

# SHEARMAN & STERLING<sup>LLP</sup>

401 9TH STREET, NW | WASHINGTON, DC | 20004-2128  
WWW.SHEARMAN.COM | T +1.202.508.8000 | F +1.202.508.8100

rlarussa@shearman.com  
202.508.8180

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Via Email (Steel232@bis.doc.gov)

Mr. Brad Botwin  
Director, Industrial Studies  
Office of Technology Evaluation  
Bureau of Industry and Security  
US Department of Commerce  
1401 Constitution Avenue NW, Room 1093  
Washington, DC 20230

## Imports of Stainless Steel and Alloys Are Having No Adverse Impact on US National Security

Dear Mr. Botwin:

In response to the Department's request of April 26, 2017,<sup>1</sup> on behalf of Aperam SA,<sup>2</sup> we hereby submit comments for the Department's consideration in its ongoing Section 232 national security investigation on steel imports. As discussed in further detail below, the evidence clearly demonstrates that imports of stainless steel and alloy products are having no adverse impact on the national security of the United States, or on the domestic production needed for projected national defense requirements. Accordingly, no remedy may be imposed.

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<sup>1</sup> See Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel, 82 FR 19205, April 26, 2017.

<sup>2</sup> Aperam SA is a global supplier of stainless steel with 2.5 million tons of flat stainless steel capacity in Europe and Brazil. It is also a leading producer of high value-added specialty products, including electrical steel and nickel alloys.

Before even considering imposing remedies of any kind, Section 232 requires the Secretary of Commerce to find a nexus between imports and national security. Specifically, the Secretary must “determine the effects on the national security of the United States of imports of any article.”<sup>3</sup> To assess whether the products are important to national security, the Department considers whether the product is used by the US Department of Defense or industries that are critical to the minimum operations of the US economy and government.<sup>4</sup> To assess the effect of imports of such products, the Department considers the domestic production needed for projected national defense requirements; the capacity of domestic industries to meet such requirements; existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense; the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth; the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements; the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products.”<sup>5</sup> To assess the impact of imports on national security, the Department considers whether there is excessive domestic dependency on unreliable foreign suppliers or if imports threaten to impair the capability of the US industry to satisfy national security requirements.<sup>6</sup>

The evidence below clearly establishes that there is no such nexus with regard to stainless steel and alloy products.

#### **US DEPARTMENT OF DEFENSE HAS FOUND THAT STAINLESS STEEL AND ALLOY PRODUCTS ARE NOT CRITICAL TO US NATIONAL SECURITY**

The US Department of Defense (DoD) has already found that stainless steel and alloy products are not critical to national security; there is no national security reason to take action to

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<sup>3</sup> 19 U.S. Code § 1862, (b) (3)

<sup>4</sup> See The Effect of Imports of Iron Ore and Semi-Finished Steel on National Security, An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, (2001 Steel 232 Investigation) as amended, Bureau of Export Administration, U.S. Department of Commerce, October 2001, p. 5.

<sup>5</sup> See id p.6 and 19 U.S.C. § 1862(d).

<sup>6</sup> Id, p.7.

ensure a long term domestic supply; no domestic source restriction is necessary; and, finally, stockpiling would be an effective mitigation option in the event of a shortage:<sup>7</sup>

The key finding of this analysis is that specialty metals, as defined in 10 U.S.C. 2533b, are not “materials critical to national security” for which only a U.S. source should be used; and there is no national security reason for the Department to take action to ensure a long term domestic supply of these specialty metals. The “criticality” of a material is a function of its importance in DoD applications, the extent to which DoD actions are required to shape and sustain the market, and the impact and likelihood of supply disruption. The analysis showed that specialty metals are “strategic materials” which may require special monitoring and attention/action; but not, in general, a domestic source restriction. Should reliable supplies/capacities be insufficient to meet potential requirements for a projected conflict, other risk mitigation options, including stockpiling, could represent an effective alternative.

This finding was made by the DoD Strategic Materials Protection Board, which includes as its members the Secretary of Defense; the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Under Secretary of Defense for Intelligence; and the Secretaries of the Army, Navy, and Air Force. In making this finding, the DoD Strategic Materials Protection Board relied on the assessment by the Institute for Defense Analyses Assessment that industry investment in U.S. domestic production of strategic materials, including stainless steel and alloys, was more than sufficient.<sup>8</sup>

Special metals investment is primarily driven by demand for commercial aircraft applications. Unlike the “advanced materials” industry of the 1980s that looked mainly to military applications, today’s materials industry is dominated by global commercial applications, including aerospace, conventional and nuclear power generation, energy exploration, and chemical plants... It is likely that the Department of Defense benefits from the investments made by the industry since the assets appear to be capable of processing both military and commercial grades.

