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May 31, 2017

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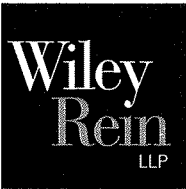
The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
Attn: Bureau of Industry and Security
Office of Technology Evaluation
14th Street and Constitution Ave., NW
Washington, DC 20230

Re: *Section 232 National Security Investigation of Imports of Steel*: Written
Comments of Commercial Metals Company

Dear Secretary Ross:

On behalf of Commercial Metals Company (“CMC”), we hereby submit the following comments in response to the request for public comments in the Section 232 National Security Investigation of Imports of Steel.¹ The available evidence establishes that imports of steel products threaten to impair the national security of the United States. Steel is essential to the national security of the United States, both as a component of defense articles and as a input to critical infrastructure. CMC is a producer of armor plate, a product vital to national defense, and a major producer of rebar, the steel product most used in critical infrastructure. Accordingly, these comments will focus primarily on the effect of imports on the ability of the domestic steel industry to produce sufficient quantities of armor plate,

¹ *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19,205 (Dep’t Commerce Apr. 26, 2017) (notice of request for public comments and public hearing).



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rebar and other long products to satisfy the national security and critical infrastructure needs of the United States.

I. SECTION 232 ESTABLISHES A BROAD DEFINITION OF “NATIONAL SECURITY”

The purpose of an investigation under Section 232 of the Trade Expansion Act of 1962 is to determine whether imports of a given product threaten to impair the national security of the United States. At the end of the investigation, the Secretary of Commerce is required to submit a report to the President with the Secretary’s determination. If the Secretary determines that imports threaten to impair the national security, the report shall also include recommendations for action.²

“National security” is defined very broadly under Section 232. It encompasses the requirements of both the defense and “essential civilian” sectors. The relevant statute emphasizes that “{i}n the administration of this section, the President and the Secretary shall further recognize the close relation of the economic welfare of the Nation to our national security.”³

In assessing the impact of imports on national security, the Commerce Department must consider a number of factors regarding defense requirements for the products in question, including

- (1) domestic production needed for projected national defense requirements;

² 19 U.S.C. § 1862(b)(3)(A).

³ 19 U.S.C. § 1862(d).

(2) the capacity of the domestic industry to satisfy those requirements;

(3) existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities;

(4) the growth requirements of domestic industries to meet national defense requirements and the supplies and services, including the investment, exploration, and development necessary to assure such growth; and

(5) any other relevant factors.⁴

The Department's assessment is not limited to these factors alone, however. To the contrary, "in recognition of the close relation between the strength of our national economy and the capacity of the United States to meet national security requirements," the Department must also consider a number of other factors, including the impact of foreign competition on the economic welfare of any domestic industry essential to national security.⁵ Thus both the economic health of the domestic industry, and the impact of imports on that health, merit scrutiny in a Section 232 investigation.

The following comments will focus initially on the products manufactured by CMC that are used directly for national defense. Consideration of these products alone, however, would yield a misleading conclusion, as the scale of production of these products is inadequate to support the investments required for an

⁴ 19 U.S.C. § 1862(d); 15 C.F.R. § 705.4(a).

⁵ 19 U.S.C. § 1862(d).



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economically viable enterprise. Rather, the continued ability of CMC, and of the domestic steel industry in general, to continue to produce these articles is dependent upon the economic viability of the industry and company as a whole. More importantly, the national security requirements of the United States extend far beyond those for the steel used in these defense articles alone. Critical infrastructure is essential for national defense and security. Imports are threatening to impair the ability of the United States to produce the steel products, including rebar, that are necessary for the maintenance, expansion, and modernization of the country's infrastructure.

II. COMMERCIAL METALS COMPANY PRODUCES STEEL PRODUCTS ESSENTIAL TO NATIONAL SECURITY

CMC is a steel producer headquartered in Irvine, Texas. CMC has operations in 26 states and 12 foreign countries.⁶ It produces steel in five states across the United States as well as in Poland. In 2016, CMC produced 2.6 million tons of steel in the United States.⁷ Its net sales from U.S. operations in 2016 were \$4.6 billion.⁸ CMC employs approximately 8,800 people, the vast majority of them in the United States.⁹

⁶ For a complete overview of CMC's operations and products, see www.cmc.com.

⁷ Commercial Metals Company, *2016 Annual Report* at 7 ("*2016 Annual Report*").

⁸ *Id.* at 2.

⁹ *Id.* at 16.

