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§232 National Security Investigation
Bureau of Industry and Security
U.S. Department of Commerce

PUBLIC DOCUMENT
Business Confidential Information
in Annex 4 Redacted

BY EMAIL¹

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

Re: Section 232 National Security Investigation of Imports of Steel

Dear Director Botwin,

On behalf of EUROFER, the European Steel Association, we hereby submit written comments on the United States' Section 232 National Security Investigation of Imports of Steel (see **Attachment**). This request is filed in accordance with the instructions set forth in the Department's Federal Register notice requesting comments in this investigation.² As requested in that notice, EUROFER's comments are directed to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR §§ 700 to 709) as they affect national security.

Founded in 1976, EUROFER represents 100 percent of steel production in the European Union. EUROFER members are steel companies and national steel federations throughout the EU. EUROFER member companies are key suppliers to the United States, and therefore have a direct interest in the current investigation and any resulting recommended actions by the Secretary to adjust steel imports pursuant to Section 232 of the Trade Expansion Act of 1962.

Pursuant to 15 CFR § 705.6, EUROFER requests business confidential treatment of the information found in **Annex 4** of this written submission, and has redacted that information herein. This confidential commercial and financial information is exempt from public

¹ To: Steel232@bis.doc.gov; cc: brad.botwin@bis.doc.gov.

² *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 FR 19205 (April 26, 2017).

disclosure under 5 U.S.C. § 552(b)(4), and such disclosure would harm the EUROFER member companies' commercial interests. Consistent with the Department's Federal Register notice, EUROFER has also filed a business confidential version of this submission.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karl Tachelet', is written over a horizontal line. The signature is stylized and somewhat abstract.

Karl Tachelet

Director, International Affairs
EUROFER

Comments of EUROFER in the Section 232 National Security Investigation of Imports of Steel

EUROFER provides in this letter comments for consideration by the Bureau of Industry and Security (“Bureau”) in the national security investigation of steel imports initiated under Section 232 of the Trade Expansion Act of 1962¹ (“Section 232”).² As requested, EUROFER’s comments are directed to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR §§ 700 to 709) as they affect national security.³ These written comments supplement the oral testimony of EUROFER at the Bureau’s recent hearing.⁴

By way of introduction, EUROFER represents 100 percent of steel production in the European Union (“EU”). EUROFER members are steel companies and national steel federations throughout the EU.⁵ Major steel companies and national steel federations in Switzerland and Turkey are associate members.

I. SUMMARY

- Like the United States, EUROFER is concerned with unfair trading practices, and global steel overcapacity and overproduction. EUROFER has worked with European officials to address these commercial problems through vigorous enforcement of trade remedy laws and international negotiations in fora like the Organization for Economic Cooperation and Development (“OECD”) and the G-20. **Coordinated, concrete action** at the international level is the **only** effective means to address the global steel market’s problems.
- The Bureau should reject requests by US steel producers to take broad action against all imported “steel” products, including downstream products made from steel. Such **broad action cannot be justified** under Section 232 because there is no nexus between imports of steel products in general and direct threats to US national security. Moreover, broad action

¹ 19 U.S.C. § 1862.

² *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 FR 19205 (April 26, 2017).

³ This includes: (a) quantity of steel or other circumstances related to the importation of steel; (b) domestic production and productive capacity needed for steel to meet projected national defense requirements; (c) existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce steel; (d) growth requirements of the steel industry to meet national defense requirements and/or requirements to assure such growth; (e) the impact of foreign competition on the economic welfare of the steel industry; (f) the displacement of any domestic steel causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; (g) the displacement of any domestic steel causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; (h) relevant factors that are causing or will cause a weakening of our national economy; and (i) any other relevant factors.

⁴ See Testimony of Karl Tachelet, EUROFER, at the Steel 232 Investigation Public Hearing (May 24, 2017) (“Hearing”).

⁵ See “EUROFER Member List,” EUROFER – The European Steel Association, *available at* <http://www.eurofer.org/About%20us/Members>

would place international trading rules at risk, with potentially severe consequences for exports of steel and other products that other countries might target on the same basis.⁶

- Therefore, the Bureau’s analysis of whether action to adjust imports should be recommended to the President should be **narrowly focused on any specific imported steel products** that directly threaten US national security. General commercial and national interests do not rise to the level of national security interests.
 - The analysis should focus on steel products that directly relate to national defense. If the Bureau also considers “critical infrastructure” uses, it should exclude subsectors that do not directly relate to national security. Steel products not relevant to such uses should be excluded from the analysis and from any proposed action to adjust imports.
 - The analysis should be based on relevant evidence. Based on EUROFER’s research, such evidence does not exist in the public realm for key aspects of the analysis, such as US consumption of specific steel products for specific national security uses. Therefore, questionnaires should be issued to obtain evidence.
- Any action proposed by the Bureau to adjust imports should differentiate by country, and **no action should be proposed with respect to steel imported from EU Member States** because such imports do not threaten US national security.
 - Protecting US national security is the sole, legal justification for any action proposed or taken under Section 232, as well as any possible defense of such action under international trading rules.⁷ Therefore, it is entirely appropriate that imports of steel from countries that do not threaten US national security should be excluded. **Normal “most-favored nation” (“MFN”) principles are not applicable.**
 - The United States and the EU share a long history of collaboration on national security issues. Twenty-two EU Members are **allies** under the North Atlantic Treaty Organization (“NATO”) and are committed to defend US security. Additionally, there are dozens of bilateral agreements between the US and EU Members covering matters such as defense cooperation and weapons production, and many EU Members are parties to reciprocal defense procurement memoranda of understanding with the US under which each country agrees to remove barriers to purchases of supplies and services of the other country.
 - EU Member States are **not among the countries identified** by US producers at the hearing as a threat (that is, China, Russia, Turkey, India, and Brazil).⁸ Nor do EU steel producers suffer from the problems identified at the hearing (correctly, in EUROFER’s view) as affecting the global steel market, namely government ownership and

⁶ See Hearing Testimony of Gary Horlick, American Institute for International Steel (discussing the threat that other countries might retaliate for US actions on steel by taking similar action against US exports of agricultural products).

⁷ See Art. XXI of the General Agreement on Tariffs and Trade (“GATT”) 1994.

⁸ See, e.g., Hearing Testimony of John Ferriola, Nucor Corporation, and John Brett, ArcelorMittal USA.

subsidization, resulting in overcapacity, overproduction, and non-market oriented behavior.⁹

- Finally, the general information available for the US steel industry does not demonstrate that steel imports threaten to imperil national security.
 - The United States is not dependent on steel imports. According to US producers' own statements, **they can make all products consumed in the United States and meet all US consumption needs with their existing capacity.**
 - The US steel industry's output, capacity utilization, and financial position have rebounded. US steel companies continue to invest in new capacity, clearly indicating that their existence is not at issue.
 - Many imports are from safe, reliable sources that the Bureau has recognized as such, including EUROFER Members in the EU.
 - US trade remedy, procurement, and other laws have been successful in curtailing injurious steel imports, bolstering the domestic industry's position and ensuring that the United States' defense-related steel capacity is not imperiled.

II. THE PROBLEMS AFFECTING THE GLOBAL STEEL MARKET CAN ONLY BE EFFECTIVELY RESOLVED THROUGH COORDINATED, CONCRETE ACTION BY THE US, EU, AND OTHER LIKE-MINDED GOVERNMENTS

EUROFER shares the US government's and US steel producers' concerns with respect to unfair trading practices, and excess global steel production and overcapacity. EUROFER and its member companies have worked with EU officials to address the injurious effects of these commercial problems through vigorous enforcement of domestic trade remedy laws.

In addition, EUROFER has strongly supported the EU's frequent collaboration with the US government on joint efforts to address global steel overcapacity, including in such fora as the OECD and the G-20.¹⁰ In this regard, EUROFER and its US counterparts – including the American Iron and Steel Institute and the Steel Manufacturers' Association – have voiced their collective support for the decision of G-20 leaders in 2016 to establish the Global Forum on Steel Excess Capacity.¹¹ EUROFER also has worked in concert with its US counterparts to directly

⁹ See, e.g., Hearing Testimony of Mark Millet, Steel Dynamics.

¹⁰ See "The Contribution of the WTO to the G20 Call for Action to Address Certain Measures Contributing to Overcapacity," World Trade Organization (October 12, 2016), available at 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.

¹¹ See "Ten Global Steel Groups Comment on G-20 Discussion of Steel Overcapacity," American Iron and Steel Institute (September 9, 2016), available at <https://www.steel.org/~/.media/Files/AISI/Press%20Releases/2016/steelreact%20to%20G20%209-6-16%20FINAL.pdf>.