As discussed in detail on page 12 below, US producers continue to make significant investments in the industry.

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<sup>7</sup> See Report of Meeting Department of Defense Strategic Materials Protection Board Held on December 12, 2008 (SMPB Report), p.5.

<sup>8</sup> See Assessment of Industry Investment in U.S. Domestic Production of Strategic Materials, Institute for Defense Analyses, October 2008, p. 17.

Separately, DoD's Annual Industrial Capabilities Report to Congress examines, on a bi-annual basis, the trend in steel and specialty metals to "assist the DoD acquisition community in preparing budgets and program plans in an economic environment of dynamic price movement."<sup>9</sup> The review analyzes the short, medium and long-term impacts of steel and specialty metals on the DoD Industrial Base.<sup>10</sup> It examines pricing, lead-time, capacity utilization and other industry factors that influence current and future conditions of the marketplace for steel, titanium, aluminum, copper, nickel, and stainless steel.<sup>11</sup> The report also identifies major influences on the metal markets and provides near-term, mid-term, and long-term forecasts.<sup>12</sup> While the annual reports' findings with respect to trends were mixed over the years, especially in economic downturn, DoD did not change its designation of stainless steel and alloys as not critical to US national security.<sup>13</sup> Nor did DoD change its position that import restrictions or other mitigation measures were not necessary.<sup>14</sup> To the contrary, the most recent annual report recognizes the importance of having a broad supply chain and to promote effective competition through improving DoD outreach for technology and products from global markets.<sup>15</sup>

Because DoD does not find stainless steel and alloy products to be important to US national security, no remedy may be imposed as a result of this investigation.

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<sup>9</sup> See Annual Industrial Capabilities Report to Congress, May 10, 2010, US Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, p.17.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> See Annual Industrial Capabilities Report to Congress for 2015, US Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, September 2016, p.7. See also Annual Industrial Capabilities Report to Congress, US Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, September 2011, p.18; and, Annual Industrial Capabilities Report to Congress for 2015, US Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, October 2013, p.74-75.

<sup>14</sup> Id.

<sup>15</sup> Id, p.7.

### IMPORTS OF STAINLESS STEEL AND ALLOY PRODUCTS HAVE NO ADVERSE EFFECT

All data indicates that imports of stainless steel and alloy products are having no adverse effect on the US market, the US national economy, or the ability to meet projected national defense requirements. We illustrate this below using the largest stainless product category – stainless steel sheet and strip. As seen in Figure 1, imports have decreased by 12 percent from 535,083 metric tons in 2014 to 470,983 metric tons in 2016.

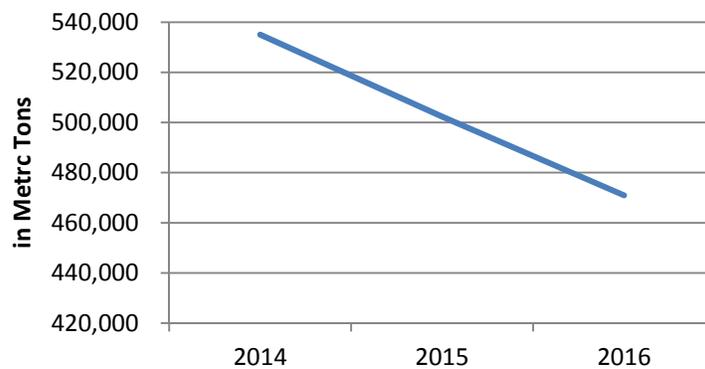


Figure 1: Stainless Steel Import Data from USITC (HTS 7219 and 7220)

Similarly, import penetration has decreased 8 percent, from 43 percent in 2015 to 35 percent in 2016. See Figure 2 below.

