

disrupt the global steel trading system—foreign excess raw steelmaking capacity has averaged more than twice the level of average domestic steel consumption. Foreign governments and steel manufacturers have shown little interest in implementing meaningful capacity reduction programs. And the inefficient excess foreign steel capacity will continue to impose serious pricing pressures in the U.S. market as foreign producers attempt to unload their excess capacity whenever an opportunity presents itself.

This is precisely why I applaud President Bush for having the vision to implement such a broad and ambitious agenda for correcting the distortions in the steel marketplace which have made this threat as cyclical as the seasons themselves. Further, I applaud the Administration for actively implementing its three-part steel program and engaging all steel producing nations at the negotiating table. Specifically, the President's three-part plan will: seek the near-term elimination of inefficient excess capacity in the steel industry worldwide; eliminate the underlying market-distorting subsidies that led to the current conditions in the first place; and implementing the safeguard action for three years to allow for domestic steel industry restructuring and recovery.

All parts of the President's plan must be implemented in order to place our domestic steel producers on a level playing field. The domestic steel industry is a national asset and is inseparable from our nation's economic, political and military development. But while no one disagrees that the American steel industry is an integral component of our nation's economic base and critical to our national security, only a few voices speak loudly to decry the remedy as unfair to steel consumers. Mr. Speaker, I emphatically disagree.

The tariffs implemented under section 201 resulted from a thorough investigation of the facts. The U.S. International Trade Commission (ITC) conducted the most exhaustive investigation of its type in history. Foreign steel producers employed over thirty-four law firms and participated in more than three weeks of public hearings, submitting over 85 feet of legal briefs and arguments. Foreign and domestic interest groups, including domestic steel consumers, who were opposed to any form of relief for the domestic steel industry were given every possible opportunity to participate—and they did.

After this exhaustive investigation, the ITC unanimously found that the American steel industry had been seriously injured as a result of high levels of low-priced steel imports. Following the unanimous decision of injury by the ITC, the President reviewed the Commission's findings, considered if a safeguard action would have a greater positive effect on the economy than it would negative, and then imposed a reasonable set of tariff and tariff-rate-quota measures.

Mr. Speaker, up to this point I have detailed two separate mechanisms which facilitate the specific input of domestic steel consumers. It is evident that the facts in this case provide the merit for the President's safeguard action, that all interested parties had ample opportunity to participate in the investigation, and that, as part of a broader plan to reform trade distorting practices in this sector, the safeguard action is working without serious negative consequences to downstream industries.

Since the safeguard action was implemented one year ago, there has been a modest price recovery on steel products. Keep in mind, however, that the price of steel was at unsustainable levels prior to and had absolutely no where else to go but up. In fact, even after one year with the tariffs in place hot rolled steel prices are still below the twenty year average.

Steel supplies have also been robust since the safeguard action has been in place. Contrary to predictions, there is no evidence that the safeguard measure has unduly hampered import supply. Indeed, imports of flat-rolled steel increased substantially after the imposition of section 201 measures in 2002, as compared to the same period in 2001.

One goal of the safeguard statute is to achieve a period of breathing room from unfairly traded imports which allows the affected industry time to restructure. Since the safeguard action was implemented, domestic producers have enjoyed improvements in revenues, operating income, and capacity utilization. A number of companies have returned to profitability, while other companies have shown significant improvements even though they have not yet become profitable. The industry has made significant progress toward restructuring and consolidation. While recovery and restructuring will take time, the President's plan has allowed the industry to make a real start.

The crisis in steel is not yet over. It is not enough for Congress to look back on the actions already taken by the ITC and the President. Instead, Congress must continue to take an active roll, along with the President, and look toward completing the initiatives we have already begun. The safeguard action was put in place by President Bush for three years, declining each year it is in effect. The safeguard action must not be cut short and must run its full course. Further, great strides must be taken to facilitate a comprehensive and meaningful conclusion to the OECD high-level talks on steel.

Finally, the United States must also maintain and utilize strong trade laws which encourage free and fair trade. Over the long term, strong and full enforcement of U.S. anti-dumping and countervailing duty laws is the only means to encourage market behavior and deter the unfair trade practices that initially led to the steel crisis. These laws are critical to the long-term survival of the domestic steel industry. It is essential that our trade laws are fully enforced and that the Administration defend the integrity of this last line of defense against unfairly traded imports in negotiations for new international trade agreements.

THE U.S. STEEL INDUSTRY

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 2003

Mr. COSTELLO. Mr. Speaker, I rise today to recognize the one-year Anniversary of President Bush's decision to impose temporary tariff relief on behalf of the domestic steel industry.

