

May 31, 2017

**VIA ELECTRONIC DELIVERY**

Brad Botwin, Director Industrial Studies  
Office of Technology Evaluation  
Bureau of Industry and Security  
U.S. Department of Commerce  
Room 1093  
14th and Constitution Avenue, NW  
Washington, DC 20230

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**5 U.S.C. §§ 552(b)(3) & (4)**

Re: Section 232 Investigation of Steel Imports: 13% Manganese Steel Plate

Dear Director Botwin:

On behalf of Lyman Steel Company (“Lyman”), we respectfully submit these comments pursuant to the Department of Commerce’s (“the Department”) investigation under Section 232 of the Trade Expansion Act of 1962, as amended, to determine the effects on the U.S. national security of imports of steel. These comments are timely filed, pursuant to the Department’s instructions set forth in its *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 of Commerce Apr. 26, 2017) (“Notice”). As an importer and distributor of a highly specialized steel product, 13% Manganese Steel Plate, Lyman urges the Department to determine that steel imports pose no threat to impair U.S. national security. Should the Department find certain relief

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measures are needed in the interest of national security, it should still exclude 13% Manganese Steel Plate from such relief.

#### **A. INTRODUCTION**

Lyman is a wholesale specialty steel distributor located in Cleveland, Ohio. One of the specialty products that Lyman sources and sells is 13% Manganese Steel Plate. The Department would be misguided in imposing import relief against this product because the domestic steel industry does not currently produce 13% Manganese Steel Plate and it is not used in military applications. Imposing tariffs or volume restrictions on this product in addition to the duties already in place would not serve the national security interest, the fundamental issue at stake. As many of Lyman's customers certify in their respective statements provided at **Exhibit 1**, restricting imports of this product would damage U.S. manufacturers that rely on 13% Manganese Steel Plate for specialized applications and harm Lyman's business and its employees in the wake. It would also harm Lyman's customers.

The product referred to as "13% Manganese Steel Plate" is hot-rolled alloy steel plate with a manganese content of 12.00 – 14.00 percent, a silicon content of 0.15 – 0.45 percent and a carbon content of 1.00 – 1.30 percent. 13% Manganese Steel Plate is a very unique grade of hot-rolled alloy steel plate used for extremely limited applications. The main characteristic of this steel is that it hardens with impact. 13% Manganese Steel has an austenitic microstructure and is non-magnetic when delivered from the mill. As the steel work hardens it forms a magnetized martensitic microstructure on the steel's surface.

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13% Manganese Steel Plate is not produced in the United States.<sup>1</sup> Only a small handful of producers in the world make 13% Manganese Steel Plate – two in China, one in France, one toll roller in Belgium and another producer in Slovenia. The product is very difficult to produce and due to its niche applications generally has a low level of consumption. In the U.S., consumption of 13% Manganese Steel Plate is estimated to be less than 2,500 MT per year.

Lyman’s U.S. customers use 13% Manganese Steel Plate for specific applications, none of which are for direct military application. Lyman sells to U.S. manufacturers of shot blast machines. These machines are work hardened from the shot hitting the 13% Manganese Steel plates. Lyman’s other sales of this product are to manufacturers of horizontal wear plates used in freight cars. Freight cars require metal to metal wear, which causes the 13% Manganese Steel Plate to harden with each use. As part of a freight transportation system, 13% Manganese Steel Plate may even support a national security related industry. Both types of Lyman’s customers rely on Lyman for sourcing high quality 13% Manganese Steel Plate, which is only supplied by two distributors in the U.S. – Lyman and [ ]. Lyman

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<sup>1</sup> In the recent investigation of CTL Plate from China, *Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 8,510 (Dep’t Commerce Jan. 26, 2017), U.S. producers claimed they “can” produce the product. Lyman has requested quotations from such producers and they have not provided quotations due to the small volume of this product. Lyman has approached [ ], [ ] and [ ], all of which have manufacturing equipment in the U.S. to toll roll slabs to make 13% Manganese Steel Plate. Only [ ] has toll rolled slabs at its facility in [ ]. This company has told Lyman that it does not want to toll roll to produce 13% Manganese Steel Plate any more.

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supplies international and domestic shot blast producers and freight car manufacturers that produce their products across the United States. *See Exhibit 1.* Wisconsin, Kansas and Oregon are all centers of production that depend on a reliable supply of 13% Manganese Steel.