CMC is vertically integrated. It is active in all aspects of the steel industry, from buying and selling scrap through steel production, fabrication and distribution. CMC is one of the world's most technologically advanced and efficient steel producers. It has pioneered micromill technology, which reduces energy and raw material consumption in the production of rebar and other long products. CMC believes that its micromill facility in Mesa, Arizona and the soon-to-be operational mill in Durant, Oklahoma are the most efficient facilities for producing rebar in the world.

CMC produces armor plate, a product used directly in national defense. However, CMC is primarily a producer of long products, especially rebar. As discussed below, rebar is used to reinforce concrete, and is the most commonly used steel product in infrastructure. CMC also produces merchant and special bar quality bar and a variety of structural products, including angles, flats, rounds, and squares, that are used in critical infrastructure.

A. CMC Produces Products Vital to National Defense

CMC produces armor plate through its subsidiary CMC Impact Metals. This material is produced at the CMC Impact Metals facility in Pell City, Alabama. CMC Impact Metals makes military armor plate in grades DTL-12560K, DTL-46100E, and DTL-32332. These products are used in tanks, mine-resistant ambush-protected vehicles (MRAPs), and other armored military vehicles. During the build-

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up following Operation Iraqi Freedom, CMC became the first new producer certified by the Defense Department to provide armor plate in more than 20 years.¹⁰

Armor plate is a steel product with direct defense applications. The lives of American soldiers literally depend upon it. Yet armor plate also shows why Congress insisted on a broad interpretation of “national security” in Section 232 investigations. The amount of armor plate CMC Impact Metals produces each year is quite small compared to CMC’s total steel production. While armor plate is a high-value product, sales of armor plate could not possibly support the viability of CMC’s business on a standalone basis.

The production of armor plate requires specialized equipment and expertise. CMC can generate the funds necessary to make these investments only from sales of its other products, including rebar and other long products. If CMC’s overall economic condition deteriorates, it could be rendered incapable of continuing to make armor plate.

CMC does not manufacture the steel sheet that is the primary input in armor plate. Rather, CMC purchases flat-rolled steel from other U.S. producers and applies the heat treatment and other processing needed to produce armor plate. If other producers cannot supply the necessary flat-rolled steel, CMC cannot make armor plate. CMC believes that the plate used in armor plate constitutes only a very

¹⁰ For a full description of CMC’s armor plate products, *see* <https://www.cmc.com/en/americas/our-businesses/services/cmcimpactmetals/heat-treated-products/plate-products>.

small part of the total production of its suppliers as well. The continued ability of the domestic steel industry to produce the armor plate needed for defense uses is accordingly dependent upon the overall health of the U.S. steel industry.

B. The Steel Products Used in Critical Infrastructure Are Vital to National Security

National security involves much more than the products like armor plate that are directly related to national defense. Critical infrastructure for both the defense and civilian sectors is also necessary. The Defense Department itself operates a sizable system of military bases and other facilities in the United States and abroad. This infrastructure, which uses massive amounts of rebar, is directly related to national defense. As just one example, CMC supplied the rebar that was used to repair the Pentagon after the 9/11 terrorist attacks.

National defense depends upon the ability of the U.S. economy to produce the goods and services needed for defense. This capability is in turn dependent upon our country's infrastructure, composed of the roads, bridges, runways, power plants, and all the other facilities needed to move people, goods, and energy around the country. There is a reason the official name of the interstate highway system is the Dwight D. Eisenhower System of Interstate and Defense Highways. The importance of infrastructure extends far beyond direct defense needs. As a recent report from the Treasury Department explains, adequate infrastructure is the foundation of the modern industrial economy:

Infrastructure investment is critical to America's continued economic success. Our nation must expand and modernize its



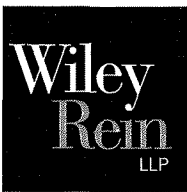
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infrastructure across various sectors to help ensure that the United States continues to provide businesses, both large and small, an environment where they can successfully grow and operate. Indeed, research has shown that well designed investments in infrastructure can increase long-term economic growth, productivity, and land values, while also providing significant positive spillovers to areas such as economic development, energy efficiency, public health and manufacturing.¹¹

