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Brad Botwin
Director, International Studies
Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 1903
Washington, DC 20230

Re: Section 232 National Security Investigation of Imports of Steel – Comments of Companhia Siderurgica Nacional LLC

Dear Mr. Botwin:

On behalf of Companhia Siderurgica Nacional LLC (“CSN LLC”), we are pleased to submit the following comments for consideration in the Department of Commerce’s (the “Department”) investigation into the national security implications of US steel imports (the “Investigation”). ^{1/}

CSN LLC is an Indiana-based manufacturer of flat-rolled steel products including cold-rolled carbon and galvanized steel. We employ over 225 people at our facility in Terre Haute, supplying high-quality thin-gauge flat-rolled steel to customers located mostly in the Midwest region. As discussed below, CSN LLC strongly opposes additional restrictions on imports of steel for national security purposes. We believe such action is both unwarranted on national security grounds and would damage the interests of U.S. manufacturers, like CSN LLC, that rely on imported steel to supplement domestic product. Indeed, further restricting imports of steel will likely cause economic damage to downstream consuming industries that are vital to national defense and the broader economy.

^{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 April 26, 2017).

I. STEEL IMPORTS ARE AN IMPORTANT BASE OF SUPPLY TO CONSUMING INDUSTRIES IN THE UNITED STATES

CSN LLC, like many other U.S. manufacturers has historically purchased the bulk of its steel requirements from U.S. producers. We generally prefer to buy domestically because of the shorter lead times and lower logistics costs. However, our experience – an experience shared by many other U.S. steel consumers – is that it is simply not possible in all cases to purchase solely from domestic sources. CSN LLC therefore looks to imports as a supplemental source of supply.

Measures to artificially restrict access to imported steel will put companies like CSN LLC at a serious competitive disadvantage in downstream markets. The inevitable result will be an expansion of imports and competition in downstream product markets, damaging our sales opportunities and, ultimately, reducing demand for domestic steel as companies like CSN LLC would be forced to reduce production.

II. THE U.S. STEEL INDUSTRY IS FUNDAMENTALLY HEALTHY

We also fundamentally disagree with the proposition that the U.S. industry is not already competitive and healthy. To the contrary, the U.S. steel industry today is likely at its most competitive level in history. The American Iron and Steel Institute characterizes the U.S. steel industry as “highly competitive.” ^{2/} It is reportedly among the most productive in the world – according to the AISI labor productivity in the U.S. steel industry has seen a five-fold increase since the early 1980s, going from an average of 10.1 man-hours per finished ton to an average of 1.9 man-hours per finished ton of steel in 2015. ^{3/} Analysts have predicted that U.S. crude steel output, driven by strong activity in non-residential building and oil and gas, will increase by 4.4 per cent in 2017, reversing almost two years of contraction, according to an average of forecasts from a Financial Times survey of 20 analysts. ^{4/} Prices increased throughout most of 2016. ^{5/}

In short, the U.S. steel industry is fundamentally healthy and competitive.

III. COMMERCIAL CONCERNS SHOULD BE ADDRESSED THROUGH ESTABLISHED TRADE REMEDY MEASURES OR NEGOTIATION

In announcing the launch of this Section 232 investigation last month, the U.S. Government referenced an increase in the volume of steel imports and concern that such imports are “unfairly

^{2/} *Id.* at 5.

^{3/} *Id.*

^{4/} *U.S. Steel Industry Expected to Return to Growth*, Financial Times (Dec. 27, 2016), available at <https://www.ft.com/content/1522243c-c93e-11e6-8f29-9445cac8966f>

^{5/} *Id.*

subsidized” and sold at “artificially low price.” ^{6/} President Trump is further quoted as observing that foreign nations are “dumping vast amounts of steel all over the United States, which essentially is killing our steelworkers and steel companies.” ^{7/} The Department has also notably cited to the “the large volumes of excess global steel production and capacity” that are allegedly injury the U.S. steel industry. ^{8/}

We are generally sympathetic to the concerns regarding unfair competition and over-capacity in the global steel industry that have been raised by the United States. However, the appropriate and lawful means for members of the World Trade Organization (“WTO”) to address issues of unfair trade is preferably through a process of bilateral or multilateral negotiation, or through established legal trade remedies – in particular, the antidumping duty and countervailing duty mechanisms.

