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Mr. Brad Botwin
Director, Industrial Studies
Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
Room 1093
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Comments of Terence Stewart on Section 232 National Security Investigation of Imports of Steel

Dear Mr. Botwin:

Our firm has represented individual steel producers in the United States periodically since the 1970s and has represented the United Steelworkers (USW) on various matters, including the Section 201 case on steel imports back in 2001. These views, however, are not submitted on behalf of any client but rather on my own behalf and do not reflect the views of any of our current clients.

First, Secretary Ross is to be congratulated on initiating the Section 232 investigation last month and for the President's Executive Order seeking an expedited consideration. It is critical that in a period in which an important industrial sector, like the steel industry (and its input suppliers), is facing extraordinary challenges, the Administration use all tools at its disposal to both understand the nature of the challenges and what type of actions might be taken.

Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), and its predecessor provisions (Section 7 of the Trade Agreements Extension Act of 1955, which added paragraph 2(b) to Section 2 of the Act of July 1, 1954, 19 U.S.C. 1352a), provides a potentially broad set of considerations in evaluating whether imports are a threat to national security. While the statutory authority under Section 232 or its predecessor has not been liberally applied in the past, the domestic steel producers and the USW testimony last week laid out the case for an evaluation of challenges that imports present to all parts of the steel industry. There is no question that the generation by certain foreign governments of massive global excess capacity in the steel sector through state direction and massive subsidization has destabilized the U.S. (and global) markets for steel mill products, downstream products and upstream inputs. The prior Administration and this Administration have attempted to get the problem of globally

unsustainable capacity addressed through bilateral and multilateral discussions. The causes of the problem have shown little actual desire to address the problem aggressively in their markets, essentially engaging in delay, which threatens the strength and viability of steel producers in the U.S. and in other countries and is a classic form of a "beggar thy neighbor" trade policy which seeks to shift unemployment to countries not responsible for the problem.

Why a broad reading of authority under Section 232 is important in this critical circumstance can be seen by reference to the broad challenges the nation faced during the Korean war and the extraordinary measures the U.S. government needed to take to mobilize resources in a wide range of sectors, to impose rationing of raw materials for civilian use, to set production quotas for businesses to meet government needs, to fund more plants, etc. *See* Wikipedia, *Office of Defense Mobilization*, https://en.wikipedia.org/wiki/Office_of_Defense_Mobilization. Many industries in the 1950s expressed concerns about the harm to national security from the weakening/loss of capacity/capability of various sectors. *See, e.g.*, Trade Agreements Extension, Hearings Before the House Committee on Ways and Means on H.R. 1, Part 1 at 837 (Statement of Arthur B. Sinkler, American Watch Manufacturers Association), 1264 (Statement of William M. Vaughey, President Independent Petroleum Association of America), Part 2 at 1934 (Statement of M.A. Hollengreen, National Machine Tool Builders Association), 2124 (Statement of J. Carson Adkerson, American Manganese Producers Association) (1955); Trade Agreements Extension, Hearings on H.R. 1 Before the Senate Committee on Finance, Part 1 at 602 (Statement of Otto Herres, Lead and Zinc Mining Industry) (1955). The 1955 amendment to Section 2 of the Act of July 1, 1954 was Congress's effort to provide a mechanism for the Administration to evaluate national security threats from imports. The current law is simply the latest reflection of how such threats can be addressed.

The House Report to H.R. 12591 (Trade Agreements Extension Act of 1958) made some modifications to the 1955 provision and contained some instructive discussion of the House Ways and Means Committee's view of the purpose of the provision:

> "Your committee was guided by the view that the national security amendment is not an alternative to the means afforded by the escape clause for providing industries which believe themselves injured a second court in which to seek relief. Its purpose is a different one – to provide those best able to judge national security needs, namely, the President and the Director of the Office of Defense Mobilization, acting with the advice of such Cabinet officers as the Secretaries of Defense, Commerce, and State, a way of taking whatever action is needed to avoid a threat to the national security through imports. Serious injury to a particular industry, which is the principal consideration in the escape-clause procedure, may also be a consideration bearing on the national security position in particular cases, but the avoidance or remedy of injury to industries is not the object per se. There are other differences between the two procedures, such as that the one here under consideration applies to all imports whether or not the subject of trade agreement concessions. Again, in the choice of remedies the President is not limited in national security cases to actions which he might take

> under the authority delegated to him in the trade-agreements legislation. However, it should be pointed out that the actions he may take under the authority of the national security amendment are limited to actions to adjust imports. In emergencies and for such time as necessary, the President may also take any action available to him under any of his other powers. Your committee considered it paramount to emphasize, however, that any action, large or small, for a short or long time, can be taken only if warranted by national security considerations. The interest to be safeguarded is the security of the Nation, not the output or profitability of any plant or industry except as these may be essential to national security."