CMC makes a variety of bar and structural products used in critical infrastructure for the transportation, construction, energy, and mining sectors. The dominant steel product used in infrastructure, is rebar. Essentially all of this critical infrastructure incorporates rebar, which is a steel long product that is embedded in concrete to give it strength; indeed, rebar is the reinforcement in reinforced concrete. Reinforced concrete is ubiquitous in any modern economy, used in everything from houses, commercial and office buildings, and factories, to water systems, energy transmission systems, airports, dams, roads, and bridges. Rebar is one of the most produced steel products in the United States, accounting for nearly 7.5 percent of total U.S. steel production in 2015.¹² In 2016, rebar accounted for slightly over 60 percent of CMC's total steel production, making CMC one of the

¹¹ M. Rollins and A. Datta, Importance of Infrastructure Investment for Spurring Growth (2016), available at <https://www.treasury.gov/connect/blog/Pages/Importance-of-Infrastructure-Investment-for-Spurring-Growth-.aspx>.

¹² See WorldSteel, *Steel Statistical Yearbook 2016* at 1, 39 (2017).



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largest rebar producers in the United States.¹³ In 2016, CMC produced nearly 24 percent of all the rebar made in the United States.¹⁴

III. IMPORTS OF REBAR THREATEN TO IMPAIR THE NATIONAL SECURITY OF THE UNITED STATES

Rebar imports have increased dramatically over the past decade. These imports have caused injury to the domestic industry and reduced its ability to make required investments to sustain a viable rebar industry. If these trends continue, the United States could find itself unable to satisfy its requirements for rebar from domestic production, and would instead be dependent upon unreliable foreign sources of supply.

A. Imports of Rebar Have Skyrocketed Despite the Imposition of Antidumping and Countervailing Duties

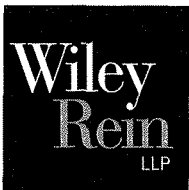
Rebar imports have grown enormously over the past 10 years. Imported rebar now holds a share of almost 25 percent of the U.S. market. In 2016, the United States consumed 8.8 million tons of rebar.¹⁵ Of this, imports accounted for 2.1 million tons, or 23.9 percent by volume, up from 1.4 million tons only two years prior.¹⁶ The United States is currently obtaining nearly one-quarter of its supply of a

¹³ 2016 Annual Report at 2.

¹⁴ According to the U.S. International Trade Commission, the United States produced 6.904 million tons of rebar in 2016. *Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey*, Inv. Nos. 701-TA-564 and 731-TA-1338-1340, USITC Pub. 4648 (Nov. 2016) (Preliminary) at C-3.

¹⁵ Public Prehearing Staff Report *in Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey*, Inv. Nos. 701-TA-564 and 731-TA-1338 – 1340 (Final), Table C-1, (May 4, 2017) (“Rebar Public Prehearing Staff Report”)

¹⁶ *Id.* at Table C-1.



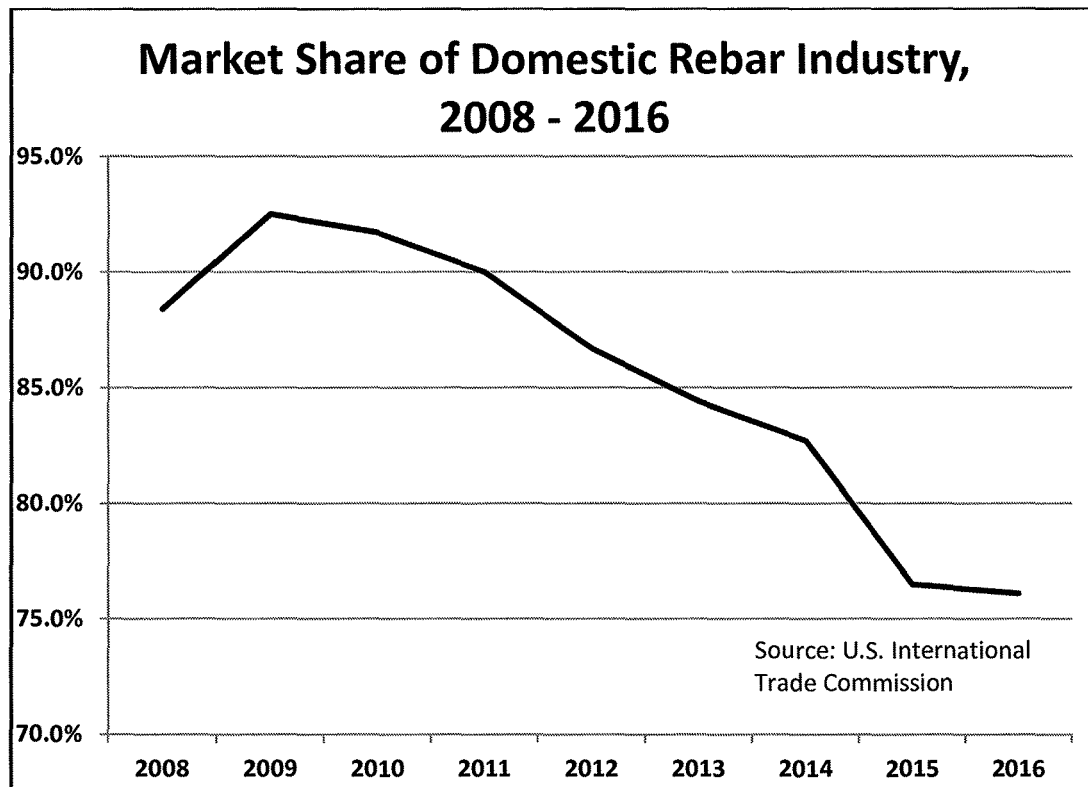
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product absolutely essential to the U.S. economy from foreign sources. This is more than three times the level of imports of semi-finished steel that the Department examined in 2001 (and found did not threaten the national security of the United States).¹⁷