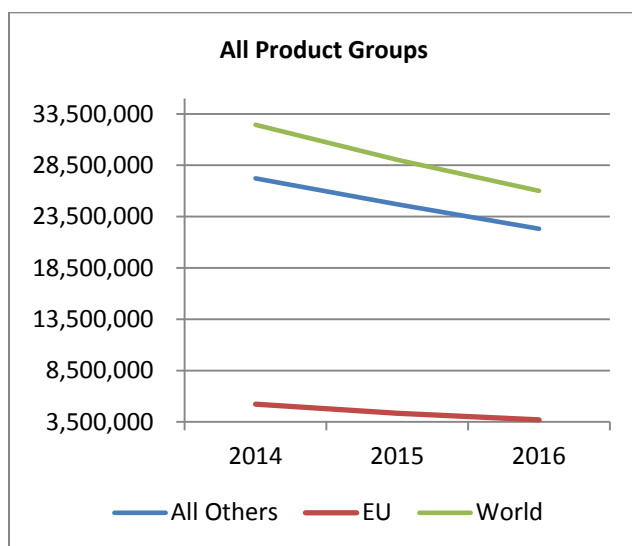
pressure the Chinese government to take meaningful steps to reduce excess production capacity in the Chinese steel industry.¹² European officials also are pressuring the Chinese government to take “effective, time-bound, and verifiable steps” to address steel overcapacity.¹³

Coordinated, concrete action between 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.

III. OVERVIEW OF EU STEEL EXPORTS TO THE UNITED STATES

We provide in **Annex 1** data regarding imports of steel from the EU into the United States. In order to permit a more meaningful analysis of the imports in relation to national security applications, we have categorized imports in accordance with the categories used by EUROFER in the ordinary course of business. In particular, imports are first categorized into four segments: Carbon; Other Alloys; Stainless; and Primary. And, within each segment, products are categorized into 25 product groups.¹⁴ US import data was sorted into these categories using the tariff classifications (at the six-digit level) used by EUROFER in the ordinary course of business. Details are also provided in Annex 1.

The data set forth in Annex 1 show that EU steelmakers are a relatively modest and stable source of domestic supply for almost every steel product category. Moreover, imports of steel from the EU are falling, as shown in the following diagram:



¹² See “Regional steel trade groups say China's new steel policy “lacks true market-based reforms,” EUROFER – The European Steel Association, available at <http://www.eurofer.eu/News%26Events/Press%20releases/Steel%20Groups%20Comments%20China%20plan%204-20-15-1.fhtml>.

¹³ See “China resists EU demand for promise to address steel glut this year,” Mlex Market Insight (May 30, 2017).

¹⁴ Ingots; Semis Long (Blooms,Billets); Semis Flat; Semis Long (Others); Hot Rolled Wide Strip; Lengths cut from hrws; Quarto Plate; Cold Rolled Sheet; Tin Mill Products; Hot Dipped; Electrolytically; Hot Rolled Narrow Strip; Wire Rod; Forged Bars; Rebars; Merchant Bars; Cold Finished Bars; Heavy Sections; Cold Finished Angles, Shapes and Sections; Drawn Wires; Grain Oriented; Grain Non Oriented; Sheet piling; Others; and Railway Material.

As discussed in further detail below, the EU steel producers are reliable, longstanding suppliers of steel products that complement US production and support US national security.

IV. THE BUREAU'S ANALYSIS SHOULD BE NARROWLY FOCUSED ON SPECIFIC IMPORTED STEEL PRODUCTS THAT DIRECTLY THREATEN US NATIONAL SECURITY

It is critical for the Bureau to focus its analysis on specific steel products that are directly related specific national security uses, and determine whether imports of those products threaten to impair US national security. This narrow approach is required by US law and international trading rules.¹⁵

A. US Law Requires a Narrow Analysis

Investigations conducted pursuant to Section 232 and any import adjustments resulting therefrom must be limited to considerations of “national security,” as opposed to broader commercial or “national interest” considerations. This limitation is clearly established in the statute, and repeated in the governing sections of the National Security Industrial Base Regulations (15 CFR § 705). Even the economic factors set forth under 19 U.S.C. § 1862(d) that the President and Secretary must consider are expressly tied to the “national security.”¹⁶ The Bureau itself has recognized that there is a fundamental difference between commercial considerations and the national security requirements of Section 232.¹⁷

Furthermore, the Department’s discretion in defining “national security” and making recommendations based thereupon is limited. In *Federal Energy Administration v. Algonquin*, for example, the Supreme Court stated that the term “national security” under Section 232 must be interpreted more narrowly than simply “the national interest.”¹⁸ The Supreme Court reviewed the legislative history of Section 232, and noted the replacement of the term “national interest” with the narrower term “national security” - a limitation that the Bureau expressly acknowledged in its most recent Section 232 investigation of iron ore and semi-finished steel.¹⁹ Thus, the Bureau’s analysis must be tied to national security and any recommended action must be

¹⁵ A broad approach would run afoul of Article XXI of the GATT 1994.

¹⁶ For example, subsection (d) establishes that the Secretary and President shall (i) “in light of the requirements of national security” consider “domestic production needed for projected national defense requirements;” (ii) “recognize the close relation of the economic welfare of the Nation to our national security;” and (iii) take into consideration certain economic factors “in determining whether such weakening of our internal economy may impair the national security.” 19 U.S.C. § 1862(d).

¹⁷ See “The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security,” United States Department of Commerce, Bureau of Export Administration (October 2001), available at https://www.bis.doc.gov/index.php/forms-documents?task=doc_download&gid=81 (hereafter “2001 Iron Ore and Semi-Finished Steel Report”), at 37 (“The issue whether imports have harmed or threaten to harm U.S. [iron ore and semi-finished steel] 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. The evidence before the Department does not support such a finding.”).

¹⁸ *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 546, 569 (1976).

¹⁹ See 2001 Iron Ore and Semi-Finished Steel Report at 5.

justified on national security grounds. This means that the Bureau's analysis must relate to specific industries and types of steel, and not simply treat all "steel" as if it were the same and used in the same way.

In this regard, we note that US government investigations typically differentiate among steel products because the markets for, and the physical characteristics and uses of, the products differ significantly. For example, existing US antidumping and countervailing duty orders cover 18 different steel products,²⁰ and the International Trade Commission's 2001 global safeguard investigation of steel examined 33 different steel product categories.²¹ Put simply, there is not one "steel" product – there are dozens of different steel products. The Bureau's Section 232 investigation should recognize this reality.

B. The Bureau's Analysis Should Begin by Identifying Steel Products With a Direct National Security Nexus

The Bureau should start its analysis by identifying specific steel products that have a strong, direct national security nexus. Only those products should be analyzed and potentially subject to import adjustment. First, the Bureau should identify steel uses that are directly related to national defense. Second, the Bureau should identify any "critical infrastructure" uses that directly relate to national security.

In this regard, EUROFER notes that several of the subsectors identified by Presidential Policy Directive 21 ("PPD 21") as "critical infrastructure" applications have little or no relevance to national security and, therefore, should be removed from the Bureau's analysis.²² For example, the Commercial Facilities sector²³ includes such subsectors as "Gaming (*e.g.*, casinos)," "Outdoor Events (*e.g.*, theme and amusement parks, fairs, campgrounds, parades)," and "Retail (*e.g.*, retail centers and districts, shopping malls)." Likewise, the Government Facilities sector²⁴ includes "Education Facilities," such as "pre-kindergarten through 12th grade schools, institutions of higher education, and business and trade schools." These and many other

²⁰ See "Antidumping and Countervailing Duty Orders in Place as of May 24, 2017," US International Trade Commission (May 24, 2017), *available at* https://www.usitc.gov/sites/default/files/trade_remedy/documents/orders.xls. Carbon and Alloy Steel Cut-to-Length Plate; Carbon and Certain Alloy Steel Wire; Carbon steel plate; Carbon steel wire rod; Clad steel plate; Cold-Rolled Steel Flat Products; Corrosion-Resistant Steel Products; Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products; Hot-rolled carbon steel flat products; Non-Oriented Electrical Steel; Stainless steel bar; Stainless steel plate in coils; Stainless steel sheet & strip; Stainless steel wire rod; Steel concrete reinforcing bar; Steel Nails; Tin mill products; and Welded Line Pipe.

²¹ See Volume II: Information Obtained in the Investigation (Carbon and Alloy Steel Flat, Long, and Tubular Products), USITC Pub. 3479, Inv. No. TA-201-73 (Dec. 2001), *available at* <https://www.usitc.gov/publications/safeguards/PUB3479B.pdf>.

²² See "Presidential Policy Directive No 21 – Critical Infrastructure Security and Resilience" the White House of President Barack Obama (February 12, 2013), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>.

²³ See "Commercial Facilities Sector," US Department of Homeland Security (December 16, 2016), *available at* <https://www.dhs.gov/commercial-facilities-sector>.

²⁴ See "Government Facilities Sector," US Department of Homeland Security (March 22, 2017), *available at* <https://www.dhs.gov/government-facilities-sector>.

subsectors included within the 16 “critical infrastructure” sectors are not connected with US national security.