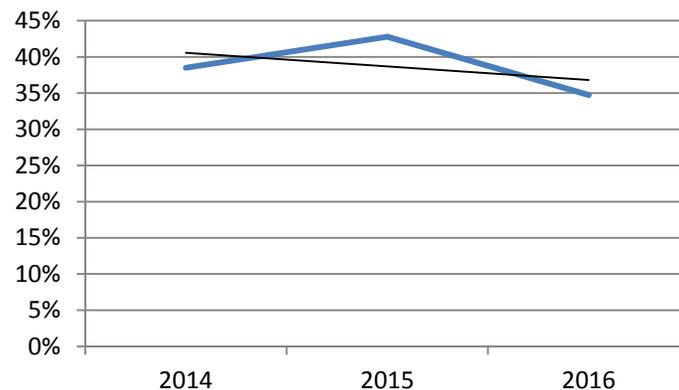


Figure 2: Import Penetration Data Based on USITC Data (7219 and 7220) for Imports and Exports; USITC Publication 4676 for Domestic Shipments

Finally, the US stainless steel industry is doing so well that exports of stainless steel represent forty-four percent of total US production and have increased 4 percent from 677,581 metric tons in 2014 to 704,491 metric tons in 2016. See Figure 3 below.

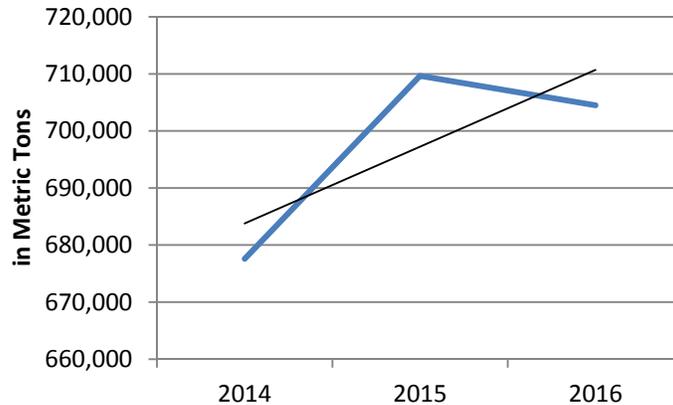


Figure 3: Stainless Export Data from USITC (HTS 7219 and 7220)

All this is prior to the April 2017 antidumping and countervailing duty orders that effectively eliminated all Chinese imports from the US market.<sup>16</sup> It is well recognized that worldwide overcapacity is primarily driven by China, and the domestic stainless steel industry has argued vehemently that Chinese stainless imports represented their biggest problem due to the price and volume of Chinese stainless steel. Steven Letnich, a vice president of Outokumpu Stainless USA, told the ITC in testimony that “a wave of low-priced unfairly traded imports from China flooded the U.S. market,” which prevented the company from earning a reasonable rate of return on its new US facility in Alabama.<sup>17</sup> The fact that the US stainless producers did not file antidumping or countervailing duty cases against countries other than China or other stainless or alloy product categories as recently as last year indicates those countries’ stainless imports were at levels and prices that were not injurious.

The trend is the same for the rest of the stainless sector and for alloy products. Another example is the high-nickel alloys produced by Aperam. Imports of nickel alloys have decreased

<sup>16</sup> See Stainless Steel Sheet and Strip From the People’s Republic of China: Antidumping Duty Order, 82 FR 16160, April 3, 2017; Stainless Steel Sheet and Strip From the People’s Republic of China: Countervailing Duty Order, 82 FR 16166, April 3, 2017. Antidumping margins ranged from 63.86 to 76.64 percent, while countervailing duty margins ranged from 75.60 to 190.71 percent.

<sup>17</sup> See International Trade Commission, Stainless Steel Sheet and Strip from China Investigation Nos. 701-TA-557 and 731-TA-1312 (Preliminary) April 2016, at VI-9.

by over 23 percent, from 16,413 metric tons in 2014 to 13,304 metric tons in 2016. Imports of these products from China are negligible.

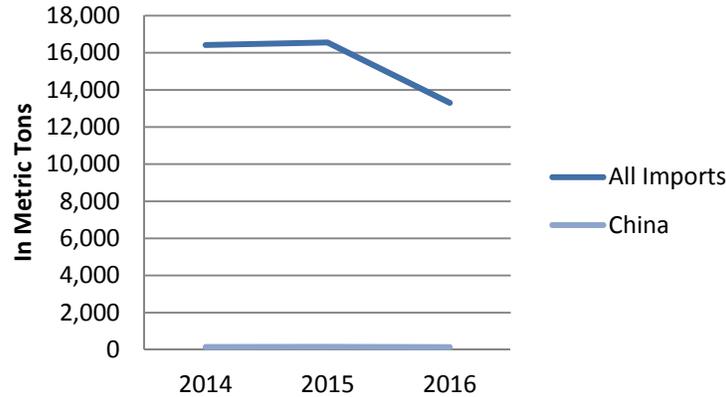


Figure 4: Nickel Alloy Import Data from USITC (7505 and 7506)

