

Richard O. Cunningham
202 429 6434
Rcunningham@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe
STEPTOE & JOHNSON LLP

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

**Re: Section 232 National Security Investigation of Imports of Steel:
Comments of Tata Steel Europe**

Dear Director Botwin,

These comments on the Section 232 investigation of steel imports are submitted on behalf of Tata Steel Europe (“Tata”) which produces in several European countries, most notably the United Kingdom and the Netherlands, and exports to the United States, a variety of flat-rolled carbon steel products.¹ While Tata fully supports the right of the United States, or any other nation, to determine whether imports of a product threaten the adequacy of supply of that product to meet national security needs, Tata wishes to offer the following comments and factual information for the Department’s consideration.

First, and most important, the focus of a national security investigation must be on the actual and potential availability of a sufficient supply of the product to meet the United States’ national security requirements. It is not the function of a national security investigation to determine whether imports cause or threaten injury – even serious injury – to the U.S industry producing the product in question.

¹ These comments are being filed pursuant to the Department of Commerce’s (“the Department’s”) *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. 19,205 – 19,207 (Dep’t Commerce, April 26, 2017).

Second, the issue to be determined in this proceeding is not whether domestic production of the various steel products is sufficient to satisfy national security requirements. Rather, it is whether domestic supply coupled with supply from safe and reliable sources – is and will be adequate to meet U.S. national security requirements. While it is beyond the scope of these comments to analyze separately every steel product, there can be no question that, as a general matter, the steel products required for U.S. national security are available in ample quantities from safe and reliable foreign sources as well as from U.S. producers. Specifically, Tata notes that supply from the Netherlands and the United Kingdom, where the preponderance of Tata production is located, is without question safe and reliable supply. The Tata companies in these countries have been a valuable supplier of steel products to a discrete set of customers in the United States for over 60 years. Tata's commitment to the U.S. market has remained unchanged throughout this period despite various ownership interests in the Tata facilities in one or both countries.

Third, the Department should take note of relationships within the steel industry and market that could be disrupted by import restrictions in ways that would threaten, rather than protect, the availability of steel supply to satisfy national security requirements. In addition, there are certain categories of steel products that U.S. producers – for economic reasons – have chosen not to fully supply. Import supply of those product categories serves to complement domestic supply and U.S. purchasers have, therefore, developed and rely upon supply relationships with foreign suppliers that date back decades in many instances. Import restrictions would be detrimental to national security if they disrupted U.S. steel companies' ability to import needed steel inputs, or if such restrictions disrupted the ability of steel consumers – including U.S. government entities and defense suppliers – to have continued access to foreign steel that complements domestic supply.

Finally, Tata submits that any national security interest that might be worthy of attention could only be for certain very narrowly-defined products with a specific national security application and not for “steel” as a whole nor for some broad category, such as “cold-rolled carbon steel flat products.” The steel industry has been the subject of numerous product-specific Title VII (antidumping and countervailing duty) investigations, not to mention the all-encompassing steel Section 201 proceeding. In all of those proceedings, without exception, the domestic industry has assured the International Trade Commission – and has provided capacity and utilization data to back up those assurances – that the industry has ample capability to supply all U.S. needs. Even if there are narrowly-defined products for which there is some question of the adequacy of domestic supply, the appropriate action would not be reduction of imports, which would reduce or cut off supply relied upon by and which is necessary to domestic purchasers – including defense companies and the U.S. Government. Rather, emphasis should be placed on measures to support the development of increased domestic supply, as has been done in the majority of Section 232 proceedings in which some action has been taken.

These points are further discussed below:

I. The Focus of This Investigation Must Be on Adequacy of Supply To Meet National Security Requirements, Not on Whether There Is Present or Threatened Injury to Domestic Steel Producers

This investigation must be about the adequacy of available steel supply to meet national security requirements, rather than on whether imports cause or threaten injury to domestic producers. This distinction was emphasized by the Department in its report to the President on its Section 232 investigation of imports of Iron Ore and Semi-Finished Steel, at page 37:

The issue whether imports have harmed or threaten to harm U.S. 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. To the contrary, the evidence suggests that U.S. national security requirements are easily satisfied by current domestic production, and could continue to be satisfied domestically even if there were substantial further diminution of U.S. production, whether caused by imports or otherwise.²