Indeed, the Department of Homeland Security (“DHS”) has recognized that not all 16 “critical infrastructure” sectors implicate US national security. On its website, DHS notes that the 16 sectors are designated as critical because “their incapacitation or destruction would have a debilitating effect on **security, national economic security, national public health or safety, or any combination thereof.**”²⁵ DHS’s Sector-Specific Plans for the critical infrastructure sectors expressly state that certain sectors (namely, Commercial Facilities, Financial Services, and Food and Agriculture) were designated as “critical” because of their relevance to public health, safety, and/or economic security, rather than national security.²⁶ The Bureau should exclude these sectors from its analysis.

Further, the Bureau should undertake a thorough review of the remaining 13 “critical infrastructure” sectors and exclude subsectors that are not directly relevant to national security. For example, one subsector of the Critical Manufacturing sector is “Machinery Manufacturing,” which DHS defines as including, *inter alia*, “earth moving, mining, agricultural, and construction equipment.”²⁷ As shown below, several applications within this category (shown in bold) have no connection to national security and should be excluded from the Bureau’s analysis:

NAICS 2017	Subsectors of “Agriculture, Construction, and Mining Machinery Manufacturing (NAICS 3331)
33311	Agricultural Implement Manufacturing
333111	Farm Machinery and Equipment Manufacturing
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing
33312	Construction Machinery Manufacturing
333120	Construction Machinery Manufacturing
33313	Mining and Oil and Gas Field Machinery Manufacturing
333131	Mining Machinery and Equipment Manufacturing
333132	Oil and Gas Field Machinery and Equipment Manufacturing

The Bureau took a similar approach in the 2001 Section 232 investigation of iron ore and semi-finished steel. In particular, it consulted with the Department’s Critical Infrastructure Assurance Office to determine a list of 28 “critical industries,” *i.e.*, the national defense industry and 27 others “that the U.S. Government has determined are critical to **minimum** operations of the

²⁵ This is the definition of “critical infrastructure” set forth in Section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) and Presidential Policy Directive No 21 (emphasis added).

²⁶ For example, DHS notes that (1) Commercial Facilities are “essential to the economy and to public health and safety;” (2) Interruption of operations within the Food and Agriculture sector “could have a potentially devastating impact on the Nation’s public health and economy;” and (3) Financial Services are “critical to the nation’s economy.” See “Sector-Specific Plans,” US Department of Homeland Security, available at <https://www.dhs.gov/critical-infrastructure-sectors>.

²⁷ See “Critical Manufacturing Sector-Specific Plan,” US Department of Homeland Security (2015), available at <https://www.dhs.gov/sites/default/files/publications/nipp-ssp-critical-manufacturing-2015-508.pdf>.

economy and government.”²⁸ The list of these industries (Table 2 of the 2001 report) is much narrower than the broad list of “critical infrastructure” sectors and subsectors identified by DHS. A similar refinement of the DHS list would be necessary in this investigation.²⁹

C. The Bureau Should Then Exclude Products That Have Little or No Connection to National Security Uses

Differentiation among steel products is critical to determine the specific steel products that have a direct connection to national security versus those that do not. For example, it would be appropriate for the Bureau to focus on the specific steel products identified in the Department’s press release announcing this investigation: “Our military uses specialty steel alloys that require unusual production skills for armor, ships and aircraft.”³⁰ There is little question that such materials have uses that relate to national security.

On the other hand, to analyze and propose actions on “steel” in the aggregate would capture steel products that clearly have no national security implications. Therefore, steel products that have little or no connection to national security should be excluded. In particular, **the following products are primarily used for commercial purposes and do not significantly affect national security:**

- **Rebar and heavy sections.** Rebar’s main application is in construction projects to provide strength to concrete. The construction industry is the principal end user of rebar.³¹ Heavy sections are also mainly used in construction and civil engineering.

²⁸ See 2001 Iron Ore and Semi-Finished Steel Report, at 13-16 (emphasis added). The industries were: Crude petroleum and natural gas (industry number 8); New construction, including own-account; construction (industry number 11); Maintenance and repair construction, including own-account construction (industry number 12); Ordnance and accessories (industry number 13); Petroleum refining and related products; (industry number 31); Metal containers (industry number 39); Engines and turbines (industry number 43); Computer and office equipment (industry number 51); Audio, video, and communication equipment; (industry number 56); Motor vehicles (passenger cars and trucks) (industry number 59A); Truck and bus bodies, trailers, and motor vehicle parts; (industry number 59B); Aircraft and parts (industry number 60); Other transportation equipment (industry number 61); Railroads and related services, passenger ground; transportation (industry number 65A); Motor freight transportation and warehousing; (industry number 65B); Water transportation (industry number 65C); Air transportation (industry number 65D); Pipelines, freight forwarders, and related services; (industry number 65E); Communications, except radio and TV; (industry number 66); Radio and TV broadcasting (industry number 67); Electric services (utilities) (industry number 68A); Gas production and distribution (utilities) (industry number 68B); Water and sanitary services (industry number 68C); Finance (industry number 70A); Insurance (industry number 70B); Computer and data processing services; (industry number 73A); Health services (industry number 77A); and National defense: consumption expenditures; (industry number 96C).

²⁹ The Bureau did not then determine the product-specific needs of these industries because it found that doing so was not necessary because the industries’ **total** iron and steel demand was far below domestic production.

³⁰ See “Presidential Memorandum Prioritizes Commerce Steel Investigation,” US Department of Commerce (April 20, 2017), available at <https://www.commerce.gov/news/press-releases/2017/04/presidential-memorandum-prioritizes-commerce-steel-investigation>.

³¹ See Steel Concrete Reinforcing Bar from Mexico, USITC Pub. 4645, Inv. No. 731-TA-1227 (Final) (Oct. 2016), p. 6.

- **Wire rod.** Wire rod is used for welded mesh in the construction industry (pre- or post-stressing wires and wire strand used for reinforcement of concrete). Wire rod has many other uses after being drawn into wire, including in the tire industry (tire cord), the nut and bolt industry (fasteners), fencing products, supermarket trolleys, steel cord, electrodes, cables, bed springs, suspension springs, and welding wire.³²
- **Wide flange beams and channels.** Wide flange beams are used in structural steel construction, as well as other applications ranging from industrial facilities, and health care and commercial buildings, and multi-family residential projects.³³ Structural channels, also known as “C-beams,” are used primarily in building construction and civil engineering.
- **Hot-rolled wide strip.** Hot-rolled wide strip (of width of 600mm or more) is produced both as a feedstock (*e.g.*, for cold rolled coil and coated coil), and for direct use in industrial applications such as the production of automobiles, steel tubes used in construction, transportation equipment, appliances, and heavy machinery.³⁴
- **Cold-rolled sheet.** This product is used to make household appliances (refrigerators, washers, dryers, and other small appliances), furniture, automobile components, construction frames, and electric motors.³⁵
- **Metallic and organic coated sheet.** Metallic and organic coated sheet is used by the automotive industry. It is sold as feedstock for construction (*e.g.*, for building materials), industrial production, domestic appliance manufacturing, and other industries.³⁶ Metallic and organic coated sheet is also used for deep-drawing and stamping.
- **Tin mill products.** Tin mill products are mainly used to make cans for food and beverages – products which raise no national security concerns. Other uses include construction products, oil filters, and other automotive applications.³⁷
- **Carbon/Alloy Plate for agricultural equipment.** In the agricultural equipment context, carbon and alloy plate is mainly used for the construction of chassis of tractors and other heavy equipment. Agricultural uses involve no national security concerns.³⁸

³² COMMISSION REGULATION (EC) No 112/2009 of 6 February 2009 imposing a provisional anti-dumping duty on imports of wire rod originating in the People’s Republic of China and the Republic of Moldova, OJ L 38 of 7 February 2009, p. 3, paragraph 16.

³³ See Certain Structural Steel Beams from Japan; Determination and Views of the Commission, USITC Pub. 3308, Inv. No. 731-TA-853 (Final) (June 2000), p. 8.

³⁴ See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Russia, USTC Pub. 4639, Inv. No. 731-TA-808 (Third Review) (September 2016), pp. 12-13.

³⁵ See Cold-Rolled Steel Flat Products from China and Japan, USITC Pub. 4619, Inv. Nos. 701-TA-541 and 731-TA-1284 and 1286 (Final) (July 2016), p. 9.

³⁶ See Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan, USITC Pub. 4620, Inv. No. 701-TA-534-537 and 731-TA-1274-1278 (Final) (July 2016), p. 20.

³⁷ See Tin- and Chromium-Coated Steel Sheet from Japan, USITC Pub. 3337, Inv. No. 731-TA-860 (Final) (August 2000), p. 7.

