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WORKSHOP ON STEEL TRADE ISSUES

**MARKET ACCESS AND TRADE FACILITATION ISSUES:
STATEMENT BY MS. NAE HEE HAN**

The Workshop will be held in Paris on 27-28 May 1998.

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**WORKSHOP ON STEEL TRADE ISSUES
MARKET ACCESS AND STEEL TRADE FACILITATION ISSUES
STATEMENT BY MS. NAE HEE HAN, RESEARCH FELLOW
POSCO RESEARCH INSTITUTE
PARIS, 27-28 MAY 1998**

Introduction

1. The steel industry is known for its history of frequent trade disputes and protectionism. Antidumping and countervailing duty filings and VRA's have widely been regarded as a matter of fact in the steel industry. The reason for this derives partly from the nature of steel industry and partly from the structural overcapacity of steel industry that existed since the 1974-75 recession. The steel industry has been viewed as a strategic industry for national security and basic industry for industrial development. This perception granted the steel industry heavy subsidisation and protection from foreign competition. The prolonged recession after the 1974 oil shock intensified the protectionism of the steel industry. During the structural adjustment process in the face of global overcapacity, steel producers often sought protectionism or subsidisation, or both. Since the steel industry was a non-negligible part of the national economy with high regional concentration, it was easier to direct the attention of national policymakers to the misfortune associated with decline of the steel industry, and hence call for protectionist measures. Especially during cyclical downturns, we often observed massive antidumping filings and introduction of protectionist measures and rising tension between exporters and importers.

2. With the US steel industry enjoying a renaissance and structural adjustment of the European steel industry almost over, it may be said that the steel industry's trade disputes disseminating from the excess capacity in developed countries are drawing to an end. However, the steel industry is now faced with another set of challenges from structural adjustments of countries in transition and developing Asian economies.

3. This paper first examines disputes that have been surrounding international trade of steel and then the implication of the Uruguay Round Agreement on contingent protection for steel trade issues. The paper also looks at the challenges presented by the recent crisis in Asian countries and calls for an initiative for a new MSA and international co-operation approach.

Traditional Steel Trade Issues

Antidumping, Countervailing Duties and VRA

4. The course of structural adjustment in the global steel industry has generated a pattern of steel trade disputes that remains largely unchanged for the past two decades or so. The US, which turned out to be the only net importer of steel among developed countries, blames the steel exporting countries, mainly the EU and Japan, for dumping their excess capacities in the US market with the backing of monopoly profits from the protected and subsidised domestic markets. In addition, to avoid competition in the

domestic market, national and international cartel arrangements are prevalent outside the US.¹ The US producers believe that the open and unsubsidised US market has been victimised by these unfairly traded products. Therefore, the American side argues that they are justified in using their trade remedy laws in self-defense against the unfair practices of foreigners.

5. The exporting countries, on the other hand, maintain that the difficulties of the US steel industry was the result of loss of competitiveness caused by high wages in the US steel sector and failure to modernise. According to this argument, the US producers turned to government for protectionist measures to keep foreign competition out and abused antidumping and countervailing duty laws to protectionist ends. Steel trade disputes are thus centered around dumping, subsidy, VRA, and cartelisation. Initially, trade friction involved primarily developed countries(e.g., the US vs. the EU and Japan), but as steel exports of newly developing countries such as Argentina, Brazil, Mexico, Korea, and South Africa expanded in the mid '80's, these countries were also included as targets of US unfair trade law actions.

6. Indeed, the steel industry has been the most frequent user of the unfair trade laws in the US. According to the US ITC Report (1995), during the 1980-93 period, 38.4 per cent of 682 antidumping investigations and 54.5 per cent of 358 countervailing duty investigations involved steel products. However, the majority of the steel industry's unfair trade law filings were terminated by VRA agreements rather than imposition of duties.² As such, massive AD/CVD filings by the US producers and subsequent deals of VRA has been a repeated pattern of steel trade history, leading to the result that steel exports to the US has been under restriction by VRA or similar gray area measures most of the time since the 1970's; ever since the US first employed VRA to limit steel exports from the EU and Japan in 1969, it has maintained VRA's with major steel exporting countries for most of the period until 1992.³