The surge in rebar imports is not a recent phenomenon, but rather represents the continuation of a long-time trend. Rebar imports increased by 119 percent between 2008 and 2016. As the following chart shows, the domestic industry's market share fell from 88 percent in 2008 to only 76 percent in 2016, a decline of more than 12 percentage points from 2008.¹⁸

¹⁷ Bureau of Indus. and Sec., U.S. Dep't of Commerce, *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security* at 31 (2001) ("Iron Ore and Semi-Finished Steel Section 232 Report").

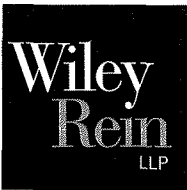
¹⁸ Rebar Public Prehearing Staff Report at Table C-1.



The United States does not “need” rebar imports to satisfy domestic demand. To the contrary, the United States has enough capacity to meet all of its rebar needs. In 2016, the United States consumed 8.8 million tons of rebar, but had the capacity to produce 9.7 million tons.¹⁹ Between 2008 and 2016, the domestic rebar industry never operated at more than 78 percent capacity. As a consequence of rising import volumes, the domestic industry’s production of rebar was nearly 10 percent lower in 2016 than in 2008, causing capacity utilization to fall from its peak of 78 percent in 2008 to only 71.4 percent in 2016.²⁰ As discussed below, such a

¹⁹ *Id.*

²⁰ See *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine*, USITC Pub. 4409 at Table C-1; *Steel Concrete Reinforcing Bar from Mexico*



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low level of capacity utilization threatens the long-term viability of the domestic rebar industry.

The surge in rebar imports in the United States is one consequence of the massive steel overcapacity in steelmaking around the world. China, Turkey, and other countries have built much more capacity than they need, largely as a result of government intervention and subsidization. In their efforts to keep these unnecessary mills in production, they sell rebar into the United States at whatever price they can obtain. Significantly, major producers in some of these countries are state-owned enterprises, which are not required to make a profit.

Excess global capacity is not unique to rebar. Massive global steel overcapacity is impacting virtually every other product line as well. While China is the main offender, many other countries are also to blame, including Russia, Japan, Turkey and Taiwan.

Rebar imports have been subject to a number of antidumping and countervailing duty cases. Indeed, antidumping and countervailing duty orders currently apply to imports from nine countries, including two of the world's largest producers, China and Turkey. The domestic industry is currently seeking relief from imports from Japan and Taiwan as well. Increasing shipments indicate that other

(Continued . . .)

and Turkey, Inv. Nos. 701-TA-502 and 731-TA-1227, USITC Pub. 4496 (Oct. 2014) (Final) at Table C-1, and Rebar Public Prehearing Staff Report at Table C-1.

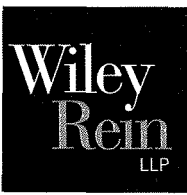
countries, including Russia, Vietnam, and Portugal, may increase their rebar exports to the United States substantially in the near future.

Despite repeated findings of dumping and subsidization by the Commerce Department, and of injury to the domestic industry by the International Trade Commission, the volume of rebar imports has continued to climb, and domestic production, capacity utilization, and profitability to fall. This establishes that the United States cannot rely on the unfair trade laws alone to ensure the continued viability of its domestic rebar industry.