- **Hot rolled plates for pressure vessel/storage tanks.** Such hot-rolled plates are produced to specific grades, such as ASME SA738 Grade B, ASTM A 516 GRADE 70, and ASTM A 537 class 1, and are mainly used for large storage tanks, pulp towers, pipe processing, bulk cargo tanks in chemical tankers, and oil and gas pipes.
- **Alloy forged/hot-rolled bars.** These products are commonly known as “engineering steels”, and are used to produce bearings.
- **High speed steels.** High speed steel is a cutting tool material used in drilling, milling, turning, threading, boring, broaching, gear cutting, and other machining operations. High speed steel is used for form tools, slitter knives, guillotine knives, parting tools, and other cutting tools.
- **Tool steels.** Tool steels are used to manufacture forming tools used in processes such as stamping, shearing, blanking, deep drawing, injection molding, die casting, forging, and extrusion. The tools are used for purposes of forming other materials into shape – a basic process for the manufacturing of high volume parts such as bottles, parts for the automotive industry, the consumer goods industry or the packaging industry. The materials are typically high-alloyed, and many of the steels supplied from the EU follow specific metallurgical processes like ingot casting or electro-slag re-melting in order to achieve specific properties.
- **Hot rolled bar for cold finishing.** Carbon and free cutting steel products are processed in the United States and generally machined into components for hydraulic, general engineering, industrial engineering and machinery, and tooling applications in a variety of sectors including automotive, mining and excavation equipment, agriculture, and construction.
- **Cold finished bar.** These precision-finished carbon and specialized free-cutting steel cold drawn, machined and turned products are processed near to net shape for machining into components for hydraulic, general engineering, industrial engineering and machinery and tooling applications in a variety of sectors including automotive, mining and excavation equipment, agriculture, and construction.
- **Stainless merchant bars.** Stainless merchant bars are used for automotive, oil and gas, and mechanical engineering applications.
- **Stainless cold rolled sheet and strip.** Stainless cold rolled sheet is used in consumer and industrial applications, especially where corrosion resistance, heat resistance, or stainless steel’s aesthetic characteristics are desired. Stainless cold rolled sheet and strip are used, for example, in the chemical processing, marine, oil and gas, power generation, wastewater, and food processing industries. Stainless cold rolled sheet and strip are also used as building segments, in transportation (mainly for exhaust systems and decoration), tubes, domestic appliances (kitchen utensils, tableware and cutlery) and medical equipment and devices.

³⁸ See Certain Carbon and Alloy Steel Cut-to-length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey, USITC Pub. 4615, Inv. Nos. 701-TA-559-561 and 731-TA-1317-1328 (Preliminary) (May 2016), p. 11.

EUROFER reiterates that the above list of steel products is for illustrative purposes only; other steel products might also lack the necessary link to national security required under Section 232.

D. Broadly Analyzing Steel Products Might Hide Trends Relevant to US National Security

Including commercial and commodity-grade products of the sort listed above would raise empirical problems and potentially hide trends regarding products that actually are relevant to national security. This is because commercial products are generally shipped in much higher volumes than the specialty steels that have a connection to national security. As such, aggregate data could show overall trends in steel production, capacity, imports, and other economic factors that distort, or even directly contradict, the actual trends facing security-related steels. For example, the chart below compares recent US import trends for: (1) one narrow product category (hot-rolled plate made from “other alloys,” which includes some products that have national defense applications); and (2) the broader product family of which it is a part (**all** flat products comprised of “other alloys”). While the import trend for the broad product family shows an increase of 28 percent over the past six years, this directly contradicts the import trend for the security-related product, imports of which declined by nearly half over the same period.

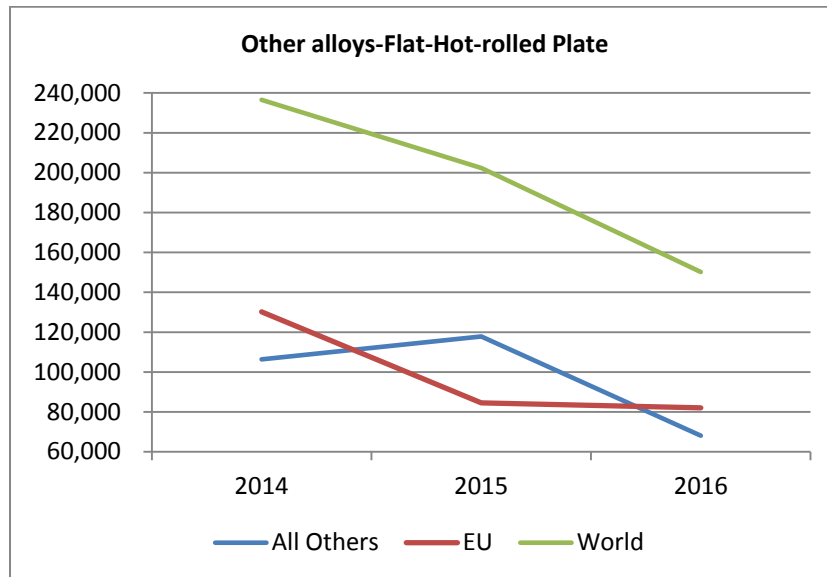
Quantity of US Imports From All Countries (MT)							
Product	2011	2012	2013	2014	2015	2016	% Change
All Other Alloys-Flat-Hot-rolled-Plate	286,931	280,034	208,154	236,585	202,354	150,166	-48%
All Other Alloys – Flat	1,204,419	1,347,261	1,340,239	1,600,787	1,645,673	1,547,087	28%

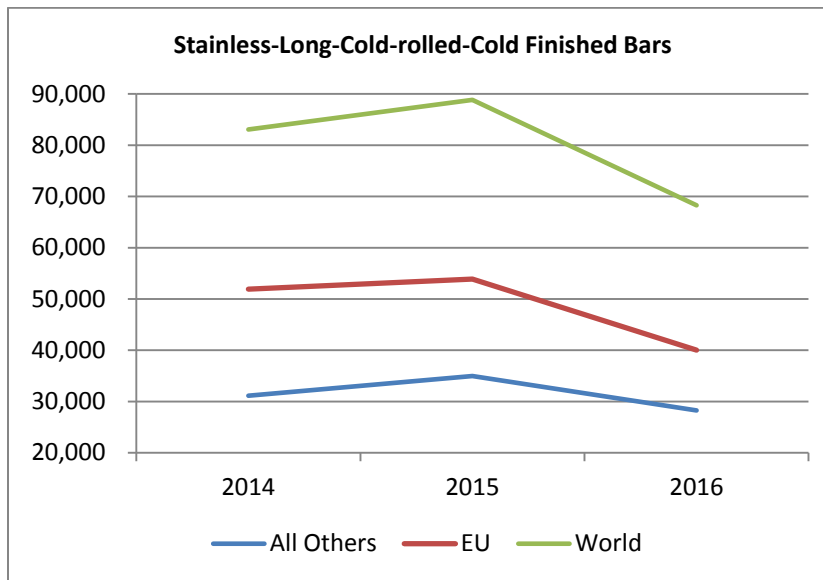
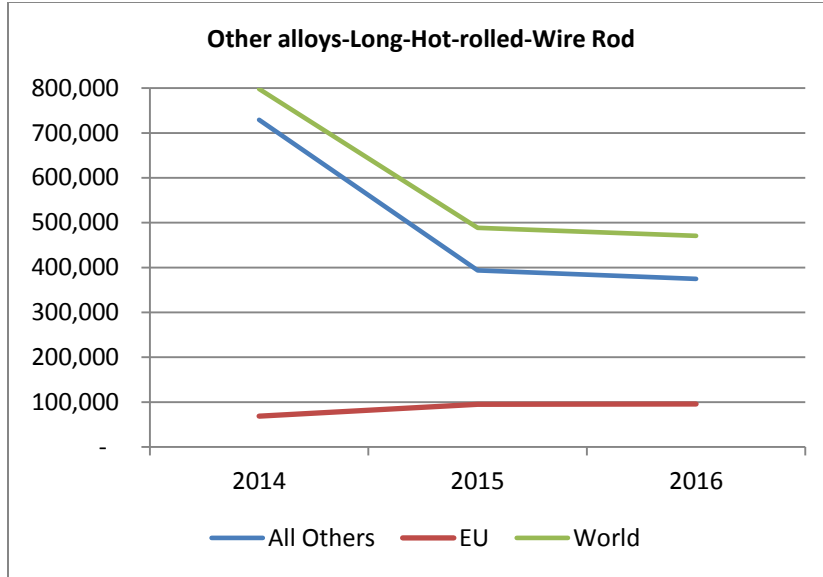
In **Annex 1**, we provide additional examples in which aggregate steel product import data show different trends for the EU, the rest-of-world, and the world in total, than do the product-specific data. These examples demonstrate that drawing conclusions from aggregate data for all steel products or broad product categories could lead to incorrect conclusions because those conclusions would be based largely on import trends for products that have no reasonable nexus to national security. Such a flawed methodology would, in some cases, fail to identify national security issues and, in other cases, go beyond what is necessary to address legitimate national security issues.