Due to the special nature of the product's chemical components, manufacturing process and niche applications, 13% Manganese Steel Plate is already very expensive. Consumers pay over 200% more compared to standard carbon and alloy steel cut-to-length (CTL) plate. In light of these factors, no producer would make 13% Manganese Steel Plate for export unless the producer or importer distributor could sell it at a sufficiently high price. With such limited production and consumption, imports of 13% Manganese Steel Plate are sold and used in entirely different channels of distribution than any domestic steel products that are used for or are related to national security applications.

Moreover, domestic producers of a broad swath of CTL Plate are *already* receiving protection from imports of CTL Plate. Notwithstanding the high price of this specialty product and the absence of U.S. domestic producers, the Department recently imposed an antidumping duty order on imports of 13% Manganese Steel Plate, among other CTL plate products, from China. *See Certain Carbon and Alloy Steel Cut-To-Length Plate From the People's Republic of China: Antidumping Duty Order*, 82 Fed. Reg. 14,349 (Dep't Commerce Mar. 20, 2017) ("Antidumping Order on CTL Plate from China"). By imposing a 68.27% antidumping duty on all imports of CTL Plate from China, the brand new Antidumping Order on CTL Plate from

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China is protecting the domestic industry from imports of CTL Plate sold in the U.S. at less than fair value. *Id.* at 14,352.

Yet significantly, military grade CTL Plate is excluded from the scope of the Antidumping Order. *See id.* at 14,350. Military grade CTL Plate forms a narrow segment of the market that was not investigated for dumping precisely because the domestic steel industry did not consider imports to be unfairly traded. And there are no indications in the short period of time since imposition of the Antidumping Order that would suggest imports of military grade CTL Plate threaten to impair national security. In this national security investigation, the Department should consider that unfair trade does not threaten domestic production of military grade plate, and domestic producers of CTL Plate are already benefitting from protection under the Antidumping Order.

We address the Department's specific topics of interest below.

**B. CRITERIA UNDER REVIEW**

Below we address the criteria set forth in section 705.4 of the National Security Industrial Base Regulations, pursuant to the Department's request. *See Notice* at 19,206. Analysis of these factors, collectively and individually, demonstrates that imports of steel products, and 13% Manganese Steel Plate in particular, do not threaten to impair the U.S. national security.

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1. Quantity of steel or other circumstances related to the importation of steel

The U.S. industry does not produce 13% Manganese Steel Plate, which is only used for niche non-military applications.<sup>2</sup> The Department of Defense does not use 13% Manganese Steel for artillery or other direct military applications. Lyman, with more than fifty years of experience in the steel business, is aware of no national security application.

There is no separate HTS number for 13% Manganese Steel Plate, but Lyman estimates annual imports total approximately 2500 MT per year.

In addition, Lyman is unaware of any other circumstances related to the importation of steel that would threaten to impair the national security. The Department has explained that the term “circumstances” in the Trade Expansion Act refers to the article’s “character, use, and availability, along with other relevant factors and any potential effects on the national security.”<sup>3</sup>

2. Domestic production and productive capacity needed for steel to meet projected national defense requirements.

While there is little recent precedent for steel in the context of Section 232 investigations, the Department has found that in 2001 the U.S. steel industry exceeds production and productive

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<sup>2</sup> See *infra* n. 1

<sup>3</sup> “The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as amended,” U.S. Department of Commerce, Bureau of Export Administration (October 2001), *available at*: <https://www.bis.doc.gov/index.php/other-areas/office-of-technology-evaluation-ote/section-232-investigations> (“2001 Semi-Finished Steel Report”), at 5 n. 4.

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capacity to meet national defense requirements. In its 2001 investigation of iron ore and semi-finished steel, the raw materials necessary for finished steel products, the Department concluded that:

Although domestic manufacturers of iron ore and semi-finished steel clearly are enduring economic hardship, there is no evidence that imports of these items . . . 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.”<sup>4</sup>

While the Department will undertake a fresh analysis in the instant investigation, there is no reason to believe either national security requirements or domestic steel production and productive capacity have significantly changed, especially with respect to this niche product.

As Lyman discussed above, the Department excluded military grade CTL Plate from the scope of investigation and it is not subject to the Antidumping Order on CTL Plate from China. *See* Antidumping Order at 14,350. This exclusion signifies that domestic production of military grade CTL Plate is not threatened by unfairly traded imports, presumably because all military grade CTL Plate is domestically produced. In any event, the domestic steel industry supported exclusion of military grade CTL Plate from the Antidumping Order.