In fact, as the Department itself observes, the United States has already imposed over 150 antidumping and countervailing duty measures against imports of steel, with another 13 such investigations pending. ^{9/} Thus, the United States is already taking aggressive lawful measures to address what it perceives to be unfair pricing and subsidization, covering a large proportion of U.S. steel imports.

Article XXI of the General Agreement on Tariffs and Trade (“GATT”) recognizes a limited exception for restricting trade where a member considers it “necessary for the protection of its essential security interest.” However, that provision also qualifies this right by stipulating that such actions is excepted when “taken in time of war or other emergency in international relations.” ^{10/} Members have accordingly invoked this limited exception in only six cases before GATT dispute settlement panels and only in three instances before the WTO. The limited application of the exception is a reflection by members, including the United States, that it should not be applied so broadly as to harm the free market principles that are the foundation of the WTO’s legal system. As individuals involved in the drafting of the exception recognized, “every [member] should be cautious not to take any step which might have the effect of undermining the General Agreement,” by frivolously invoking GATT Art. XXI. ^{11/}

That members have limited invoking GATT Art. XXI to instances of armed conflict and international crises is a reflection of the respect among nations that the exception should only be

^{6/} See Press Release, U.S. Department of Commerce, Office of Public Affairs (April 20, 2017).

^{7/} *Id.*

^{8/} See Frequently Asked Questions, U.S. Department of Commerce, Office of Public Affairs (April 21, 2017).

^{9/} April 20, 2017, Press Release at 1.

^{10/} GATT Art. XXI(b)

^{11/} GATT/CP.3/SR.22, Corr. 1.

applied narrowly, and where “essential” for their interests. The United States, to date, has been a consistent defender of this interpretation of GATT Article XXI. Invocation of Section 232 in the absence of “war or other emergency in international relations,” which has not been alleged by the United State Government in this case, would be a dramatic and harmful departure from the limited application of the national security exception to date.

We are also concerned that precipitous action under Section 232 to address what is essentially a commercial concern will inadvertently invite similar action by other trading partners of the United States and, quite possibly, also retaliatory measures. The United States should therefore approach this issue with extreme caution. The appropriate method to address the concerns raised by the United States, such as global over-capacity in steel production, clearly is through multilateral negotiation, not unilateral action.

IV. THERE IS NO NATIONAL SECURITY JUSTIFICATION FOR LIMITING STEEL IMPORTS BEYOND EXISTING ANTI-DUMPING AND COUNTERVAILING DUTIES

In accordance with the Department’s regulations (15 C.F.R. Part 705), the Department has instituted a Section 232 investigation to determine if there are any national security concerns related to steel imports. Based on the twenty-six 232 investigations instituted to date, we understand that the Department and the President have only restricted imports under the law in seven instances, five of which concerned petroleum imports.

Most recently, the Department investigated imports of iron ore and semi-finished steel in 2001 and determined that there was

no probative evidence that imports of iron ore or semi-finished steel threaten to impair national security. Neither is there evidence to showing that the United States is dependent on imports of iron ore or semi-finished steel, nor evidence showing that such imports fundamentally threaten the ability of domestic producers to satisfy national security requirements. ^{12/}

In support of this conclusion, the Department found that:

- “The demand of critical industries for iron ore and semi-finished steel can be readily satisfied by domestic production, even assuming that all such demand were necessary to preserve the national security (which is not the case).”

^{12/} US Department of Commerce, *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security* 1 (October 2001) (**Exhibit 1**).

- “U.S. industry currently has, and anticipates continuing to have in the future, sufficient human resources, products, raw materials, and other supplies and services needed for the production of iron ore and semi-finished steel.”
- “Imports of iron ore and semi-finished steel are from diverse and “safe” foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil).”
- “Although domestic manufacturers of iron ore and semi-finished steel clearly are enduring substantial economic hardship, there is no evidence that imports of these items (which account for approximately 20 and 7 percent of U.S. iron ore and semifinished steel consumption, respectively) fundamentally threaten to impair the capability of U.S. industry to produce the quantities of iron ore and semi-finished steel needed to satisfy national security requirements, a modest proportion of total U.S. consumption.”