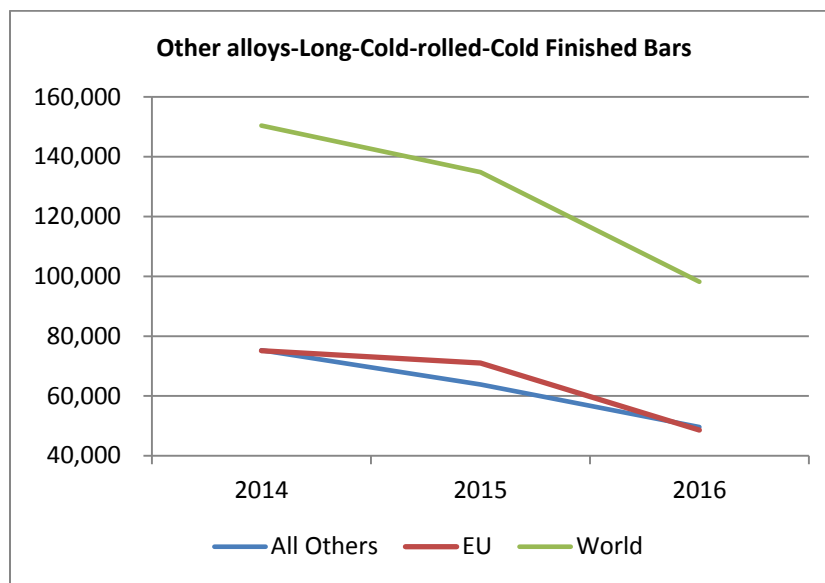
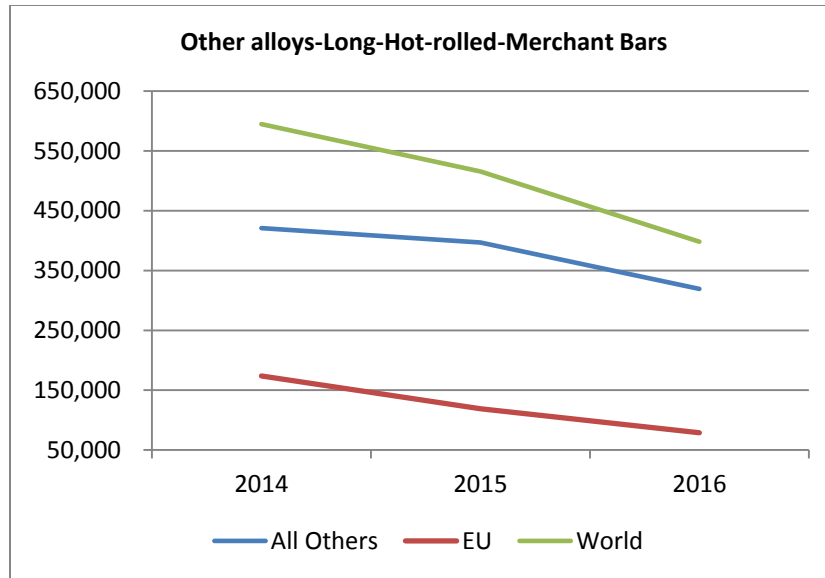
E. A Product-Specific Analysis Solely of Products with a Strong, Direct National Security Nexus Is Necessary

Determining the precise product scope of the Bureau’s investigation is beyond EUROFER’s capabilities based on publicly-available data, but will necessarily entail an initial determination of the domestic operations/uses of steel that are legitimately tied to national security. From there, the Bureau should determine the specific types of steel products used by these sectors and, in turn, the relevant economic data (imports, domestic demand and production capacity, etc.) that should form the basis of the Bureau’s final conclusions.

In **Annex 2**, EUROFER provides an illustrative list of its member companies’ shipments to the United States and their known end-uses. As shown in the Annex, most of these steel products are used to produce goods (*e.g.*, aerosol cans, furniture or exercise equipment) that have little or no relationship to national security. Indeed, only *six* of the dozens of steel products listed in the Annex (using EUROFER nomenclature) are designated for defense purposes like military vehicles: (1) Other alloys, Flat, Hot-rolled, Plate; (2) Other alloys, Flat, Hot-rolled, Other; (3) Other alloys, Long, Hot-rolled, Wire Rod; (4) Other alloys, Long, Hot-rolled, Merchant Bars; (5) Other alloys, Cold Rolled, Cold Finished Bars (6) Stainless, Long, Cold Finished Bars. However, not all products within these categories are utilized for defense purposes; in fact, the vast majority of the steel products within these six groups are used in non-defense applications. An import adjustment measure applied to these six categories as a whole would therefore affect many products that have no national security nexus. Moreover, by EUROFER’s estimation, these six products – even assuming (erroneously) that all sales went to defense uses – represent only 15.1 percent of EU steel companies’ total 2016 shipments to the United States (and only 2.14% of world 2016 shipments to the United States), and were in stable or decreasing volumes in recent years.







V. NO ACTION SHOULD BE PROPOSED WITH RESPECT TO STEEL IMPORTED FROM THE EU

Protecting US national security is the sole, legal justification for any action proposed or taken under Section 232 as well as any defense by the United States of such action under international trading rules. The statute is entitled “Safeguarding national security” and ties every action taken thereunder – *i.e.*, initiation of an investigation, submission of a final report and recommendations, to the President, and presidential adjustment of imports – to “national security.”³⁹ There is no other basis to adjust imports under Section 232, and every import

³⁹ 19 U.S.C. §§ 1862(b)(1)(A) (“Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereafter in this section referred to as the

adjustment must ensure “that such imports will not threaten to impair the national security.” Because any import adjustment taken under Section 232 would almost certainly be inconsistent with the United States trade-in-goods commitments under the GATT (*e.g.*, tariff bindings under Article 2), the United States would have to seek to defend the adjustment under the “security exceptions” of GATT Article XXI, which covers all GATT commitments. Article XXI, if applicable to the action taken by the United States, would cover any derogation from US obligations under any GATT provision, including Articles I (“General Most-Favoured-Nation Treatment”) and III (“National Treatment”). Therefore it is entirely appropriate that imports of steel from countries that do not threaten US national security should be excluded from any action taken by the United States. Normal MFN principles are not applicable.

A. The United States and the EU Are Allies and Their National Security Interests Are Aligned

Certain countries and companies raise few, if any, national security risks. Indeed, the Bureau in 2001 found that “iron ore and semi-finished steel are imported from reliable foreign sources. Accordingly, even if the United States were dependent on imports of iron ore and semi-finished steel, imports would not threaten to impair national security.”⁴⁰ Among the evidence cited to support that conclusion was (1) major steel supplier countries were longstanding trading partners that had both security and trade agreements with the United States; and (2) there were various investment ties between US companies and foreign exporters.⁴¹

This certainly is true with respect to the United States and the EU, which share a long history of collaboration on national security issues. For example:

- 22 EU Members are members of NATO and are legally obligated to defend US security, including by providing assistance in times of crisis. Just last month, President Trump praised NATO’s seven-decade history, describing the alliance as “the bulwark of international peace

“Secretary”) shall immediately initiate an appropriate investigation to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.); 1862(b)(3)(A) (“By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.); and 1862(c)(1)(A) (“Within 90 days after receiving a report submitted under subsection (b)(3)(A) in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall (i) determine whether the President concurs with the finding of the Secretary, and (ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.”).

⁴⁰ See 2001 Iron Ore and Semi-Finished Steel Report at 27.

⁴¹ *Id.* “Canada is a North Atlantic Treaty Organization (“NATO”) ally, the United States’ largest trading partner, and also a party to NAFTA. Moreover, two US companies own interests in one of the principal Canadian iron ore mines.” See also *id.* at 29 (“As noted above, two Canadian integrated steel mills own interests in three U.S. mines.”) and 30 (“Acme Metals Inc., a U.S. integrated steel mill, and Cleveland-Cliffs, Inc., a U.S. merchant iron ore company, currently own a combined 37.9 percent interest in one of the three Canadian iron ore producers.”).

and security,” and committed the United States to “work closely with all of our NATO allies to enhance this partnership and to adapt to the challenges of the future.”⁴²

- Many EU Member States have defense procurement memoranda of understanding (“MOUs”) with the United States under which each country agrees to remove barriers to national security-related purchases of supplies and services of the other country. The EU countries with which the US Department of Defense (“DoD”) has these MOUs are considered “qualifying countries” under the United States’ Defense Federal Acquisition Regulation Supplement (DFARS § 225.872),⁴³ meaning that DoD has determined it “inconsistent with the public interest” to apply restrictions on the federal government’s acquisition of qualifying products from these countries.⁴⁴
- DoD has “security of supply” arrangements with several EU countries, which “allow the DoD to request priority delivery for DoD contracts, subcontracts, or orders from companies in these countries.” These arrangements implement the “Meeting National Defense Requirements” section of the “Declarations of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry” documents that the United States has signed with certain nations, “which recognizes the **potential for a certain degree of mutual interdependence of supplies needed for national security**, and calls for the parties to explore solutions for achieving assurance of supply.”⁴⁵

In fact, there are **dozens** of bilateral agreements between the United States and individual EU Members covering matters such as defense cooperation and weapons production. These agreements are listed in **Annex 3**, and underscore the fact that EUROFER member companies are longstanding, reliable suppliers of high-quality steels who help to **maintain**, rather than threaten US national security. Any national security determination under Section 232 must account for these agreements and the mutually-beneficial security relationship between the United States and the EU Member States.

Finally, many EUROFER members have invested in US plants to make steel products and employ American workers. An indicative list of these investments is provided in **Annex 4**.

