, the Commission already looks in detail at an industry's profitability and its ability to repay debts, so this additional wording contributes nothing of substance. The bill also makes other technical and arcane modifications to the statute, none of which grants the ITC authority beyond what it already has.

Although the changes proposed by Brown seem relatively modest, they should not be adopted for a simple reason: litigation risk. The skilled and creative attorneys who represent domestic industries in AD/CVD cases (and who likely drafted Brown's bill) would be only too happy to have another basis on which to appeal Commission decisions with which they disagree. A claim that the ITC had not adequately considered the newly crafted provisions would provide a wonderful justification for an appeal. Why invite such mischief?

If members of Congress actually are interested in modifying the AD/CVD statutes to make them better serve the interests of the U.S. manufacturing economy, they should propose legislation that would balance the interests of domestic producers that are petitioning for import restrictions against the interests of downstream consumers. Currently the ITC injury determination is limited to the effect of imports "on domestic producers of domestic like products." In essence, the Commission must disregard any costs that would be imposed on users of the product once imports are restricted. Those costs can be very large – well in excess of the potential benefits

that might flow to domestic producers. (For more on this issue, see this thoughtful analysis by Daniel Ikenson.)

As an example, the United States now imposes antidumping or countervailing duties (or both) on imports of hot-rolled steel from China, India, Indonesia, Russia, Taiwan, Thailand, and Ukraine. Hot-rolled is a basic form of steel coil that is further manufactured into products such as cold-rolled steel, corrosion-resistant steel, tin-coated steel, and welded steel pipe. In turn, those steel products are used to make automobiles, farm machinery, appliances, ventilation ducts, and a wide range of other products too numerous to mention. Manufacturing those value-added products employs far more people and contributes far more to the U.S. economy than is the case for hot-rolled steel.

The AD/CVD duties very likely cause hot-rolled steel to be higher priced in the United States than in many other countries. Thus, protection for hot-rolled producers raises costs for all other U.S. firms that utilize flat-rolled steel products. The spread between the cost of steel in the United States relative to other countries doesn't have to be very wide before it can become more economical to import steel-containing manufactured products from other countries rather than producing them here.

If the Leveling the Playing Field Act achieves its intended purpose of providing an even greater level of protection to firms producing basic products, it certainly will have the unintended consequence of weakening the U.S. economy and reducing employment overall. Artificially increasing the costs borne by the wide swath of U.S. manufacturers that depend on steel as an input will make them more vulnerable to competition from overseas.

Supporters of Brown's bill instead should consider adjusting the AD/CVD statutes to ensure that interests of downstream users are taken into account. The ITC's injury determination should be changed so that the Commission is required to assess not only the effects of imports on producers, but also the costs that import restrictions impose on users. This would be an important first step toward ensuring that AD/CVD measures actually level the playing field among U.S. firms rather than inadvertently damaging the broad U.S. economy.

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