B. Rebar Imports Have Had a Significant Negative Impact on the Domestic Industry

Rising rebar imports have had a demonstrably negative effect on the domestic rebar industry. As noted above, the International Trade Commission has repeatedly determined that rebar imports have caused material injury to the domestic industry. As a result, the industry has seen its capacity utilization, profitability, capital expenditures, and employment all decline since 2008. Over the past four years, two producers were forced to temporarily stop rebar production completely at some of their facilities, while other producers ran their mills on reduced schedules, or otherwise curtailed production.

Steel is a capital intensive industry. High levels of capacity utilization are needed to maintain profitability and the ability to invest. Declining capacity utilization levels as a consequence of rising imports have adversely affected the domestic industry. The industry's profitability declined precipitously, with

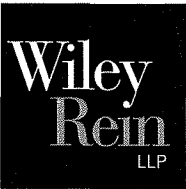


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operating profits in 2016 being 90 percent below what they were in 2008. Capital expenditures in 2016 were nearly six percent lower in 2016 than in 2008, as the loss of market share to imports, and the consequent fall in profits, deprived companies of the funds they needed to invest in new facilities and technology. Companies may commit funds to a project years in advance, so that it is likely that capital expenditures will fall even more in the next few years in response to rising import levels.

CMC's experience mirrors that of the domestic rebar industry as a whole. From 2008 to 2016, CMC's production of rebar rose by 44 percent, due to the commissioning of the Mesa micromill, though its overall production of steel increased by only 4.0 percent. Investments in the steel industry require significant lead time. CMC had committed to these investments at least three years before they were made – and before imports surged to new, record levels. The value of CMC's sales, on the other hand, fell by 55 percent between 2008 and 2016, reflecting lower prices as a consequence of mounting import volumes. The company's earnings declined by nearly 69 percent, as its profit margin dropped from an already-low 2.2 percent in 2008 to only 1.5 percent in 2016.

In response to growing imports, CMC was forced to close some facilities and to reduce its workforce by nearly 7,000 jobs, or 45 percent of its total workforce, between 2008 and 2016. Each job in the steel industry typically generates another seven in upstream suppliers and downstream customers, so that



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these reductions may well represent the loss of nearly 50,000 high quality middle class jobs in all. CMC facilities are frequently the economic mainstays of their communities, so that these closures and layoffs had an effect far beyond what the mere numbers might indicate.

Employment in the domestic rebar industry dropped by 13 percent from 2008 to 2016.²¹ This decline is especially worrisome. Although it is highly automated, steelmaking nonetheless requires real expertise which can be developed only over time. This is especially true with respect to highly specialized products such as armor plate. When the industry loses workers, it loses the expertise they represent as well. This could make it difficult to rapidly increase production of specialized products such as armor plate if such an increase became necessary in time of emergency.

C. Increasing Imports Threaten the Ability of the Domestic Industry to Make Necessary Investments

Because rebar is internationally traded, and because the barriers of entry into the U.S. market for imports are low, the domestic rebar industry must invest in new technologies and facilities to remain competitive. Rising import volumes are undermining the ability of the industry to make these investments, as CMC's experience establishes. One indicator of a company's ability to invest is the

²¹ Data are derived from *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine*, USITC Pub. 4409 at Table C-1; *Steel Concrete Reinforcing Bar from Mexico and Turkey*, USITC Pub. 4496 at Table C-1, and Rebar Public Prehearing Staff Report at Table C-1.

difference between depreciation and capital expenditures. If depreciation is lower than capital expenditures, a company is adding new facilities. If depreciation is higher, on the other hand, the company is effectively eroding the asset value and productive capability over time. In 2008, CMC's capital expenditures exceeded its depreciation by \$220 million, indicating that the company was increasing its asset base. In 2016, capital expenditures were \$20 million less than depreciation. Because of rising imports and falling profits, CMC has not even been able to offset the depreciation of its assets with new investments.

Because rebar is so widely produced, staying competitive in the rebar industry requires constant innovation. CMC has pioneered the micromill process for producing rebar, which enables it to achieve levels of efficiency in raw material and energy usage unmatched in the world. This technology allows CMC to produce steel using much less energy, and generating far fewer emissions, than the producers in China, Turkey, and other countries are capable of achieving. Much of the steel produced abroad uses older, heavily-polluting technology.