⁴² See “Joint Press Conference of President Trump and NATO Secretary General Stoltenberg” the White House of President Donald J. Trump (April 12, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/04/12/joint-press-conference-president-trump-and-nato-secretary-general>.

⁴³ See “Reciprocal Defense Procurement and Acquisition Policy Memoranda of Understanding,” Defense Procurement and Acquisition Policy (May 5, 2017), available at http://www.acq.osd.mil/dpap/cpic/ic/reciprocal_procurement_memoranda_of_understanding.html. Qualifying countries include Australia; Austria; Belgium; Canada; Czech Republic; Denmark; Egypt; Estonia; Finland; France; Germany; Greece; Israel; Italy; Japan; Latvia; Luxembourg; Netherlands; Norway; Poland; Portugal; Slovenia; Spain; Sweden; Switzerland; Turkey; and the United Kingdom.

⁴⁴ 48 C.F.R. §225.872-1(a)

⁴⁵ See “Security of Supply,” U.S Department of Defense, Manufacturing and Industrial Base Policy, available at (<http://www.businessdefense.gov/security-of-supply/>) (emphasis added). Partner countries include Australia, Canada, Finland, Italy, The Netherlands, Spain, Sweden, and the United Kingdom.

Given these strategic and commercial arrangements, EUROFER companies have a manifest interest in a strong, prosperous, and secure United States.

B. EU Steel Mills Are Responsible Global Participants

Not all foreign sources of steel are the same. EU Member States are not among the countries identified by US producers at the hearing as a threat (that is, China, Russia, Turkey, India, and Brazil). Nor do EU steel producers suffer from the problems identified at the hearing as affecting the global steel market, namely government ownership and subsidization, resulting in overcapacity, overproduction, and non-market oriented behavior. Consequently, taking uniform action against imports from all sources would be inappropriate.

VI. AVAILABLE INFORMATION DOES NOT DEMONSTRATE THAT STEEL IMPORTS THREATEN THE ABILITY OF US STEEL PRODUCERS TO MEET US NATIONAL SECURITY NEEDS

The general information available for the US steel industry does not suggest that it is in crisis or that imports threaten to impair national security. Data supporting the following facts may be found in **Annex 5**.

A. US Steel Production Satisfies the Vast Majority of Domestic Steel Demand

According to the International Trade Administration (“ITA”), import penetration for all steel mill products (excluding semi-finished steels) averaged 25.5 percent in 2016 and has ranged from 24.5 to 27.3 percent on a monthly basis during the first quarter of 2017.⁴⁶ This market share has remained relatively steady since 2009 and is, in fact, down from a high of 35 percent in January 2009.⁴⁷ These data demonstrate that the United States is not dependent on imported steel products, and that US steel producers satisfy and will continue to satisfy the vast majority of total domestic demand – including for uses having nothing to do with national security. This strongly argues against a finding that imports currently threaten to imperil national security.

B. Trade Remedy Measures Have Been Successful in Curtailing Injurious Imports

To the extent that steel imports have, in fact, injured or threatened to injure the domestic steel industry, US trade remedies laws have proven more than capable of addressing the problem. The United States presently has 202 antidumping and countervailing duty (“AD”/“CVD”) orders in place on imported iron and steel products, 48 of which apply to products from China (currently subject to more US AD/CVD orders than any other country).⁴⁸ The United States imposed 4 new AD/CVD orders on steel mill products from China in 2016 alone, and these and other measures appear to have caused the total volume of steel imported from China into the United States to drop by 58 percent between 2015 and 2016. Import trends were similar for other countries targeted by multiple new AD/CVD measures in 2016, such as Korea (whose steel mill product exports to the US declined by 32 percent between 2015 and 2016); Brazil (whose exports declined by 29 percent during the same period); and India (whose exports declined by 58 percent).⁴⁹

These import trends strongly suggest that trade remedy measures have successfully curtailed injurious steel imports into the United States, thereby contributing to the domestic industry’s improved financial performance (which is discussed in the next sections). Indeed, some industry

⁴⁶ See “Steel Industry Executive Summary: May 2017,” US Department of Commerce, International Trade Administration. Figure 16. available at <http://enforcement.trade.gov/steel/license/documents/execsumm.pdf>.

⁴⁷ *Ibid.*

⁴⁸ See “Antidumping and Countervailing Duty Orders in Place as of May 11, 2017”, US International Trade Commission, available at https://www.usitc.gov/trade_remedy/documents/orders.xls.

⁴⁹ See “U.S. Imports of Steel Mill Products, Entered Customs Value,” US Department of Commerce, International Trade Administration, available at [http://enforcement.trade.gov/steel/license/SMP/Census/Annual/gdesc52/M\\$Sum_ALL_ALL_9Y.htm](http://enforcement.trade.gov/steel/license/SMP/Census/Annual/gdesc52/M$Sum_ALL_ALL_9Y.htm).

analysts have predicted a recovery in the US steel market in 2017 on the expectation that “domestic producers will be able to retake market share from imports, which will decline because of trade tariffs imposed in early 2016 that have been very effective.”⁵⁰

C. Total US Steel Production, Shipments, Capacity Utilization, and Prices Have Stabilized and are Now Rising

Total US steel production has stabilized in recent years and, in fact, has increased significantly in 2017. Domestic crude steel output was steady between 2015 (78.8 million metric tons (“MMT”)) and 2016 (78.5 MMT),⁵¹ and at 27 MMT between January and April 2017 is up 3 percent over the same period in 2016.⁵² Shipments of steel mill products experienced the same trends: stable from 2015 (78.5 MMT) to 2016 (78.0 MMT),⁵³ and up 6 percent from January to March 2017 (22.6 MMT) versus January-March 2016.⁵⁴

US domestic steel capacity utilization also has remained steady, averaging 70.1 percent in 2015 and 70.5 percent in 2016,⁵⁵ and appears now to be rebounding. According to the ITA in May 2017, “U.S. domestic capacity utilization made strong gains in recent months after reaching a dip in October 2016”, and was estimated at 75.9 percent in February 2017 and 73.6 percent in March 2017.⁵⁶ Benchmark domestic steel prices also have rebounded over the past 18 months: (1) prices for hot-rolled band averaged \$704 per metric ton in April 2017 (up 25.9 percent compared to the same period last year); (2) cold rolled coil prices averaged \$894 per metric ton

⁵⁰ See “US Steel Industry Expected to Return to Growth,” Financial Times, (December 27, 2016), available at <https://www.ft.com/content/1522243c-c93e-11e6-8f29-9445cac8966f>.

⁵¹ See “Monthly Production 2017-2016,” World Steel Association, available at <https://www.worldsteel.org/steel-by-topic/statistics/monthly-crude-steel-and-iron-production.html>. 2015 data available at <https://www.worldsteel.org/en/dam/jcr:37ad1117-fefc-4df3-b84f-6295478ae460/Steel+Statistical+Yearbook+2016.pdf>.

⁵² These domestic production levels appear to be more than sufficient to satisfy the US government’s defense procurement needs, as well as the steel needs of the “critical industries” the Bureau identified in Iron Ore and Semi-Finished Steel. We note, however, that in recent years the Bureau of Economic Analysis (BEA) has published input-output data only at the 71-industry level of aggregation, which does not allow for a sufficiently detailed analysis of the steel consumption needs of critical industries. For example, data on steel consumption are incorporated into a single broad category encompassing all “primary metals” consumption, and important consuming industry categories are similarly overbroad (encompassing, for example, all “machinery” manufacturing). The Bureau should request that BEA provide more detailed input-output data (e.g., at the 389-industry level of aggregation) to ensure that the Bureau’ analysis can accurately identify the steel needs of the critical industries, and distinguish these from the steel needs of industries that have no national security nexus.

⁵³ See “2017 Mineral Commodity Summary: Iron and Steel,” US Geological Survey, available at https://minerals.usgs.gov/minerals/pubs/commodity/iron_&_steel/mcs-2017-feste.pdf.

⁵⁴ See “March Steel Shipments Up 6.4 Percent from February,” American Iron and Steel Institute (May 9, 2017), available at http://www.steel.org/Steel_org/document-types/news/2017/marchshipments.aspx?siteLocation=c481cc99-d816-4613-805c-b90af33cc162.

⁵⁵ See Steel Industry Executive Summary: May 2017 at p. 14.