These conclusions, moreover, explicitly took into account the campaign against terrorism resulting from the events of September 11, 2001, and the associated increased requirements of related military operations.

If the Department applies the same analytical approach as in the 232 investigation of iron ore and semi-finished steel in 2001, the clear conclusion must be that U.S. national security is not being harmed by imports of steel.

The Department has explained that imports may impair U.S. national security in two ways: (1) through excessive domestic dependency on unreliable foreign suppliers, or (2) if imports fundamentally threaten to impair the capability of the relevant US industry to satisfy national security requirements. ^{13/} Factors the Department takes into account for determining such impairment include, *inter alia*: (1) domestic production needed for projected national defense requirements, (2) the capacity of domestic industries to meet such requirements, and (3) existing and anticipated availability of the human resources, products, raw materials, and other supplies and services essential to national defense. In addition, the Department considers the wider impact that imports may have on the U.S. economy, including the impact of foreign competition on the economic welfare of individual domestic industries, with an emphasis on the impact of competition on twenty-eight “critical industry sectors.” ^{14/}

Applying these same factors to the U.S. steel industry today, and across the five product categories identified by the Department for investigation (i.e., flat products, long products, pipe and tube products, semi-finished products, and stainless products), the Department will be unable to find that national security is being impaired by imports of steel. U.S. security requirements as

^{13/} *Id.* at 6-7.

^{14/} *Id.*

represented by the most-recently-completed *Quadrennial Defense Review* in 2014 are not fundamentally different than in 2001. 15/

Nor is the condition of the U.S. steel industry significantly changed or more vulnerable than in the past (particularly considering the intervening imposition of numerous antidumping and countervailing duty measures on various steel products over the last five years). The American Iron and Current U.S. steel capacity utilization reportedly is in the range of 74%, leaving substantial room to expand production to meet national security needs. 16/ Indeed, the U.S. steel industry reportedly produced in excess of 87 million tons of steel in 2015, and directly or indirectly employs more than 1 million U.S. jobs. 17/ As noted above, the U.S. steel industry is also reportedly among the most productive in the world – labor productivity in the U.S. steel industry has seen a five-fold increase since the early 1980s, going from an average of 10.1 man-hours per finished ton to an average of 1.9 man-hours per finished ton of steel in 2015. 18/

Applying the same analytical framework used in the Department’s 2001 Section 232 analysis of iron ore and semi-finished steel products, it is clear that U.S. defense and critical industry sectors remain unimpaired from a national security perspective. As the Department found in the 2001 investigation, national defense consumes a very small (only 0.25% in 2001) of total primary steel and iron manufacturing output – a sum indicative of the defense industry’s reliance on steel generally. 19/ Even if the Department doubled or tripled this estimate for changed circumstances, there would be no realistic possibility of a threatened shortfall in domestic steel production capacity to meet national security requirements. The American Iron and Steel Institute estimate that national defense and homeland security accounted for only 3% of 2015 steel shipments. 20/ In addition, the U.S. national defense industry has continued to ensure preferences for domestically-produced steel through consistent use of “Buy American” provisions in supply agreements – a feature applicable to most U.S. defense supply agreements and entirely permissible at the WTO.

With respect to the wider economic question, the Department found in 2001 that all twenty-eight industry sectors combined only consumed 30.88% of total primary steel and iron

15/ See U.S. Department of Defense, *Quadrennial Defense Review: 2014* (March 2014)(**Exhibit 2**).

16/ American Iron and Steel Institute, *This Week's Raw Steel Production*, May 20, 2017, available at <https://www.steelmarketupdate.com/news/category/191-weekly-raw-steel-production/> (**Exhibit 3**).

17/ American Iron and Steel Institute, *Profile 2016*, at 4, 6 (**Exhibit 4**).

18/ *Id.*

19/ *2001 Section 232 Report* at 6.

20/ American Iron and Steel Institute, *Profile 2016*, at 6.

manufacturing output in 2001. 21/ Moreover, even this estimate grossly overstates the defense-related consumption, as the Department concluded that “a substantial portion of consumption by these industries is likely not related to national security requirements.” 22/ We have no information to suggest that steel consumption among these twenty-eight industry sectors has changed materially since the 2001 investigation. And without a material change in steel consumption, the Department is very unlikely to find conditions that warrant the imposition of trade restrictive measures for “essential national security” reasons in accordance with the Department’s regulations.

