

**PUBLIC DOCUMENT**

Steel

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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: Written comments with respect to the ongoing national security investigation of steel imports initiated under Section 232 of the Trade Expansion Act of 1962**

Dear Director Botwin,

thyssenkrupp Steel Europe AG (tkSE) 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 1962<sup>1</sup> ("Section 232").<sup>2</sup> As requested, tkSE'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.

By way of introduction, tkSE and its subsidiaries thyssenkrupp Electrical Steel GmbH, thyssenkrupp Rasselstein GmbH and thyssenkrupp Hohenlimburg GmbH form the Business Area steel unit within the diversified industrial group of thyssenkrupp. The steel business of thyssenkrupp is one of the worldwide leading suppliers of high grade flat steel products.

**I. 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**

tkSE shares the US government's and US steel producers' concerns with respect to unfair trading practices, and excess global steel production and overcapacity. tkSE has worked through EUROFER and with EU officials to address any potentially adverse

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<sup>1</sup> 19 U.S.C. § 1862.

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

effects of these commercial problems through vigorous enforcement of domestic trade remedy laws. In addition, tkSE has individually and via EUROFER strongly supported the EU's frequent collaborations with the US government on joint efforts to address global steel overcapacity, including in such fora as the OECD and the G-20.<sup>3</sup> 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.

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## II. OVERVIEW OF tkSE's EXPORTS TO THE UNITED STATES

tkSE and its subsidiaries have maintained a relatively stable supply of exports to longstanding customers in the US with specific needs. Our US customers rely on high-quality material according to their specific business needs. Hence our shipments consists mainly of carbon and other alloy tin mill products, hot and cold-rolled flat products and coated products for a wide array of specific end uses in the commercial sector. Often, our US customers cannot obtain the specific material they need from domestic US sources and they are therefore reliant on our supply of such material.

## III. THE BUREAU'S ANALYSIS SHOULD BE NARROWLY FOCUSED ON ANY 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 concerns, 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. It also is incumbent upon the Bureau to narrowly define its actions and possible remedies so as not to prejudice the interests of other US industries and US consumers. We discuss this below.

### 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). Furthermore, although the statute grants the Department some discretion in defining "national security" and making recommendations based thereupon, that discretion 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."<sup>4</sup> Thus, the Bureau's analysis must be tied specifically to

<sup>3</sup> [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=232337,231889,230320,230321,228836,228749,228671,228133,227837,135773&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=232337,231889,230320,230321,228836,228749,228671,228133,227837,135773&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True).

<sup>4</sup> *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 546, 569 (1976).



national security concerns and any recommended action or remedies must be justified on national security grounds.

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In this regard we note that US government investigations related to steel trade typically differentiate among steel products because the markets for and physical characteristics and uses of various steel products differ significantly. For example, existing US antidumping and countervailing duty orders cover no less than 18 different steel products,<sup>5</sup> and the International Trade Commission's 2001 global safeguard investigation of steel examined 33 different steel product categories.<sup>6</sup> Put simply, there is no one "steel" product – there are dozens of different steel products, and 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 specific products should be analyzed and potentially subject to import adjustment. First, the Bureau should identify those specific 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, tkSE 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.<sup>7</sup> The Bureau should therefore undertake a thorough review of the "critical infrastructure" sectors and exclude subsectors that are not directly relevant to national security. The Bureau took a similar approach in the 2001 Section 232 investigation of iron ore and semi-finished steel.<sup>8</sup>

<sup>5</sup> [https://www.usitc.gov/sites/default/files/trade\\_remedy/documents/orders.xls](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.

<sup>6</sup> <https://www.usitc.gov/publications/safeguards/PUB3479B.pdf>.

<sup>7</sup> Presidential Policy Directive No 21 of February 12, 2013 (<https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>).

<sup>8</sup> Section 232 Investigation of Iron Ore and Semi-Finished Steel (2001), at 13-16 (<https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>). 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

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

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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. To broadly analyze and propose actions on “steel” in the aggregate would capture and impact steel products that clearly have no national security implications. Therefore, steel products that have little or no connection to national security should be excluded from the investigation and any proposed remedies. In particular, **the following products are used for commercial purposes, do not significantly affect national security, and should be excluded from this investigation and from any proposed remedies:**

- **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 passenger automobiles, steel tubes used in construction, transportation equipment, appliances, and heavy machinery.<sup>9</sup>
- **Cold-rolled sheet.** This product is used to make household appliances (refrigerators, washers, dryers, and other small appliances), passenger automobile components, construction frames, and electric motors.<sup>10</sup>
- **Metallic and organic coated sheet.** Metallic and organic coated sheet is sold as feedstock for construction, industrial production, appliance manufacturing, and other industries such as the commercial automotive sector, including the production of passenger cars, trucks, and buses.<sup>11</sup> These products are not used for military applications but are used only in the civilian automotive sector.

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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).

<sup>9</sup> Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Russia, USITC Pub. 4639, Inv. No. 731-TA-808 (Third Review) (September 2016), pp. 12-13.

<sup>10</sup> 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.

<sup>11</sup> 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.



- **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<sup>12</sup>.

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Importantly, our downstream customers in the US rely on our materials for production of their own downstream products. An overly broad inclusion of the above materials in the Section 232 investigation (and remedies) would significantly impact our customers' US operations, needlessly tightening supplies and/or increasing costs for many downstream US manufacturing operations that have nothing to do with national security concerns.

#### **D. Aggregating All Steel Exporters Could Lead to Security-Related Measures on Imports from Allies and Companies Invested in the United States**

Second, the Bureau must consider and differentiate among the varying sources of the imported steel products that are determined to have a strong, direct national security nexus. Not all foreign sources of steel are the same with respect to national security. Most basically, available data may show that some import sources have a historically small or declining share of the US market and no immediate ability or plans to expand capacity, and therefore present no threat to the US industry (and, by extension, national security). Furthermore, countries have widely-varying policies with respect to steel production and trade – the stated concern of many in the US steel industry at the Bureau's May 24, 2017 hearing for the current investigation. Applying a uniform response to these varying policies would serve no legitimate national security purpose.

Perhaps even more importantly, certain countries and companies raise few, if any, national security risks. This is certainly 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 including Germany are members of the North Atlantic Treaty Organization (NATO) and are legally obligated to defend U.S. security, including by providing assistance in times of crisis. 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 various agreements underscore the fact that tkSE is a longstanding, reliable supplier of high-quality steels which helps to *maintain*, rather than threaten to imperil, US national security. Any national security determination under Section 232 must account for these agreements.

<sup>12</sup> Tin- and Chromium-Coated Steel Sheet from Japan, USITC Pub. 3337, Inv No. 731-TA-860 (Final), (August 2000), p. 7.

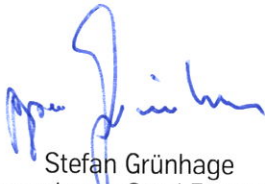
#### IV. CONCLUSION

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tkSE strongly believes that the commercial problems with the global steel market cannot be adequately addressed through domestic measures targeting national security. Nevertheless, if the Bureau continues the current investigation under Section 232, it must (i) develop an analytical framework that accounts for wide variances among steel products and exporting countries and companies; (ii) ensure that it has sufficient factual information from US companies and consumers, as well as foreign exporters and governments to enable it to perform this analysis; and (iii) ensure it excludes from its investigation and any remedial actions any specific steel products that have little or no connection to national security concerns. Failure to do so would inevitably result in recommendations and remedies that do not actually address US national security in a manner consistent with US law.

Sincerely



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