

NAVISTAR INTERNATIONAL CORP
Form S-8
November 15, 2001

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As filed with the Securities and Exchange Commission on November 15, 2001

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

NAVISTAR INTERNATIONAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

36-3359573
(I.R.S. Employer
Identification Number)

4201 Winfield Road
P.O. Box 1488
Warrenville, IL 60555
Telephone: (630) 753-5000
(Address of principal executive offices)

401 (K) PLAN FOR THE NON-BARGAINING UNIT
EMPLOYEES OF AMERICAN TRANSPORTATION CORPORATION
(Full title of plan)

Robert A. Boardman
Senior Vice President and General Counsel
Navistar International Corporation
4201 Winfield Road
P.O. Box 1488
Warrenville, Illinois 60555
Telephone: (630) 753-5000
(Name, address and telephone number of agent for service)

Calculation of Registration Fee

| Title of Securities to be Registered | Amount to be Registered(3) | Proposed Maximum Price per Share(1)(2) | Proposed Maximum Aggregate Offering Price(1)(2) | Amount of Registration Fee |
|--------------------------------------|----------------------------|--|---|----------------------------|
| Common Stock, par value \$0.10 | 500,000 shares | \$34.67 | \$17,335,000 | \$4,333.75 |

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h).
 - (2) Reflects the average of the high and low prices on the New York Stock Exchange Composite Tape on November 9, 2001 pursuant to Rule 457(h).
 - (3) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this Registration Statement also covers an indeterminate amount of interests in the plan to be offered or sold pursuant to the terms described therein.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act"), and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

The following documents filed by Navistar International Corporation (the "Registrant") with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

(a) The Registrant's Registration Statement No. 333-64626 on Amendment No. 1 to Form S-4 filed July 26, 2001.

(b) All other reports filed by the Registrant with the Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since October 31, 2000.

(c) The description of the Registrant's Common Stock contained in the Registrant's Form S-1 (Registration No. 33-50327) filed pursuant to Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Registrant pursuant to Section 13(a), 13(c), and 14 and 15(d) of the Exchange Act, prior to filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such reports and documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the General Corporation Law of the State of Delaware provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The

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indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceedings, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceedings, had no reasonable cause to believe that his conduct was illegal. A Delaware corporation may also indemnify any persons who are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorney's fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. To the extent that a present or former officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses (including attorneys' fees) which such officer or director has actually and reasonably incurred in connection with such defense.

Under Article Ninth of the Registrant's Restated Certificate of Incorporation and Article XII of its By-Laws, as amended, the Registrant shall indemnify any person who was or is made a party or is threatened to be made party to or is otherwise involved in any action, suit or proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Registrant (including any predecessor corporation of the Registrant), or is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith to the fullest extent authorized by the General Corporation Law of the State of Delaware. Such right of indemnification shall be a contract right and shall not be exclusive of any other right which such directors, officers or representatives may have or hereafter acquire under any statute, the Registrant's Restated Certificate of Incorporation, the Registrant's By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

In addition, Section 102 of the General Corporation Law of the State of Delaware allows a corporation to eliminate the personal liability of a director of a corporation to the corporation or to any of its stockholders for monetary damages for a breach of fiduciary duty as a director, except in the case where the director (i) breaches his duty of loyalty, (ii) fails to act in good faith, engages in intentional misconduct or knowingly violates a law, (iii) authorized the payment of a dividend or approves a stock repurchase or redemption in violation of the General Corporation Law of the State of Delaware or (iv) obtains an improper personal benefit. Article Eighth of the Registrant's Restated Certificate of Incorporation includes a provision which eliminates directors' personal liability to the full extent permitted under the General Corporation Law of the State of Delaware.

The Registrant maintains a policy of directors and officers liability insurance covering certain liabilities incurred by its directors and officers in connection with the performance of their duties.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the Exhibit Index that immediately precedes the exhibits filed with this Registration Statement.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that the undertakings set forth in paragraphs (i) and (ii) above do not apply if the Registration Statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in the periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of any employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant

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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and had duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois, on November 15, 2001.

NAVISTAR INTERNATIONAL CORPORATION

By: /s/ ROBERT C. LANNERT

Name: Robert C. Lannert
Title: Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

POWER OF ATTORNEY

Each person whose signature appears below does hereby make, constitute and appoint John R. Horne, Robert C. Lannert, Robert A. Boardman, and Mark T. Schwetschenau and each of them acting individually, true and lawful attorneys-in-fact and agents with power to act without the other and with full power of substitution, to execute, deliver and file, for and on such person's behalf, and in such person's name and capacity or capacities as stated below, any amendment, exhibit or supplement to this Registration Statement, making such changes in the Registration Statement as such attorney-in-fact deems appropriate.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement and Power of Attorney have been signed on November 15, 2001 by the following persons in the capacities indicated.

/s/ JOHN R. HORNE
Chairman, President and Chief Executive Officer and Director (Principal Executive Officer)
John R. Horne

/s/ ROBERT C. LANNERT
Executive Vice President and Chief Financial Officer and Director (Principal Financial Officer)
Robert C. Lannert

/s/ MARK T. SCHWETSCHENAU
Vice President and Controller (Principal Accounting Officer)
Mark T. Schwetschenau

/s/ WILLIAM F. ANDREWS
Director
William F. Andrews

/s/ Y. MARC BELTON
Director
Y. Marc Belton

/s/ JOHN D. CORRENTI
Director
John D. Correnti

/s/ JERRY E. DEMPSEY
Director
Jerry E. Dempsey

/s/ DR. ABBIE J. GRIFFIN
Director
Dr. Abbie J. Griffin

/s/ MICHAEL N. HAMMES Director

Michael N. Hammes

/s/ ALLEN J. KROWE Director

Allen J. Krowe

/s/ DAVID MCALLISTER Director

David McAllister

/s/ SOUTHWOOD J. MORCOTT Director

Southwood J. Morcott

/s/ WILLIAM F. PATIENT Director

William F. Patient

The Plan

Pursuant to the requirements of the Securities Act of 1993, the Plan Administrator for the Plan has caused this registration statement to be signed on the Plan's behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois on November 15, 2001.

401(K) PLAN FOR THE NON-BARGAINING
UNIT EMPLOYEES OF AMERICAN
TRANSPORTATION CORPORATION

By: American Transportation Corporation

By: /s/ ROBERT J. WHITEHOUSE

Name: Robert J. Whitehouse

Title: President and CEO

INDEX TO EXHIBITS

| Exhibit Number | Description | Sequentially Numbered Page |
|-----------------------|--|-----------------------------------|
| 4.1 | Form of Certificate representing shares of Common Stock of the Registrant | (1) |
| 4.2 | Restated Certificate of Incorporation of Registrant | (2) |
| 4.3 | By-Laws of Registrant | (3) |
| 5.1 | Opinion of Robert G. Martinell with respect to the legality of the shares of the Common Stock being registered | E-1 |
| 23.1 | Consent of Deloitte & Touche LLP | E-4 |

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| <u>Exhibit Number</u> | <u>Description</u> | <u>Sequentially Numbered Page</u> |
|---------------------------|--|---------------------------------------|
| 23.2 | Consent of Robert G. Martinell (included in opinion filed as Exhibit 5.1) | |
| 24.1 | Powers of Attorney (included on the signature page of this Registration Statement) | |
| (1) | Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement No. 33-50327. | |
| (2) | Incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-K (File No. 1-9618), which was amended as of May 4, 1998. | |
| (3) | Incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-K (File No. 1-9618). | |

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