Since 1998, our domestic steel industry has been in crisis, with the worst year coming in 2001. The fundamental cause of this crisis

was massive foreign overcapacity, which had caused the United States to become the dumping ground for world excess steel products. As a result of this, 35 steel companies have filed for bankruptcy, and over 50,000 American steel workers have lost their jobs.

In my home state of Illinois, the crisis has resulted in four steel companies filing for bankruptcy, including Laclede Steel and the parent company for Granite City Steel, which are in the Congressional District I represent. Approximately 5,000 steel workers have lost their jobs in Illinois alone.

In 2000, I joined my colleagues on the Congressional Steel Caucus in urging the President to implement a Section 201 investigation by the International Trade Commission to determine if our domestic markets had been harmed by illegal dumping. I also testified before the ITC to express my concerns regarding the steel crisis. The ITC ruled unanimously that the steel industry had indeed been harmed.

While the ITC's decision was welcome, it didn't guarantee relief for the domestic steel industry. That decision was left to the President to determine what type of remedy should be afforded to the industry. I was pleased that the President decided to impose the tariffs, rather than quotas, which would not have been as helpful to the industry.

Mr. Speaker, we have seen the positive results of the President's decision to impose tariffs. The steel industry is beginning to show signs of recovery. Prices are stabilizing and steel companies are returning to profitability. The industry is restructuring and consolidating. All of this has happened without hampering the availability of competitively priced steel products. In fact, steel imports were higher in 2002 than they were in 2001.

However, for the industry to continue its recovery, it is imperative that as the Section 201 tariff measures are reviewed, they remain fully enforced for at least three years as ordered by the President, and that exemptions to the tariffs are limited.

I urge my colleagues to join me in supporting our domestic steel industry by supporting the existing tariffs on foreign steel. This support will allow for the continued recovery of this nation's domestic steel industry.

INTRODUCTION OF THE INSTALLMENT SALE PRODUCTION ACT OF 2003

HON. WALLY HERGER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 2003

Mr. HERGER. Mr. Speaker, I am today introducing legislation that would restore effective use of the installment method of accounting to long-term service business owners who sell their business interests.

The installment method of accounting allows a seller to pay tax on the gain from a sale as the seller receives the sale proceeds. This tax treatment matches the time for paying the tax to when the seller has the cash with which to pay that tax.

As many Members are aware, in the 106th Congress, we acted on a recommendation from the Clinton Administration to repeal the installment method of accounting for accrual

basis taxpayers. Only after such change became law did we discover that we had effectively eliminated the installment method of accounting for many small business owners and, as a result, made it much more difficult for those business owners to sell their businesses. These business owners were forced to pay the entire federal income tax due on the sale of their business in the year of sale, even though the proceeds of the sale would be received over several years. This up-front demand by the government forced business owners to borrow to pay the tax or to accept lower sale prices in order to induce buyers to pay enough up-front to cover the seller's tax. To its credit, the Congress admitted its mistake and retroactively restored the installment method to accrual basis taxpayers in the Installment Tax Correction Act of 2000 (P.L. 106-573), which was enacted on December 28, 2000.

While restoring the installment method for accrual method taxpayers in 2000 was the right thing to do, it did not go far enough in remedying the installment sale problems of business owners. Despite the clear policy decision by Congress in 2000 to permit sellers of businesses to use the installment method, some long-term business owners continue to be required to pay a significant portion of total taxes upon entering into an installment sale of their business, even though they have not yet received any significant part of the sale proceeds.

An exception to the installment sale method of accounting requires taxpayers to pay all tax attributable to depreciation recapture in the year of a sale. This depreciation recapture rule was adopted in 1984 in order to prevent taxpayers from engaging in "churning" transactions, sale/leasebacks, and other tax shelter transactions involving real estate and equipment. However, the recapture provision was expanded well beyond its original purpose in 1993 in connection with legislation relating to the treatment of intangibles. Unfortunately, Congress may not have fully appreciated the consequences to sellers of business interests.

In 1993, the Congress adopted rules to clarify the amortization of acquired intangibles (e.g., goodwill, going concern value). The 1993 change required intangibles to be written off over a 15-year period, but specified that any gain on the sale of the intangibles attributable to previous amortization deductions would be treated as depreciation recapture. As a result, tax on this gain must be paid immediately in the year of sale. Because these new rules generally applied to intangibles acquired after August, 1993, business owners are now only just beginning to feel the effects of the recapture rule. This rule is having a particularly adverse effect on service businesses, because intangibles such as goodwill and going concern value represent a major portion of the value of those businesses.