7. The tendency to rely on VRA's and/or antidumping filings to restrict imports has been rather a common fashion in other developed countries as well. The European Community steel trade policy was formed in the context of the Davignon plan introduced in the late 1970's to facilitate the community's steel adjustment problem in response to the post-1974 steel crisis. The Davignon plan adopted minimum prices and production quotas to tackle the excess capacity and also subsidy programs for capacity reduction. In order to prevent imports from undermining the effectiveness of such policy, the EC maintained VRA's with 14 exporting countries.⁴ With the VRA in force, the EC's use of antidumping filings was not as frequent as the US, but the EC turned out to be a heavy user of antidumping rules against East European and Latin American countries. Canada and Australia were also heavy users of antidumping laws, and in Canada the steel sector took the largest portion of antidumping investigations in the 1980's.

1. For example, Allan Wolff(1994).

2. Crandall(1995), who investigated the economic effects of antidumping in the steel industry as a part of the OECD project on antidumping and competition policy, reports:

Virtually all of 1982-91 antidumping cases in the US was terminated by "arrangement". Only a very few actually resulted in the imposition of duties. Thus, the US antidumping policy through 1991 had the effect of being a lever to obtain quantitative import restrictions, reflecting the preference of the US producers and importers alike.'

3. The 1969 VRA expired in 1974 without extension. But when the US imports rose again in 1977, the Trigger Price Mechanism, a price equivalent of VRA, was introduced to limit steel imports to the US until 1982. However, the Trigger Price Mechanism proved ineffective in limiting imports, and after massive AD filings, the US entered into a VRA with the EU in 1982 again. In 1984-85, the US entered into VRA with almost all of the exporting countries.

4. Austria, Finland, Norway, Sweden, Bulgaria, Romania, Hungary, Poland, Czechoslovakia, Spain, Australia, Brazil, Japan, and Korea.

Table 1. Use of Antidumping in the Primary Metal Industry

	Unites States (1979-89)	EC (1980-89)	Canada (1980-91)	Australia (1980-82)
All Industry	451	385	311	546
Basic Metals Industry*	185	45	112	63

* Based on. SIC code 33(primary metals) for US; ISIC Code 3710(iron and steel) for EC; ISIC code 37(primary metals industry) for Canada, ASIC code 29(basic metal products) for Australia.

MSA talks

8. Under the US initiative, the world steel industry agreed to launch talks for a Multilateral Steel Agreement with an intent to put an end to the controversies surrounding steel trade. From 1990, there were 18 rounds of MSA negotiation involving almost all of the steel producing countries in an effort to ensure a free and fair trade in steel through elimination of tariff and non-tariff barriers and prohibition of subsidies. However, since June 1994 the MSA talks have been suspended without promise of reopening. The major reason for the break-up was disagreement over “grandfathering” of past subsidies and dismissal of pending countervailing cases. Even though it failed to materialise, the draft MSA discussed during the final meeting of MSA negotiation in June 1994 contains elements that can be viewed as a major improvement over the market access issues of the steel industry. It contains a subsidy discipline that is stricter than the UR subsidy code, tariff elimination, competition policy code, and dispute settlement procedure.⁵ However, the draft MSA fails to address one important element of steel trade disputes; it does not recognise trade restricting effects of antidumping rules or discipline the abuse of antidumping. Hence, if the draft MSA was adopted, the need to use trade remedy laws may have been reduced, but it would not have lessened the possibility of abuse should a country choose to do so.

Steel Trade Issues in the Post-Uruguay Round Era

9. While the MSA failed to be submitted to the UR agreements as intended, the completion of UR agreement itself has brought about some changes to the issues about which the steel industry had been debating about. In particular, strengthened disciplines on contingent protection(e.g., safeguards, antidumping, and countervailing measures) and the introduction of an effective and efficient dispute settlement system is expected to contribute toward lessening trade conflicts of the steel industry.

Agreement on Safeguards

10. The UR Agreement on Safeguard clearly prohibits the use of VER’s and other gray area measures. Such a ban on VER may force members to turn to article XIX(escape clause), or rely more on antidumping measures to obtain *de facto* VER. The possibility of the latter is rated to be higher and effective enforcement of the ban on VER remains a key issue.