Trade Agreements Extension Act of 1958, Report of the House Committee on Ways and Means To Accompany H.R. 12591, H. Rep. No. 1761, 85th Cong., 2d Sess. at 13-14 (1958).

The Senate Finance Committee added an amendment which was included in the 1958 legislation and which is included as part of current Section 232 (paragraph (d)). It demonstrates the breadth of the consideration of what is a threat to national security:

> "Another important strengthening amendment was added to the bill by the Finance Committee. This amendment would direct the President, in the administration of the national security amendment, to recognize that the country's national security is tied closely to its internal economic welfare. The President is to take into consideration the impact of foreign competition on the economic welfare of individual domestic industries and give attention to unemployment, loss of skills, decreases in revenue to the Government, State and Federal, and to other serious effects resulting from the displacement of domestic products by excessive imports."

Trade Agreements Extension Act of 1958, Report of the Senate Committee on Finance, S. Rep. No. 1838, 85th Cong., 2d Sess. at 12 (1958). The Senate Report recognized that, by the amendment, the "authority of the President is thereby broadened considerably" but necessarily because "the dangers inherent in an economy suffering from unemployment, declining Government revenue, or loss of skills, and investment because of excessive imports of one or more commodities, must be recognized and avenues provided whereby they may be lessened." *Id,* at 6.

As the myriad of trade remedy cases brought by steel producers and their workers in the last few years demonstrates, there has been a large loss of employment and significantly reduced profitability for the industry, which translates into lost revenues for the Federal and state governments, reduced capital expenditures, and reduced R&D, with consequent harm to the industry's ability to remain cutting edge.

Actions That the Department of Commerce Could Recommend to the President to Address the Import Measures

Obviously, domestic producers and their workers are hopeful that the Administration will find a lasting solution to the crisis that has gripped the industry here and in much of the rest of the world. By definition, that means that the underlying problem has to be solved – global excess capacity of gargantuan proportions driven by a handful of countries, supported by state interventions or massive government subsidies.

If Commerce determines that imports of product in the steel sector (including upstream product) are threatening national security, there are various things that could be recommended to the President for his consideration:

(1) A temporary tariff rate quota (TRQ) that imposes a zero tariff on products by grade/spec that are at or above domestic full cost of production plus profits equal to the industry cost of capital, and imposes a tariff equal to the difference between the import value and the full cost of domestic production plus profits equal to the industry cost of capital. The TRQ would continue until the global excess capacity has been eliminated; costs/profits would be updated annually. The steel producers and workers have all asked for a carve-out from any remedy for product from certain countries. That presumably could be an option.

(2) Commerce could use its statutory authority to self-initiate cases in appropriate circumstances to pursue cases against products from any country identified as having added capacity in the last ten years if that excess capacity is due to the expansions. Commerce could conduct such cases on an expedited basis. Commerce could similarly pursue CVD cases on imports of downstream products from such country or other countries where steel exports were sent and utilized in downstream products, where steel is a significant part of the cost of production, and where significant subsidies or dumping have been identified by Commerce. Again, self-initiation would be prioritized as long as significant global excess capacity exists. By limiting self-initiation to countries that have caused the crisis, the Administration would also focus on where action is needed to address the underlying problem.

(3) For steel products alleged not to be produced in the U.S. or not meeting quality needs, the Administration could provide funding/research assistance to help domestic producers develop the capabilities (similar to what was done under Section 232 for semiconductor ceramic packaging).

(4) The Administration could seek, through Congress, special tax treatment (expedited depreciation, loss carryover provisions, etc.).

The above could be used while efforts continue to seek, either through bilateral or multilateral talks, actual reductions in capacity by countries with excess capacity. The Administration could prepare and file a WTO challenge on steel similar to what was filed in January on unwrought aluminum to add pressure on countries needing to deal with their internal excess capacity on a more urgent basis.

Sincerely,

/s/ Terence P. Stewart

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