In addition to the import analysis, all indications are that the domestic stainless steel and alloy producers have robust defense-related and commercial businesses, with plenty of room for further growth. First, over the past year, stock prices for US stainless firms or their foreign parents have increased substantially:

US Company	Stock Price Increase
ATI	29%
Carpenter	14%
NAS	19%
OTK USA	100%

Table 1: Stock Price Increases

Second, there are also a number of indications that the domestic stainless and alloy industry as a whole is healthy and getting healthier:

- Allegheny Technologies Inc. (ATI) boasts that it has the product breadth, technical depth, manufacturing capabilities, scale and flexibility to deliver more than just military-grade metals.<sup>18</sup> Indeed, it quotes a revenue of \$3.2 billion for the twelve month period

<sup>18</sup> See <https://www.atimetals.com/markets/defense/manufacturing>.

ending March 31, 2017, and markets ranging from aerospace & defense to oil & gas, electrical energy, medical, automotive, and other industrial markets.”<sup>19</sup> ATI’s long-term strategy is to focus its “leadership in specialty materials technologies, products, and manufacturing capabilities to create value for customers across diversified high-value global markets, including the defense market.”<sup>20</sup> On April 25, 2017, ATI characterized its latest quarter in similarly glowing terms: “First quarter 2017 sales grew by 14% compared to the same 2016 period. Net income was \$17 million, or \$0.16 per share, compared to a significant loss in the first quarter 2016. This was a good start toward achieving our goal of sustainable long-term profitable growth,” said Rich Harshman, Chairman, President and Chief Executive Officer.<sup>21</sup>

- Carpenter Technology, Inc., is also doing quite well in this sector. Carpenter reported in its 2016 Annual Report on Form 10K that aerospace and defense represented by far its biggest sector for sales, accounting for 54 percent of Carpenter sales in Fiscal Year 2016. Net sales in this sector amounted to \$981.5 million in FY 2016. <sup>22</sup> Carpenter indicates that this trend and focus will continue: “We have continued to increase our global manufacturing capacity as well as expand our operations to provide customers with solutions to today’s changing materials challenges.”<sup>23</sup> Carpenter characterized its third quarter results on April 17, 2017 extremely positively, as follows: “Our solid third quarter results reflect revenue growth across our diverse end-use market portfolio, strong commercial execution and the benefits of our ongoing implementation of the Carpenter Operating Model,” said Tony Thene, Carpenter’s President & CEO. “Conditions across most of our markets have continued to improve, including in Aerospace where we are seeing increasing demand and are benefiting from our broad aerospace participation. While the recovery in oil and gas remains in the early stages, we are encouraged by the increase in North American rig counts and believe we are well positioned to drive growth and gain market share as activity levels increase further. These factors helped contribute to our Specialty Alloys Operations segment’s strongest operating margin percentage in almost three years.”<sup>24</sup>

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<sup>19</sup> Id.

<sup>20</sup> ATI Press Release, May 12, 2015.

<sup>21</sup> See Pittsburgh Business Wire, April 25, 2017 at <https://seekingalpha.com/pr/16808740-ati-announces-first-quarter-2017-results>.

<sup>22</sup> See Carpenter 2016 Annual Report on Form 10-K, page 17.

<sup>23</sup> Id, page 2.

<sup>24</sup> See Carpenter Technologies press release at <http://ir.carttech.com/phoenix.zhtml?c=64522&p=irol-newsArticle&id=2266367>.

- AK Steel reported higher margins in the first quarter of 2017. Net income and adjusted EBITDA both increased substantially for the first quarter of 2017 from the first quarter of 2016. Net income was \$62.5 million, or \$0.19 per diluted share of common stock, in the first quarter of 2017; adjusted EBITDA was \$142.9 million, or 9.3 percent of net sales, for the first quarter of 2017, compared to adjusted EBITDA of \$81.1 million, or 5.3 percent of net sales, for the first quarter of 2016.
- Acerinox, the Spanish parent of NAS, announced just a few weeks ago that it had just had an outstanding first quarter, with a net profit totaling 98 million Euros, which it described as the best quarter in the last ten years.<sup>25</sup>
- Outokumpu Stainless USA's parent reported a 571.74 percent year-on-year jump in earnings for the first quarter of 2017.<sup>26</sup> The company boasted in its press release that it significantly increased stainless steel shipments in the Americas.<sup>27</sup>

