American Iron and Steel Institute

Written Statement of
American Iron and Steel Institute (AISI)

To the
Chairman and Board of Directors of the
United States Export-Import Bank (EXIM)

In Connection with
Public Hearing on Proposed Revisions to the
Bank's Economic Impact Procedures to Reflect
Changes Made in the Bank's Charter
During Its June 2002 Reauthorization

October 10, 2002

The American Iron and Steel Institute (AISI) appreciates this opportunity to submit written comments to the Export-Import Bank on behalf of its U.S. member companies who have a major stake in any steel-related action by the Bank.

America's steel producers support an effective EXIM Bank, and we are concerned about the health of our domestic suppliers. At the same time, we support the President's Steel Program, including our government's ongoing efforts at the OECD to eliminate excess and inefficient global steel capacity and steel market-distorting practices worldwide. This effort now embraces a specific attempt to get other governments "to refrain from using official export credits for steel plant and equipment in circumstances where there is substantial excess global steelmaking capacity." Correcting world steel overcapacity is a primary goal of the President's Program, and the failure to speak with one voice detracts from the credibility of the President's Plan and empowers its opponents. Thus, it is critical that our government not speak with two conflicting voices in this area.

With that as background, when the AISI last submitted comments on this issue in July of 2001, we stated that it was essential to give more weight in the Bank's economic impact procedures to:

- commodity oversupply situations such as steel;
- past and pending trade case determinations;
- production displacement or trade diversion from third countries; and
- full and timely input from the private sector.

AISI and its U.S. members are grateful that, when the Congress did pass the 2002 EXIM Bank Reauthorization Act, it endorsed these principles. Now the question is: how should the Bank's economic impact procedures be revised to be consistent with these principles and with the specific requirements of the 2002 Reauthorization Act?

In reviewing current procedures, staff recommendations for the new procedures and the requirements of the 2002 Act, we urge that the Bank's procedures be revised in the following ways so as to comply with the new requirements:

- First, the Bank should clarify that, in determining the definition of "substantially the same product" covered by an order, preliminary determination or 201 determination, it will not use the product descriptions from trade law cases, since they are designed for a different purpose and do not define "substantially the same product." Instead, the Bank, consistent with the purpose of the statute, should take into account those products that are one or two steps upstream or downstream from the product subject to such action. In other words, the definition should capture the concern where there is an order on cold rolled steel, for instance, but the request for support involves a hot rolling (next step up) mill in the same country. Otherwise, excess hot rolled production could simply be dumped into the U.S. market. The staff recommendation that the Bank should use the descriptions from trade cases to determine the scope of product coverage does not accord with the language of the 2002 Act or with Congressional intent. The Congress clearly expects that the Bank will recognize that, where there are products, such as hot and cold rolled steel, which are closely related and part of a continuous production process, they should be treated as "substantially the same." The Congress <u>specifically broadened</u> the coverage to products that are "substantially the same," and it purposely avoided crafting a provision to apply only to the specific products covered by a trade case. This issue is perhaps the most important new procedure in the 2002 Act, and Congressional intent here has been <u>well known</u> to Bank representatives throughout the legislative process. <u>Only</u> a broad definition of "substantially the same" makes sense in terms of the economics, statutory language and Congressional intent on this issue.

- Second, the Bank should clarify that there is no dollar threshold in procedures that involve entities subject to a preliminary antidumping (AD) or countervailing duty (CVD) determination, since the Congress considered and specifically rejected this concept of a dollar threshold. The staff recommendation to use a $10 million threshold approach is essentially the same as current policy, yet the 2002 Act requires that procedures be adopted regarding loans or guarantees to any entity that is subject to a preliminary AD/CVD injury determination. The staff recommendation does not accord with the language of the 2002 Act or with Congressional intent. The Bank has no authority to circumvent the law or override Congressional intent by granting several smaller loans in order not to trigger the $10 million threshold and -- to avoid this danger -- the 2002 Act requires that the Bank develop a new process to take into account loans and guarantees regardless of the amounts involved.

- Third, the Bank should clarify that it will not provide a loan to any producer of a product that is "substantially the same" as a product subject to an AD/CVD order. In other words, if there is an AD/CVD order against hot rolled steel from Indonesia, the Bank should not be able to support a loan to a producer of hot rolled steel from Turkey. This reflects the clear meaning of the statute. The staff recommendation that there be no change in the current procedures does not accord with the language of the 2002 Act. The statutory language makes it very clear that the prohibition in the future should turn on whether there is an order on the product -- not necessarily the product from a specific company or country.

- Fourth, the Bank should clarify and explicitly state that, in cases where there is a "substantial injury test" (which is an objective calculation equaling at least 1 percent of U.S. production), it will take into account the public comment received during the notice and comment period, in addition to the 1 percent test, in determining whether oversupply conditions exist. The new procedures strongly suggest but do not explicitly state that the Bank should take into account comments received from the public during the notice and comment period.

Further on the issue of private sector input -- and given the serious process problems that occurred in a recent request by a U.S. supplier for EXIM financing assistance for a steel project in Turkey -- AISI continues to support clear, carefully defined and faithfully followed procedures for soliciting public comment well before a request is voted on by the EXIM Board. In addition, we support the steel-specific EXIM language included in the FY 2003 Foreign Operations Appropriations bill. This language, sponsored by Rep. Peter Visclosky (D-IN) and supported by Sen. Evan Bayh (D-IN), requires that the Bank report to the Committee any steel-related proposals, and that it consider global steel overcapacity, before it extends support to a foreign steel project.

To sum up, the 2002 EXIM Reauthorization Act made significant changes in the area of economic impact procedures, and the Congressional intent of the amendment sponsored by Rep. Patrick Toomey (R-PA) and Sen. Bayh is clear. The opponents of the new procedures want to argue that, because the Bank made some changes to its procedures in September 2001 (prior to passage of the 2002 Act), no significant changes are required now. Their position is wrong.

The statute is clear as to the definition of "substantially the same product," the procedures relating to preliminary AD/CVD orders and the scope of the new procedures on products subject to AD/CVD orders. The Congress knew all about the 2001 procedures, yet it still saw a need to amend the statute in significant ways. It is not acceptable to take a "sharp practice" tax lawyer approach to find possible loopholes in the 2002 Act or to draft the new procedures in an adroit or technical way to try to get around the statute and its clear meaning. The Bank needs to honor the will of Congress and to implement fully the 2002 Act in its new procedures.

Simply stated, the Bank needs to fulfill its basic mission. That mission, as the Congress has made clear, is to promote U.S. exports, but to make sure that there is a balanced, full and fair procedure with regard to economic impact analysis -- so as not to promote exports to the further detriment of domestic manufacturing.

Once again, AISI appreciates this opportunity to provide written comments to the Bank on a subject of great importance to the Institute's U.S. members.