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<sup>4</sup> *Id.* at 2.

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While specific national defense requirements are provided by the Department of Defense, there is no reason to believe there has been a substantial change that would cause the U.S. steel industry to be unable to amply fulfill those needs.

3. Existing and anticipated availability of human resources, products, raw materials, production equipment and facilities to produce steel.

There are sufficient employees, steel products, raw materials and production plants to produce defense related steel products at present and in the foreseeable future. In its 2001 investigation of semi-finished steel, the Department found that although the U.S. steel industry was undergoing restructuring, “there are and will continue to be ample human resources, products, raw materials, and other supplies and services essential for the domestic production of iron ore and semi-finished steel in sufficient quantities to meet U.S. national security requirements.”<sup>5</sup> Lyman is aware of no significant change in this respect since the 2001 investigation that would warrant a different outcome in this investigation.

To the contrary, imposing trade barriers on imports of steel and 13% Manganese Steel Plate are certain to have negative effects on the U.S. economy. Lyman had relied on a trusted source of foreign supply of 13% Manganese Steel from China and countries such as France, Belgium and Slovenia.<sup>6</sup> The remaining suppliers are located in “friendly countries” such as

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<sup>5</sup> *Id.* at 24.

<sup>6</sup> Lyman’s sources of 13% Manganese Steel in China, France and Belgium face prohibitive duties. *See Antidumping Order on CTL Plate from China* at 14,352 (imposing 68.27% antidumping duties on imports from China); *Certain Carbon and Alloy Steel Cut-to-Length Plate* AFDOCS/15007841.1



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Belgium and Slovenia and should not be subject to new or additional duties or quotas. Their prices to Lyman would increase. If duties are imposed, Lyman would be forced to increase its own prices to its customers, with no benefit to the U.S. steel industry.

4. Growth requirements of the steel industry to meet national defense requirements and/or requirements to assure such growth

As noted above, in an earlier Section 232 investigation, the Department concluded that growth of the steel industry was not necessary to ensure national security.<sup>7</sup> The U.S. steel industry even in 2001 satisfied national defense requirements:

As a preliminary matter, it is important to recognize that growth in the iron ore and steel industries is not necessary to satisfy the national security requirements set forth above. Indeed, domestic production of iron ore and semi-finished steel could satisfy national security requirements even if such production was at substantially lower levels than it is today.<sup>8</sup>

While the Department's analysis focused on the level of iron ore and semi-finished steel needed to satisfy 2001 levels of national security requirements, there has been and there is no reason to

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*From France: Final Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 16,363 (Dep't Commerce Apr. 4, 2017) ("CTL Plate Final Determination: France") (determining dumping margins ranging from 8.62% to 148.02% on CTL Plate from France); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 Fed. Reg. 16,378 (Dep't Commerce Apr. 4, 2017) (determining dumping margins ranging from 5.4% to 51.78%).

<sup>7</sup> 2001 Semi-Finished Steel Report at 26.

<sup>8</sup> *Id.* (emphasis in original).

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expect a significant change in the levels of finished steel products needed to satisfy those requirements today.

In turn, what is important to national security is sustainable economic growth, which is fueled by a reliable, high quality supply of openly and fairly traded steel. As the Department explained in the 2001 Semi-Finished Steel Report: “{g}rowth in iron ore and semi-finished steel production is principally driven by downstream demand. Semi-finished steel production is sensitive to consumer demand for finished steel products{.}”<sup>9</sup> This means 13% Manganese Steel Plate must remain readily available, as Lyman’s customers explain in their respective statements at Exhibit 1. Lyman’s business in this specialized segment of the market is precisely the type of demand that fuels the U.S. steel industry. Lyman is already concerned with the availability of the product. It has approached [ ] domestic steel manufacturers that possess the equipment to toll roll slab into 13% Manganese Steel Plate. None of these [ ] domestic steel manufacturers are willing to produce the product.

By cutting off or further heightening tariffs on imports of 13% Manganese Steel Plate imports, Lyman will be forced to pay sky-high prices for imports as there are absolutely no domestic producers of this product. Neither scenario is viable and both would ultimately result in increased prices to Lyman’s customers. *See Exhibit 1.*

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<sup>9</sup> *Id.*

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5. The impact of foreign competition on the economic welfare of the steel industry

The domestic steel industry is fully able to satisfy the levels of steel necessary for U.S. national security, and foreign imports of 13% Manganese Steel Plate do not threaten the U.S. producers' ability to do so. The economic welfare of the steel industry is only relevant to the extent its economic welfare is so poor that it cannot produce to the levels necessary for national security. The Department of Defense (DOD) most likely sources all or most of its steel needs from domestic producers and to Lyman's knowledge does not rely on 13% Manganese Steel Plate whatsoever.