In summary, should the Department of Commerce proceed with this investigation, despite the blatant commercial focus of the investigation, we urge the Department to apply methodologies that are consistent with those employed in the 2001 investigation. If properly applied that analysis must again lead to the conclusion that imports of steel do not threaten national security.

V. IF A REMEDY IS APPLIED IT SHOULD BE PRODUCT-SPECIFIC AND SHOULD INCLUDE TERMINATION OF AD/CVD MEASURES

If the Department nevertheless makes an affirmative finding and the President determines to apply a remedy under Section 232, we respectfully submit that any remedy should be product-specific and must account for any antidumping (AD) and/or countervailing duty (CVD) measures being imposed on the same product and country to avoid unfairly imposing a double-remedy.

The scope of the Section 232 investigation is extremely broad and encompasses literally dozens of distinct products, each of which warrants separate analysis. We note that during the section 201 safeguards investigation of steel products conducted back in 2001, the U.S. International Trade Commission (“ITC”) recognized multiple distinct categories or groupings of steel products, including: (1) carbon and alloy steel flat products, including steel, including carbon and alloy steel slabs, plate, hot-rolled steel, cold-rolled steel, grain-oriented electrical steel, coated steel and tin mill products; (2) carbon and alloy steel long products, including ingots, hot bar, cold bar, reinforcing bar, rails, wire, steel rope, nails, shapes, and fabricated structural units; (3) carbon and alloy steel tubular products, including seamless tubular products other than oil country tubular goods (“OCTG”), seamless OCTG, welded tubular products other than OCTG, welded OCTG, and fittings; and (4) stainless and tool steel products, including slabs/ingots, plate bar, rod tool steel, wire, cloth, steel rope seamless tubular products, welded tubular products, and fittings. The ITC Commissioners making affirmative determinations recommended significantly different remedies for each of these products, recognizing that each product faces different conditions of competition and injury profiles. 23/

21/ *Id.*

22/ *Id.* at 14.

23/ *See Steel*, Inv. No. TA-201-73, USITC Pub. 3479 (Dec. 2001) at 17-23.

If the Department is to shape a remedy that is reasonable and fair to all concerned, it must take these differences into consideration. A “one size fits all” approach to a remedy would be arbitrary and capricious and would inevitably lead to market distortions that would inevitably harm downstream purchasers by over-compensating on certain products and, perhaps fail to offer appropriate or adequate relief to the corresponding domestic industry for other products. For example, the remedy appropriate for producers of welded carbon and alloy steel tubular goods has no necessary correlation with the remedy that is appropriate for stainless steel flat products. These product categories are manufactured by different industries and serve entirely different markets.

There is no short cut in this area. *To* avoid an arbitrary result, the Department must collect and carefully analyze data specific to each of the products under investigation and fashion an appropriate remedy for each.

The Department must also take into consideration the extent to which specific products, from specific countries, are already under AD and/or CVD orders. For example, imports of hot-rolled and cold-rolled flat-rolled carbon and alloy steel from Brazil are already under order and imports of these products have significantly decreased. If, and to the extent that measures are imposed on these products from Brazil (or other countries) the remedy should take into account the existence of the AD/CVD measures. Specifically, the Department should either terminate the AD/CVD measures outright or, at a minimum, reduce any additional measures imposed under Section 232 by the amount of those duties to avoid double-counting of remedies.

VI. CONCLUSION

For the foregoing reasons, CSN LLC respectfully submits that the United States should not take action to restrict steel imports in the name of “national security.” The U.S. steel industry is fundamentally healthy. There is more than ample domestic capacity to meet national security requirements – whether narrowly defined as Department of Defense requirements or more broadly to encompass critical industry sectors. Applying the analytical framework adopted in the 2001 iron ore and semi-finished steel section 232 investigation, must yield a conclusion that national security is no threatened by steel imports.

The issues of concern raise by the United States are commercial in nature and should, accordingly, be addressed either through negotiation or through the established trade remedies channels. Taking unilateral action to restrict trade outside of the trade remedy mechanisms will only invite retaliation by the United States’ trading partners. We urge the Department to render a negative determination.

Respectfully submitted,

Jerry Richardson
Executive Director
CSN LLC