⁵⁶ Ibid.

in April 2017 (a 19 percent increase from last year); and (3) standard plate prices averaged \$800 per metric ton in April 2017 (an 18.5 percent increase from last year).⁵⁷

D. US Steel Producers Remain Capable of Meeting Domestic Demand and Supplying a Wide Range of Products

There is also no current threat of a collapse in domestic steelmaking capacity – a conclusion made by US steelmakers themselves. In particular, US steel producers have in recent trade remedy proceedings repeatedly stated that they possess (1) sufficient production capacity to satisfy total US demand across various broad steel product segments; and (2) the ability to produce **all** types of products within these segments. For example:

- Nucor Corporation in July 2016 stated that the domestic industry “has sufficient capacity to satisfy U.S. demand across all hot-rolled steel product lines,” and that it “can and does produce the full range of hot-rolled steel products.”⁵⁸
- Nucor in November 2016 stated that the US plate industry produces “the full spectrum of plate products,” can produce “virtually all types of so-called specialty [cut-to-length plate],” and that “[t]o the extent that there are any [cut-to-length plate] products that the U.S. industry cannot currently produce, such products comprise an extremely small portion of the US plate market (*i.e.*, less than one percent).”⁵⁹ SSAB in the same case stated that, “during the entire [period of investigation] ... the domestic industry was fully capable of supplying the domestic market[.]”⁶⁰
- US Steel Corporation in May 2016 stated that “we are fully capable and have more than enough capacity to serve all aspects of [the corrosion-resistant steel] market. This includes light gauge, narrow Galvalume, advanced high strength steel and many other advanced corrosion-resistant steel products that our customers and the market demand.”⁶¹ US Steel further stated that it has “capacity and capability to support the domestic auto industry's production of cars uninterrupted.”⁶²

⁵⁷ See Steel Industry Executive Summary: May 2017 at p. 10.

⁵⁸ See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom; Inv. No. 701-TA-545-547 and 731-TA-1291-1297 (Final), Nucor Prehearing Brief pp. 28-29.

⁵⁹ See Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan and Turkey; Inv. No. 701-TA-560-561 and 731-TA-1317-1328 (Final), Nucor Prehearing Brief p. 20.

⁶⁰ See SSAB Prehearing Brief p. 31.

⁶¹ See Corrosion-Resistant Steel Products from China, India, Italy, Korea and Taiwan; Inv. Nos. 701-534-538 and 731-TA-1274-1278 (Final), Hearing transcript pp. 58-61.

⁶² *Ibid* pp. 103-104.

- Nucor in May 2016 stated that the domestic industry “has sufficient capacity to satisfy U.S. demand across all cold-rolled steel product lines,” and that it “can produce all types of cold-rolled steel products and has the capacity to quickly increase production[.]”⁶³

Based on these statements, it would be implausible to find that imports of all steel products threaten to impair national security. Instead, the US industry itself has concluded that it is fully capable of satisfying the domestic steel market in times of national emergency.

E. The Financial Performance of the US Steel Industry is Improving, and Several US Steel Companies Have Undertaken or Planned Substantial Investments in Recent Years

The financial performance of almost all US steel producers has rebounded dramatically in 2017, further demonstrating that steel imports do not currently threaten to imperil national security. As the ITA noted in May 2017, the stock prices of five major US steel producers (United States Steel Corporation, Nucor Corporation, Arcelor Mittal, Steel Dynamics Inc., and AK Steel Corporation) outperformed the S&P 500 between Q1 and Q4 of 2016.⁶⁴ The ITA also noted that: (1) the Q1 2017 average share prices for each of these companies increased from their Q4 2016 average share prices; (2) US Steel average share prices saw the largest increase from the previous quarter at 34%, followed by ArcelorMittal with an increase of 19% and AK Steel with an increase of 14.2%; and (3) compared to the same quarter last year, stocks for each of these companies showed significant increases in average share prices, with US Steel increasing by 263.7% and AK Steel by 203.9%.

Moreover, as the ITA has noted, six of the largest US steel producers (AK Steel, Carpenter Technology, Commercial Metals Company, Nucor, Steel Dynamics, and US Steel) posted a combined net income of \$491 million in Q1 of 2017.⁶⁵ With the exception of US Steel, each of these companies reported quarterly net gains in Q1 of 2017, with Nucor reporting a quarterly net profit at \$356.9 million, followed by Steel Dynamics (\$201 million), AK Steel (\$62.5 million), Commercial Metals (\$30.3) million, and Carpenter Technology (\$20.7 million).⁶⁶ The combined net income of the aforementioned six companies has been positive in each of the past four quarters.

⁶³ See Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom; Inv. No. 701-TA-540-544 and 731-TA-1283-1290(Final), Nucor Prehearing Brief pp. 29-31.

⁶⁴ See Steel Industry Executive Summary: May 2017 at p. 18.

⁶⁵ *Ibid*, p. 18.

⁶⁶ Though US Steel Corporation posted a net loss of \$180 million in Q1 2017 and has seen a significant decline in share prices in recent weeks, these problems – by the company’s own admission – stem from the its internal business decisions, rather than import competition. See, e.g., “A New CEO Is Unlikely To Transform U.S. Steel’s Fortunes Anytime Soon,” *Forbes Magazine* (May 16, 2017), available at <https://www.forbes.com/sites/greatspeculations/2017/05/16/a-new-ceo-is-unlikely-to-transform-u-s-steels-fortunes-anytime-soon/#1c90d35418ce> (“The company attributed the unfavorable results to a renewed focus on its asset revitalization program, as it looks to boost the reliability and operational performance of its US Flat-rolled facilities. Work pertaining to the upgrade of existing facilities disrupted shipments for the Flat-Rolled division, which reported a 4% year-over-year decline in its Q1 shipments *amid favorable market conditions*”) (emphasis added).

In addition, many US steel companies have undertaken or planned substantial investments in new production in recent years – a strong indication that steel imports are not threatening the domestic industry’s ability to meet national security-related demand in the future. A list of these is provided in **Annex 5** (see Figure 9). Some of the most significant expansions of US steel production undertaken in recent years are as follows:

- Big River Steel, LLC’s construction of a new **\$1.3 billion “flex mill”** in Osceola, Arkansas, which has an estimated annual production capacity of 1.6 million tons per year and had its first full month of production in January 2017;⁶⁷
- Allegheny Technologies, Inc.’s construction of a new **\$1.2 billion hot-rolling and processing facility** in Brackenridge, Pennsylvania, which began operating in 2015 and has an estimated annual production capacity of 1.5 million tons per year;⁶⁸
- Nucor Corporation’s construction of a **\$230 million specialty cold mill complex** at its Arkansas sheet mill, which is expected to become operational by the autumn of 2018 and will have an estimated annual production capacity of 650,000 tons per year;⁶⁹ and
- North American Stainless’ **\$150 million expansion of its manufacturing facility** in Ghent, Kentucky, which will add a cold-rolling mill and an annealing line with an estimated annual production capacity of 190,000 tons per year, and is expected to be operational in 2017.⁷⁰

Moreover, EUROFER understands that certain US steel producers are considering additional investments in new production facilities. For example, Big River Steel is reportedly planning to build an additional \$1.5 billion “flex mill” identical to its new plant in Osceola, Arkansas, and is in the process of considering locations for the new facility.⁷¹ That US steel producers continue to invest in new and expanded production facilities further demonstrates that the industry is recovering, and that there is no national security threat.

Finally, credit rating agencies consider US steel producers to be capable of meeting their financial commitments in the future. As shown in the first table below and in **Annex 5**, Standard and Poor’s (“S&P”) has assigned credit ratings of B or higher to eight major US steel producers (indicating that, at a minimum, the rated companies currently have the capacity to meet their financial commitments). S&P’s outlook for seven of the listed companies was “stable” (*i.e.*, not

⁶⁷ See "Big River Steel's First Full Month of Production Sets Record," The Fabricator (February 2, 2017), available at <http://www.thefabricator.com/news/metalsmaterials/big-river-steel-s-first-full-month-of-production-sets-record>.

⁶⁸ See "Why ATI Spent \$1.2B on Its Brackenridge Facility," BizJournals.com (May 7, 2017), available at <http://www.bizjournals.com/pittsburgh/blog/innovation/2015/05/why-ati-spent-1-2b-on-its-brackenridge-facility.html>.

⁶⁹ See “Nucor to Build Specialty Cold Mill Complex at Its Arkansas Sheet Mill,” Nucor Corporation (September 20, 2016), available at <http://nucor.com/investor/news/print/?rid=2204890>.

⁷⁰ See "North American Stainless Invests \$150 Million To Expand Ghent, Kentucky, Manufacturing Center," Area Development (March 26, 2015), available at <http://www.areadevelopment.com/newsItems/3-26-2015/north-american-stainless-manufacturing-facility-ghent-kentucky677572.shtml>.

⁷¹ See “LEED-certified Steel Mill at Port Would Supply Auto Industry” Brownsville Herald (May 2, 2017), available at http://www.brownsvilleherald.com/news/local/article_37364a14-2fa8-11e7-82a5-97d9d991c002.html.

likely to change in the intermediate term of six months to two years); whereas its outlook for AK Steel Corporation was positive (*i.e.*, the rating may be raised in the intermediate term). Moreover, these ratings are consistent with (and, for several companies show an improvement from) the historical ratings shown in the second table below, demonstrating that the US industry has been regarded as financially stable for years.