11. Under the GATT system, the safeguard measures were regarded less attractive than VER’s or antidumping actions since they were deemed difficult for governments to meet the conditions imposed on

5. Tariff elimination on all steel products over a 10 year period beginning 1995 was agreed upon among 6 participants (the US, the EU, Canada, Japan, Korea, Australia), and is currently being implemented.

the use of GATT XIX, (i.e. non- discrimination of application and compensation to exporting countries).⁶ The new UR Safeguard Agreement has relaxed the conditions on invocation of safeguard measures to make it more attractive. It does so by allowing for selective application and putting restrictions on the right to compensation, and no adjustment requirement for at least 4 years. On the other hand, it has strengthened the rule by requiring substantial transparency, limit on duration, progressive liberalisation, and specification of appropriate level of initial restriction.

12. It remains unclear, however, if these changes to the safeguard rule overall will make it more attractive. The consensus seems to be that it may not.

Agreement on Antidumping

13. The UR agreement on antidumping was motivated by the concern about an increasing tendency to use antidumping laws and the possibility of abuse for protectionist purposes.

14. The UR antidumping agreement is regarded as an improvement over the Tokyo Round antidumping code in the sense that it has clarified the method used in calculating dumping margins⁷ and investigation procedure⁸; includes sunset clauses, and new disciplines on cumulative assessment of injury. However, it is less than fully satisfactory in the sense it has not totally eliminated room for abuse that existed before. Also, it does not address the more fundamental question of anti-competitive effects of antidumping rules. Critics of the new antidumping code touch on the following issues.

- a mechanical definition of dumping : all export sales at a price lower than home market sale price is subject to AD regulation⁹
- lack of transparency in determining export price and normal price: arbitrariness, unpredictability of dumping margins
- suggested indices for injury determination but no criteria for when these indices signify ‘material injury’: leads to discretion in determining injury
- no generally accepted mechanism to examine the causal relation of dumping and injury

15. It has been noted that to exporters of steel, the abuse of antidumping actions for protectionist purpose is regarded as the biggest obstacle to market access. But the Uruguay Round antidumping

6. To May 1993, 151 safeguard actions have been notified under Article XIX with a third occurring after conclusion of Tokyo Round in 1979. Between 1979-1993, the EU invoked 18 safeguard measures and the US only 4.

7. These include new criteria for determining sales below cost, adjustment mechanism for start-up costs, the acceptance of cost calculation based on accepted accounting principles in the exporting country and new criteria for setting profit rate in constructed value.

8. These include introduction of quantitative criteria for initiating proceedings, termination of investigations upon a determination of *de minimus* dumping margins or negligible import volume, establishment of strict time limit, new disciplines on refunds of anti-dumping duties, new disciplines on sample-based investigations, new disciplines requiring accelerated investigation of new market entrants

9. Finger (1994) maintains that the new antidumping code includes no dumping counterpart to the SCM agreements’ section on ‘subsidy’, and dumping is defined only by implication, as anything against which an anti-dumping action can be legitimately taken. In this sense, he maintains that the Antidumping Agreement defines antidumping, not dumping.

agreement has not provided a fully satisfactory solution to this core market access problem of the steel industry. And, with the ban on VER, the possibility that antidumping will be used for means of protection is greater than before. The recent trend in the use of antidumping seems to verify this possibility: use of antidumping has increased substantially since the completion of the Uruguay Round Agreement and developing countries are taking an increasing share of total antidumping filings (Table 2).

Table 2. **Number of Antidumping Investigations, by Country**

	1969-74	1975-79	1980-84	1985-89	1990-94	1995-96	Total
US	125	140	146	219	249	43	922
EU	19	55	138	101	147	67	527
Canada	42	74	176	115	90	21	518
Australia	-	120	242	180	252	35	829
Others	39	64	10	74	227	264	686
Total	225	453	712	689	973	430	3478

Source: WTO documents, adapted from *1998 Report on the WTO Consistency of Trade Policies by Major Trading Partners*, MITI, Japan

Agreement on Subsidies and Countervailing Measures.