CMC invested millions in its technologically advanced micromill in Mesa, Arizona and in current construction of the most modern rebar mill in the world in Durant, Oklahoma. CMC was planning to commission a whole series of micromills across the United States, which would have created thousands of high-paying jobs. Competition from imports has been so fierce, however, that CMC has been forced to put its expansion plans on hold. In fact, rising import levels have so eroded

CMC's profitability that the returns on the investments in Mesa and other facilities are not even covering the company's cost of capital. The data on capital expenditures discussed above indicates that this situation is true for the domestic rebar industry as a whole.

D. Imports Have Deprived the United States of Substantial Tax Revenues

The United States has lost substantial tax revenues as a consequence of falling profitability in the domestic rebar industry, itself a result of rising imports.²² In 2008, the industry as a whole achieved an operating profit of \$850 million. CMC's effective tax rate that year was 31.1 percent. Applying that rate to the entire domestic rebar industry indicates total tax revenues of \$264.3 million. In 2016, the industry achieved an operating profit of only \$82.4 million. Applying CMC's effective tax rate in 2016 of 18.6 percent yields total tax revenues from the industry of only \$15.3 million. The tax revenues from the domestic rebar industry in 2016 alone were nearly \$250 million lower than they would have been, had the industry maintained its 2008 profitability.

E. Imports of Rebar Threaten to Impair the National Security of the United States

Rising volumes of rebar imports threaten the ability of the United States to produce the rebar it needs for critical infrastructure, and so threaten to impair the national security of the United States. The Department has explained that imports

²² Section 232 Investigations Program Guide at 1.

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can threaten to impair the national security of the United States in two ways. First, the United States may be dependent upon unreliable sources of supply. Second, imports may threaten to impair the capability of the U.S. industry to satisfy national security needs.²³ Both conditions are present here.

The United States is becoming increasingly dependent upon unreliable sources of supply for its rebar needs. The United States already imports approximately 25 percent of the rebar it consumes. The largest rebar producers in the world include China, Russia, Japan, Turkey, and Korea. This is a situation fundamentally different from that examined in the investigation of iron ore semi-finished steel, where the largest suppliers to the United States were “safe” foreign suppliers in the Western Hemisphere, including Canada, Mexico, and Brazil.²⁴

This situation is compounded by the nature of the global rebar trade. Most rebar is sold by traders who are constantly seeking open markets with the highest prices, and who have the ability to shift volume rapidly from market to market. These traders are opportunistic, and have no loyalty to the U.S. market. Traders operate on a trading margin with no regard for profit or return on the investment required to sustain production of the product. Even with plentiful global supply, it is possible that the United States would have to pay excessively high prices for rebar,

²³ See Iron Ore and Semi-Finished Steel Section 232 Report at 1.

²⁴ *Id.* at 2.

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or might not even be able to find rebar supply at all, should these traders decide to sell in other markets instead.

Imports also threaten the ability of the United States to supply its rebar needs domestically. Because of imports, the industry has reduced capital expenditures and overall capacity, as detailed above. If this trend continues, and the industry continues to close facilities, the United States could find itself in a situation where it cannot supply its needs for rebar, a material essential to critical infrastructure and the smooth functioning of the U.S. economy.

IV. THE SECRETARY OF COMMERCE SHOULD RECOMMEND A COMPREHENSIVE ACTION TO ADDRESS THIS CRISIS

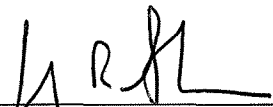
Because imports of rebar threaten to impair the national security of the United States, the Secretary should recommend that the President take action to minimize the damage from those imports. The threat from imports to national security is not restricted to rebar, however. Submissions by other steel producers have shown that the threat is equally present with respect to virtually all steel products. The Secretary of Commerce should accordingly recommend that the President take comprehensive, broad-based, and effective action based on the following principles:

- The recommended measures must apply to all steel products, including downstream products. Otherwise foreign producers will simply shift production to products not subject to the remedy, exposing those segments of the steel industry to even greater import competition.
- The recommended measures must apply to imports from all countries. International steel traders can easily shift sources of supply from one country to another.

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- The recommended measures must be easily administrable. One option is to use tariffs, as tariffs are easily applied at the border and eliminate uncertainty on the part of importers, purchasers, and the domestic industry.
- The recommended measures must be substantial. Tariff levels must be high enough to improve market conditions for the domestic industry.
- The recommended measures must last long enough to allow the domestic industry to profit from recent investments, to make necessary new investments, and to discourage the creation of unnecessary new capacity in other countries. This would require a term of three years or longer.
- The domestic industry should retain the ability to avail itself fully of the antidumping and countervailing duty laws.

Respectfully submitted,



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