Finally, the US industry continues major investments in infrastructure and research and development:

- In 2012, Outokumpu Stainless USA acquired the \$1.6 billion stainless steel plant originally built by ThyssenKrupp AG in Calvert, Alabama.
- ATI invested \$1.2 billion in a hot-strip mill in Pennsylvania. The facility opened in 2015.<sup>28</sup>
- North American Stainless (NAS) is investing \$130 million in developing a line of bright annealed steel and a cold roller with the goal of increasing production capacity and its range of end products in its factory in Kentucky. Calling this a “great opportunity,” the company announced on its website that this strategic moves reinforces its position as the “current market leader in the US, where it enjoys an impressive market share and is the number one company in terms of volume and billing.”<sup>29</sup>
- On April 7, 2017, AK Steel opened a Research and Innovation Center in Middletown, Ohio, a \$36 million, 135,000 square-foot facility as part of its focus on “driving leading

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<sup>25</sup> See Acerinox First Quarter Report, March 31, 2017 at p. 3.

<sup>26</sup> See Metal Bulletin, April 27, 2017.

<sup>27</sup> See Outokumpu Interim First Quarter Statement, pp. 2-4.

<sup>28</sup> See ATI Annual Report for 2015 at page 2.

<sup>29</sup> See Acerinox website at <https://www.acerinox.com/en/>.

edge products and processes as an innovator in the carbon, stainless and electrical steels."<sup>30</sup>

Thus, it is clear that imports of stainless steel and alloy products are having no adverse effect.

### **IMPORTS OF STAINLESS STEEL AND ALLOY PRODUCTS DO NOT THREATEN TO IMPAIR US NATIONAL SECURITY**

Now that China has been effectively removed from the US market for a key stainless product, the remaining active foreign producers in stainless steel and alloys are in countries with a long history of collaboration with the United States on national security issues. We highlight below a few exporting countries with reliable, high-quality producers of stainless steel and alloy products, many of which are our closest allies and either already supply US national security needs or would if necessary. Many have strong US production footprints. Most, along with the United States, are members of NATO, whose core mission includes enabling members to consult and cooperate on defense and security-related issues.<sup>31</sup> Most are designated by DoD to be reliable foreign suppliers.<sup>32</sup> And, all have reciprocal defense procurement agreements with the United States, which remove barriers to purchases of defense supplies.<sup>33</sup>

- Belgium: NATO member; Reciprocal Procurement Memoranda of Understanding with the United States.
- Brazil: Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.
- Canada: NATO member; Reciprocal Procurement Memoranda of Understanding with the United States; Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.

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<sup>30</sup> See [http://www.aksteel.com/production\\_facilities/research\\_technical\\_services.as](http://www.aksteel.com/production_facilities/research_technical_services.as).

<sup>31</sup> See NATO web site at <http://www.nato.int/nato-welcome/index.html>.

<sup>32</sup> See (SMPB Report), p.57.

<sup>33</sup> See 48 CFR 252.225-7002 - Qualifying country sources as subcontractors. As listed extensively in EUROFER's comments in this proceeding, there are dozens of additional bilateral agreements between the United States and individual EU members covering matters such as defense cooperation and weapons production.

- Finland: US production; NATO partner; Reciprocal Procurement Memoranda of Understanding with the United States.
- France: NATO member; Reciprocal Procurement Memoranda of Understanding with the United States; Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.
- Germany: US production; NATO member; Reciprocal Procurement Memoranda of Understanding with the United States; Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.
- Italy: NATO member; Reciprocal Procurement Memoranda of Understanding with the United States; Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.
- Japan: Reciprocal Procurement Memoranda of Understanding with the United States; Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.
- Spain: US production; NATO member; Reciprocal Procurement Memoranda of Understanding with the United States.
- Sweden: NATO member; Reciprocal Procurement Memoranda of Understanding with the United States.
- United Kingdom: NATO member; Reciprocal Procurement Memoranda of Understanding with the United States; Designated as a reliable foreign supplier of stainless steel and alloy products by DoD.