Current S&P Credit Ratings for US Steel Companies		
Company	Long-Term Issue Credit Rating – Local Currency (Date)	CreditWatch/Outlook (Date)
United States Steel Corporation	B (29 Jan 2016)	Stable (15 Sep 2016)
Nucor Corporation	A- (29 Sep 2015)	Stable (29 Sep 2015)
AK Steel Corporation	B (13 Jun 2016)	Positive (16 Mar 2017)
ArcelorMittal USA	BB+ (24 May 2017)	Stable (24 May 2017)
Commercial Metals Company	BB+ (19 Jan 2012)	Stable (19 Jan 2012)
Zekelman Industries	B+ (23 May 2016)	Stable (23 May 2016)
Cliffs Natural Resources	B (10 Feb 2017)	Stable (10 Feb 2017)
Steel Dynamics	BB+ (4 Sep 2014)	Stable (04 Sep 2014)

Historical S&P Credit Ratings for US Steel Companies			
Company	Long-Term Issue Credit Rating – Local Currency (Date) – Last Three Ratings		
United States Steel Corporation	B (29 Jan 2016)	BB- (17 June 2013)	BB (28 Apr 2009)
Nucor Corporation	A- (29 Sep 2015)	A (29 July 2009)	A+ (18 Mar 2009)
AK Steel Corporation	B (13 Jun 2016)	B- (21 Oct 2015)	B (8 Sep 2014)
ArcelorMittal USA	BB+ (24 May 2017)	BB (3 Feb 2015)	BB+ (7 Nov 2014)
Commercial Metals Company	BB+ (19 Jan 2012)	BB+ (29 Nov 2011)	BB+ (23 Nov 2011)
Zekelman Industries	B+ (23 May 2016)	B (26 June 2013)	B+ (15 Feb 2012)
Cliffs Natural Resources	B (10 Feb 2017)	CCC+ (14 Apr 2016)	SD (12 Apr 2016)
Steel Dynamics	BB+ (22 Nov 2006)	BB+ (25 July 2014)	BB+ (3 June 2009)

F. A Large Portion of National Security-Related Steel Production and Consumption is Already Protected by US Law

The domestic steel industry’s ability to satisfy national security demands also is currently protected by US law. First, various “Buy American” laws require domestic content for government procurement of steel products and other goods. In fact, most national-defense related steel consumption is subject to these requirements:

- The Buy American Act of 1933⁷² (“BAA”) requires federal government departments and agencies, including DoD, to buy US “unmanufactured articles, materials, and supplies” (that

⁷² 41 U.S.C. §§ 8301-8305.

have been mined or produced in the United States) and “manufactured articles, materials, and supplies” (that have been produced in the United States substantially from all articles, materials, and supplies mined, produced or manufactured in the United States) when they are acquired for public use, unless a specific exception applies.

- The “specialty metals restriction” codified in 10 U.S.C. § 2533b prohibits DoD from purchasing any “specialty metal” not melted or produced in the United States, unless a specific exception applies.⁷³ Specialty metals include steels having (1) a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or (2) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.⁷⁴ DoD also is prohibited from purchasing aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition containing a specialty metal not melted or produced in the United States.⁷⁵

In addition, other US laws prohibit DoD from: (1) purchasing ball and roller bearings that are not manufactured in the United States or Canada;⁷⁶ (2) purchasing carbon, alloy, or armor steel plate that is not melted and rolled in the United States or Canada;⁷⁷ and (3) acquiring, or allowing a contractor to acquire, steel for any construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete for such acquisition of steel.⁷⁸

The Bureau cited these laws to support its 2001 conclusion that iron and semi-finished steel imports do not threaten to imperil national security under Section 232.⁷⁹

Finally, in accordance with its statutory obligations, DoD has a comprehensive system in place for identifying and rectifying any shortcomings with respect to defense-related industrial procurement and domestic capacity. Under the National Security Strategy for National Technology and Industrial Base (10 U.S.C. § 2501), “[t]he Secretary of Defense shall develop a national security strategy for the national technology and industrial base.” The strategy “shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving” multiple enumerated objectives, including the President’s national security strategy and “{s}ustaining

⁷³ 10 U.S.C. § 2533b(a)(1).

⁷⁴ 10 U.S.C. § 2533b(1)(1).

⁷⁵ 10 U.S.C. § 2533b(a)(2).

⁷⁶ 48 § C.F.R. 225.7009.

⁷⁷ 48 § C.F.R. 225.7011.

⁷⁸ 48 § C.F.R. 236.274.

⁷⁹ See 2001 Iron Ore and Semi-Finished Steel Report at 14 (citing DoD Defense Federal Acquisition Regulation Supplement (DFARS)): “DOD’s demands for steel for military uses are met by domestic industries already subject to procurement policies establishing preferences for domestic suppliers. DOD stated that these domestic preferences apply to essentially all of the steel used in weapons systems. DOD also indicated that the preference defines domestic steel by where it is melted, and as a result, imports of semi-finished steel are not used for DOD weapons systems.”

production, maintenance, repair, logistics, and other activities in support of military operations of various durations and intensity.”⁸⁰ The law further requires the Secretary of Defense, “in consultation with Secretary of Commerce and the Secretary of Energy” to prepare selected assessments of the capability of the national technology and industrial base to attain the national security objectives set forth” in the statute.⁸¹ This includes the submission of an annual report to Congress:

The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include...

(3) Based on the strategy required by section 2501 of this title and on the assessments prepared pursuant to section 2505 of this title--

(A) a description of any mitigation strategies necessary to address any gaps or vulnerabilities in the national technology and industrial base; and

(B) any other steps necessary to foster and safeguard the national technology and industrial base.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

An examination of the last four publicly available reports submitted to Congress (covering 2012, 2013, 2014, and 2015) shows little to no DoD concern regarding the health of the domestic steel industry.⁸² The 2012 report discusses a DoD report assessing “pricing, capacity utilization, and other industry factors that influence current and future conditions of the marketplace trending for steel, titanium, aluminum, copper, nickel, and stainless steel” and concludes that “[t]he metals market showed robustness during the first quarter of 2012 but it has not been sustained as global economic weakness continued into the second half of the year.”⁸³ However, the most recent reports (*i.e.*, 2014 through 2016) discuss only discrete product- or production-method specific issues. For example, the 2013 report discusses US government efforts to “reduce lead times and ensure the domestic supply” of low alloy Vacuum Induction Melting, Vacuum Arc Remelting (“VIM” and “VAR”) steels “for critical military components” as part of the Defense Production Act.⁸⁴ The 2014 report describes advancements in VIM VAR and steel plate production projects,⁸⁵ and the 2015 report discusses large steel cartridge cases, modernization of Navy-grade

⁸⁰ 10 U.S.C. § 2501(a).

⁸¹ 10 U.S.C. § 2505.

⁸² See “Resources,” U.S Department of Defense, Manufacturing and Industrial Base Policy, *available at* <http://www.businessdefense.gov/resources/>.

⁸³ See Annual Industrial Capabilities Report to Congress: October 2013 at B-6–B-7.

⁸⁴ See Annual Industrial Capabilities Report to Congress for 2013 at C-1, C-22.

⁸⁵ See Annual Industrial Capabilities Report to Congress for 2014 at C-24–C-25, C-28.

alloy steel plate, and hybrid composite container development.⁸⁶ **If steel imports indeed represented an existential threat to national security in recent years, DoD’s reports to Congress certainly would have mentioned it. They do not.**

All of these requirements ensure adequate domestic production of steel products that have direct national security applications, and therefore demonstrate that broad steel import measures are not needed under Section 232.

VII. CONCLUSION

EUROFER firmly believes that only coordinated, concrete action at the international level can effectively address the global steel market’s problems. The Bureau should not take broad action against all imported “steel” products, as such broad action cannot be justified under Section 232. There is simply no nexus between imports of steel products in general and direct threats to US national security, and broad action would place international trading rules at risk.

Instead, the Bureau’s analysis of whether action to adjust imports should be recommended to the President should be narrowly focused on any specific imported steel products that directly threaten US national security. This analysis would necessarily address steel products that directly relate to national defense. If the Bureau also considers “critical infrastructure” uses, it must exclude subsectors that do not directly relate to national security. To the extent that the Bureau lacks sufficient evidence to undertake this analysis, it should issue questionnaires to relevant interested parties.

Furthermore, any action proposed by the Bureau to adjust imports should differentiate by country, and no action should be proposed with respect to steel imported from EU Member States because such imports do not threaten US national security. The United States and the EU share a long history of collaboration on national security issues, as evidenced by the dozens of security-related agreements between the United States and EU Members. Furthermore, EU Member States and EU steel producers do not contribute to the current problems in the US and global steel markets.

Finally, several facts about the current state of the US steel industry argue against a finding that steel imports threaten to imperil national security. The United States is not dependent on steel imports, and many imports are from safe, reliable sources (such as the EU) that the Bureau has recognized as such. US producers can still satisfy all domestic demand – not just that related to national security – with their existing capacity. The US steel industry’s output, capacity utilization, and financial position have rebounded, and US steel companies continue to invest in new capacity. And US trade remedy, procurement, and other laws have been successful in curtailing injurious steel imports, bolstering the domestic industry’s position and ensuring that the United States’ defense-related steel capacity is not imperiled.

⁸⁶ See Annual Industrial Capabilities Report to Congress for 2015 at 82, C-13, C-30.