6. 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

If an exclusion is granted there would be no displacement of any domestic steel resources, Any impact on the domestics steel industry would be negligible compared to the broader economic effects of imposing trade barriers on steel products, including 13% Manganese Steel Plate. In addition to the Antidumping Order on CTL Plate from China, the Department will be imminently imposing AD/CVD orders against 11 other countries for the benefit of U.S. plate production<sup>10</sup>, and further restrictions would block out available sources for this product.

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<sup>10</sup> See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil, South Africa and the Republic of Turkey: Antidumping Duty Orders*, 82 Fed. Reg. 8,911, 8,913 (Dep't Commerce Feb. 1, 2017) (determining dumping margins of 74.52% on imports from Brazil, 87.72% and 94.14% on imports from South Africa, and 42.02% and 50% on imports from Turkey); *Certain Carbon* AFDOCS/15007841.1

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7. Relevant factors that are causing or will cause a weakening of our national economy

Lyman reiterates its concern that placing trade barriers in the form of additional duties or quotas on CTL Plate, including 13% Manganese Steel Plate, would have a negative rippling

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*and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Countervailing Duty Order*, 82 Fed. Reg. 14,346 (Dep't Commerce Mar. 20, 2017) (determining 251% subsidy rate); *Certain Carbon and Alloy Steel Cut-To- Length Plate From the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 Fed. Reg. 16,341, 16,342 (Dep't Commerce Apr. 4, 2017) (determining 4.31% subsidy rate); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 Fed. Reg. 16,345 (Dep't Commerce Apr. 4, 2017) (determining dumping margins ranging from 6.08% to 22.19%); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Japan: Final Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 16,349 (Dep't Commerce Apr. 4, 2017) (determining dumping margins ranging from 14.79% to 48.67%); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Germany: Final Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 16,360 (Dep't Commerce Apr. 4, 2017) (determining dumping margins ranging from 5.38% to 22.90%); *CTL Plate Final Determination: France* at 16,363 (determining dumping margins from 8.62% to 148.02%); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Austria: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 Fed. Reg. 16,366 (Dep't Commerce Apr. 4, 2017) (determining 53.72% dumping margin); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 Fed. Reg. 16,369 (Dep't Commerce Apr. 4, 2017) (determining 7.39% dumping margin); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 Fed. Reg. 16,372 (Dep't Commerce Apr. 4, 2017) (determining dumping margins ranging from 3.62% to 6.95%); *Certain Carbon and Alloy Steel Cut-to- Length Plate From Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 Fed. Reg. 16,378 (Dep't Commerce Apr. 4, 2017) (determining dumping margins ranging from 5.4% to 51.78%). All calculated dumping and subsidy margins will become duties once the Department publishes all antidumping and countervailing duty orders and instructs U.S. Customs and Border Protection to collect cash deposits at the calculated rates.

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effect across Lyman and all downstream users. *See Exhibit 1.* It could even cause Lyman's U.S. customers to shift production overseas. *Id.*

**C. CONCLUSION**

We appreciate the Department's consideration of these comments. Please contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

/s/ Steven Green

Steven Green

President, Lyman Steel Company

In accordance with the Department's instructions, business confidential information clearly identified by square brackets (“[ ]”) and is found on **pages 3 and 10, and in Exhibit 1**. A non-confidential submission is also provided. *See Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19,205, 19,206 (Apr. 26, 2017).

Some of the documents and information attached in this submission includes confidential business information relating to Lyman's operations and purchasing activities. Accordingly, Lyman requests that the Department treat the documents and information attached herein as confidential and not release the information, pursuant to 5 U.S.C. § 552(b)(4) and 28 C.F.R. § 16.7. Lyman requests that the Department not release this information in any request under the Freedom of Information Act (“FOIA”) because its release would cause substantial harm to its competitive position. Lyman conducts business in a highly competitive industry, and the release of this agreement and its terms would cause substantial commercial harm under Exemption 4.

# **EXHIBIT 1**

# PUBLIC VERSION

## **EXHIBIT 1**

This information is not publicly available and should be treated as confidential commercial information pursuant to 5 U.S.C. § 552(b)(4) and 28 C.F.R. § 16.7.