16. The UR Subsidies and Countervailing Measures (SCM) Agreement is evaluated to be one of the major achievements of the Uruguay Round negotiations. In contrast to the Tokyo Round Agreement on Subsidies and Countervailing Measures, the new SCM Agreement has provided a workable definition of subsidy and classified subsidies into three categories; prohibited, actionable, and non-actionable. Moreover, the Agreement defines countervailing measures and remedies for each type of subsidy. In this manner, it has reduced room for trade friction resulting from countervailing measures.¹⁰

17. The UR SCM Agreement also provides for special and differential treatment for developing countries and transitional arrangements. However, concern have been raised that providing for the green light subsidy may work as incentive to overuse it.

18. Even though unsuccessful so far, the steel industry tried to introduce a stricter discipline on subsidy through MSA. The MSA subsidy code is different from the UR SCM Agreement in that it tries to work out concessions and provides no differential treatments for developing countries.

Trade and Competition Policy Issue

19. The achievement of the UR negotiation in opening up national borders through substantial tariff reduction has brought into the spotlight the issue of establishing a 'level playground' between domestic and foreign companies within a national border. In particular, it has been noted that the market opening achievement of the UR agreement can be undermined if private anti-competitive practices work as deterrent to the market access of foreign companies.¹¹ The OECD has been at the forefront of advancing the trade and competition policy issue and is very near to adopting an international discipline on hard core cartels. Also, at the first Ministerial Meeting in December 1996, WTO has launched discussions on trade and competition policy issue. Among various trade and competition issues, the ones that seem most

10. It has been noted that disputes concerning countervailing measure have declined noticeably after the UR Agreement.

11. For example, the Kodak-Fuji film disputes between the US and Japan.

relevant to steel trade disputes seem to be the effect of antidumping on competition and international competition code to deal with international cartels.

20. An examination of antidumping in the context of competition policy reveals that antidumping policies whose original intention was to address dumping with predatory purposes, have become a means of protection and is being abused to restrict competition in the domestic market. Moreover, even in the case where antidumping is used to deal with the anti-competitive effect of dumping, still it is only a second best policy; it tries to eliminate distortions caused by dumping by introducing another distortion. The first best policy will be handling antidumping in the context of competition policy. While the OECD has stopped discussing the relation of antidumping and competition policy, the WTO has decided to work on it. Therefore, there remains the prospect for disciplining antidumping through the trade and competition policy talks in the WTO.

21. One interesting point to note is that, whereas the primary motivation behind trade and competition policy discussions in the OECD was to obtain better market access for exports through international discipline on competition policy, the steel industry's primary concern seems to be about defending the domestic market, i.e., how lax competition policies abroad lead to increased imports to the US market.

Current Steel Trade Issues and International Cooperation

22. The economic crisis in Asia is resulting in increased steel exports from the region and is escalating the tension generated earlier by exports from the NIC countries. This time, it is not the US alone that complains, but producers in the EU, Latin American and other developing countries are also expressing concerns about the impact of increased imports.

23. As predicted by many, with the UR agreement ban on VRA, antidumping seems to be the preferred choice in dealing with the current steel market situation; looking at the recent record of antidumping filings of the steel industry, we observe a rapid increase in the number of antidumping cases since the second half of 1997. The trend seems to be accelerating during the first half of this year and may further intensify as the overall downturn in the steel industry becomes more apparent later this year.

24. It appears then that the steel industry, so far, is tackling the new challenges in an old way, and worries are rising that the steel industry is heading toward another round of antidumping war. Experiences from the Great Depression suggest a protectionist approach may not be an optimal solution to the global crisis. But unfortunately, the steel industry is not equipped with an alternative means; the UR agreement on antidumping seems to be insufficient in dealing with the conflicts arising from the current market situation. Thus, it may be time to readdress the MSA with a refreshed and balanced view in light of the changes in world trade rules and the structure of the steel industry.

25. It is hoped that such an initiative will also provide an opportunity to discuss international cooperation in overcoming the steel crisis presented by the Asian crisis.

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