For a simplified example, take the case of a business owner who purchased an interest in an architectural firm for \$100 in 1993, substantially all of the value of which was attributable to going concern value. The owner, who has actively participated in the business, retires in 2009 and sells the business for \$200, payable in ten equal annual installments. This sale would produce \$100 of capital gain (at an assumed tax rate of 20%) and \$100 of ordinary income (at an assumed tax rate of 33%), generating a total tax of \$53. Be-

cause of the intangibles recapture rule, the seller will have to pay \$35, or 66% of the total tax, in the first year, despite having received only 10% of the sale proceeds in that year. This result is clearly inequitable and defeats the purpose of allowing business owners to use the installment method of reporting gain from the sale of the business. Moreover, the result is especially harsh in cases where a business owner is retiring and selling the business.

My bill would allow a long-term active participant in a service business to report intangibles recapture gain on the installment basis along with other gain from the sale. The legislation would not change the character of any gain. As such, intangibles recapture gain would continue to be ordinary income to reflect the fact that it previously gave rise to an ordinary deduction. The bill is limited to long-term participants because they are the individuals who would otherwise be likely to suffer the greatest hardship under the recapture rule and who are most likely to be relying on installment sale payments to supplement their retirement income.

Specifically, my bill would allow an individual who has been an active participant for five of the prior seven years in a business in which capital is not a material income-producing factor (i.e., a service business) to report on the installment basis any intangibles recapture income resulting from the disposition of an interest in the business.

Because this proposal does not apply to depreciation recapture from tangible property, the proposal does not conflict with the original goals of Congress in adopting the depreciation recapture exception to the installment sale rules. Specifically, this is not a change that would permit tax sheltering through any sort of "churning" transactions.

While this proposal does not address all of the potential cases in which the installment sale method is unavailable upon the sale of a business, it does go a long way towards addressing one of the most egregious situations. I urge my colleagues to support this worthy legislation.

INTRODUCTION OF THE CLASS ACTION FAIRNESS ACT OF 2003

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 2003

Mr. GOODLATTE. Mr. Speaker, I am pleased to introduce today, along with my good friends from Virginia, Mr. BOUCHER and Mr. MORAN, and the Chairman of the Judiciary Committee, Mr. SENSENBRENNER, the Class Action Fairness Act of 2003.

This much-needed bipartisan legislation corrects a serious flaw in our federal jurisdiction statutes. At present, those statutes forbid our federal courts from hearing most interstate class actions—the lawsuits that involve more money and touch more Americans than virtually any other type of litigation in our legal system.

The class action device is a necessary and important part of our legal system. It promotes efficiency by allowing plaintiffs with similar claims to adjudicate their cases in one proceeding. It also allows claims to be heard in

cases where there are small harms to a large number of people, which would otherwise go unaddressed because the cost to the individuals suing could far exceed the benefit to the individual. However, class actions are increasingly being used in ways that do not promote the interests they were intended to serve.

In recent years, state courts have been flooded with class actions. As a result of the adoption of different class action certification standards in the various states, the same class might be certifiable in one state and not another, or certifiable in state court but not in federal court. This creates the potential for abuse of the class action device, particularly when the case involves parties from multiple states or requires the application of the laws of many states.

For example, some state courts routinely certify classes before the defendant is even served with a complaint and given a chance to defend itself. Other state courts employ very lax class certification criteria, rendering virtually any controversy subject to class action treatment. There are instances where a state court, in order to certify a class, has determined that the law of that state applies to all claims, including those of purported class members who live in other jurisdictions. This has the effect of making the law of that state applicable nationwide.

The existence of state courts that broadly apply class certification rules encourages plaintiffs to forum shop for the court that is most likely to certify a purported class. In addition to forum shopping, parties frequently exploit major loopholes in federal jurisdiction statutes to block the removal of class actions that belong in federal court. For example, plaintiffs' counsel may name parties that are not really relevant to the class claims in an effort to destroy diversity. In other cases, counsel may waive federal law claims or shave the amount of damages claimed to ensure that the action will remain in state court.

Another problem created by the ability of state courts to certify class actions which adjudicate the rights of citizens of many states is that often times more than one case involving the same class is certified at the same time. In the federal court system, those cases involving common questions of fact may be transferred to one district for coordinated or consolidated pretrial proceedings.

When these class actions are pending in state courts, however, there is no corresponding mechanism for consolidating the competing suits. Instead, a settlement or judgment in any of the cases makes the other class actions moot. This creates an incentive for each class counsel to obtain a quick settlement of the case, and an opportunity for the defendant to play the various class counsels against each other and drive the settlement value down. The loser in this system is the class member whose claim is extinguished by the settlement, at the expense of counsel seeking to be the one entitled to recovery of fees.

Our bill is designed to prevent these abuses by allowing large interstate class action cases to be heard in federal court. It would expand the statutory diversity jurisdiction of the federal courts to allow class action cases involving minimal diversity—that is, when any plaintiff and any defendant are citizens of different states—to be brought in or removed to federal court.