Imports from Finland, Germany, Spain and Mexico almost exclusively reflect captive consumption or strategic imports by the US industry. The remainder is high quality, high value-added products, much of which is not adequately produced in the United States. Imports are necessary to supply the full range of products at the quality required by the US defense industry and in certain commercial applications. For example, imports from Belgium, France and Brazil are all produced by Aperam and primarily supply US white goods appliance and automobile manufacturers.

As evidenced by the data above, these imports do not threaten to impair the capability of the US industry to satisfy national security requirements. To the contrary, these imports are coming from allies that have been designated as reliable foreign suppliers by the DoD.

Moreover, any threat has been eliminated by Buy American requirements,<sup>34</sup> as well as over fifty antidumping and countervailing duty orders in place on stainless steel products.<sup>35</sup> Mitigating more than this is beyond the scope of the Department's authority under Section 232. The Department has previously found that the issue of "whether imports have harmed or threaten to harm U.S. producers writ large is beyond the scope of the Department's inquiry, and need not be resolved here. Under Section 232, the Department is authorized only to determine whether imports fundamentally threaten the ability of domestic producers to satisfy the United States' national security requirements."<sup>36</sup> If the domestic industry believes that China or any other low-priced producer is causing injury, it can take action against imports from those countries under other US laws, with remedies that do not have an impact on innocent suppliers of high-quality, higher priced products. This investigation is not an antidumping case, in which the US Government must find both dumping and injury, and it is not a Section 201 safeguards action, which also requires an injury determination. Instead, Section 232 must show that imports have had an adverse impact on national security. As described above, that is not the case with regard to stainless steel and alloys.

Aperam shares the US government's and US steel producers' concerns with respect to unfair trading practices, and excess global steel production and overcapacity. Aperam has worked through EUROFER and with EU officials to address the injurious effects of these commercial problems through vigorous enforcement of domestic trade remedy laws. In addition, Aperam has individually and via EUROFER strongly supported the EU's frequent collaborations with the US government on joint efforts to address global steel overcapacity, including in such fora as the OECD and the G-20.<sup>37</sup> As demonstrated herein, coordinated, concrete action between

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<sup>34</sup> See Presidential Executive Order on Buy American and Hire American, April 18, 2017, in which the President orders the heads of US agencies to "Develop and propose policies for their agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal *procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.* (emphasis added).

<sup>35</sup> The domestic stainless steel industry is highly protected. Antidumping and/or countervailing duty orders are in place against the following products and countries: Stainless steel sheet and strip from Japan, Korea, Taiwan, China; large diameter seamless pipe from Japan, Romania; welded stainless steel pipe from Korea, Taiwan; stainless steel wire rod from India; stainless steel butt-weld pipe fittings from Italy, Malaysia, Philippines; stainless steel bar from Brazil, India, Japan, Spain; seamless pipe from Germany; circular welded austenitic stainless pressure pipe from China; stainless steel wire rod from Taiwan, Korea; Japan, South Africa, Belgium. The fact that there are no orders on high alloy products indicates that the domestic industry is either not focused on these products or does not see a threat from imports.

<sup>36</sup> 2001 Steel 232 Investigation, p. 37.

<sup>37</sup> See [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=232337,231889,230320,230321,228836,228749,228671,228133,227837,135773&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=232337,231889,230320,230321,228836,228749,228671,228133,227837,135773&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True).

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the EU, the United States, and other like-minded governments and industry groups is the only effective means to address these problems and secure balance in the global and US steel markets.

**CONCLUSION: NO ACTION IS WARRANTED OR PERMISSIBLE WITH RESPECT TO STAINLESS STEEL AND ALLOY PRODUCTS**

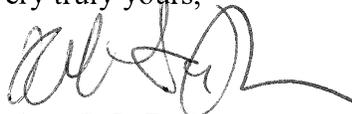
The evidence is clear:

- DoD does not consider stainless steel and alloy products critical to US national security;
- DoD does not consider mitigation to be necessary with respect to stainless steel and alloy products;
- Imports of stainless steel and alloy products have had no adverse effect on the US market, US producers or the national security preparedness of the United States; and,
- Imports of stainless steel and alloy products come from reliable foreign suppliers designated by the DoD.

Accordingly, there can be no finding that imports of stainless steel and alloy products are having a negative effect on the national security of the United States, or on the domestic production needed for projected national defense requirements; and, no remedy can be imposed on stainless steel and alloy products.

We hope the foregoing has been helpful. If you have any questions, please do not hesitate to contact us.

Very truly yours,



Robert S. LaRussa