The analysis conducted by the Department in reaching this conclusion is instructive as to the different focus of a Section 232 investigation, as opposed to an investigation by the International Trade Commission under Title VII Section 201 or other statutes focused on injury caused by imports to domestic producers. The Department first concluded that iron ore and semi-finished steel are important to the national security as inputs used in the production of finished steel products needed by (i) the Department of Defense, and (ii) critical industries. But it found that the "critical industries" would need no more than 33.68 million tons of finished steel per year, and that production of that finished steel would require no more than 36.04 million tons per year of semi-finished steel and 22.5 million tons per year of iron ore. It found that U.S. production of semi-finished steel and iron ore far exceeded those numbers and would continue to far exceed them even if U.S. production declined. Moreover, the Department found that there were more than sufficient "human resources, products, raw materials and other supplies and services" to produce the semi-finished steel and iron ore needed for national security applications. Finally, it noted that imports were primarily from "safe and reliable suppliers."³

² *The Effect Of Imports Of Iron Ore And Semi-Finished Steel On The National Security*, U.S. Department of Commerce, Bureau of Export Administration (October 2001).

³ *Id.*, at 2 ("Imports of iron ore and semi-finished steel are from diverse and "safe" foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil).")

It is that analysis that the Department must conduct in the present investigation. As to any steel product as to which there is concern about adequate supply to meet national security requirements,⁴ the Department should estimate the quantity needed to meet national security requirements, then determine the extent to which domestic producers' capacity,⁵ is and will be adequate to meet that required supply. In that analysis, the Department must also consider the available supply coming from safe and reliable sources. If, in combination, there is more than adequate supply to meet the national security demands of the United States, the Department should conclude that there is no threat.

The availability of supply from safe and reliable sources is particularly necessary where there is currently, or as a result of any measures that might be imposed, only one domestic supplier of the products at issue. Single sourcing is rarely, if ever, preferred, especially in critical applications. Depending on the product, then, it would be in the national interest to take no action to limit or eliminate imports from safe and reliable sources in those instances.

Above all, contrary to the positions taken by a number of domestic producers at the Section 232 hearing, the Department must not reach a determination that the domestic steel industry (or the industries producing major steel categories) is unable to supply national security needs because that industry, in general, is so severely injured, or threatened with such severe injury, that its ability to meet national security needs is threatened. First, as noted by several of the speakers, national security production accounts for less than 3% of total steel production.⁶ The remaining production, approximately 97% of total steel production, is accounted for by products that have no national security involvement and should not be the focus of this investigation, particularly because they have been fully investigated in the context of numerous antidumping and countervailing duty investigations. As has been repeatedly demonstrated to the International Trade Commission in these investigations, such a determination that imports related to these products somehow threaten the production of this country's national security interests is not possible. Although the International Trade Commission last year found in a series of cases that U.S. producers of flat-rolled carbon steel (hot-rolled, cold-rolled, corrosion-resistant and cut-to-length plate) had suffered "material injury" from certain imports, its findings were based on

⁴ As discussed in Section IV, below, Tata submits that the Department's inquiry will necessarily focus on specific, narrowly-defined product categories, not on "steel" or on broad product categories.

⁵ As discussed in Section II, below, the Department must also consider availability of supply from safe and reliable foreign sources.

⁶ See, for example, the testimony at the Section 232 hearing of John Ferriola, CEO/President, Nucor Corporation; Congresswoman Marcy Kaptur, Dennis M. Oates, Chairman, and Specialty Steel Industry of North America.

some potential loss of market share. No price effects were found, and there was no suggestion that the industry's viability was threatened.

Moreover, the operating results of almost all sectors of the steel industry have improved substantially in 2016 and 2017.⁷ In fact, SDI's press release announcing its 1Q2017 results contained an optimism regarding its future performance and that of the industry that stands in stark contrast to the very gloomy testimony of the domestic steel producers at the Section 232 hearing.

As evidence of the confidence in the company's sustainable long-term cash flow generation capability, the board of directors approved an 11 percent increase in the company's first quarter 2017 cash dividend, reflecting the strength of the company's capital structure and liquidity profile, and the continued optimism and confidence in its future prospects. (SDI Press Release of April 19, 2017.)

The Department should note that SDI's assessment of the company's "continued optimism and confidence in its future prospects" was issued before the announcement of the Section 232 investigation. It is purely the reflection of the strength of the domestic industry currently and its future prospects independent of any impact of the Section 232 investigation.

⁷ For example, in its 2016 Annual Report, Nucor reports net earnings of almost one billion dollars, which is the highest level reported in its five-year financial review at page 47. It also reported cash and cash equivalents of over \$2 billion, and total current assets of over \$6.5 billion, both up from 2015. (Nucor 2016 Annual Report at page 50). Another example of the strength of the domestic industry is SDI, who also appeared at the Section 232 hearing. According to SDI:

Steel Dynamics, Inc. today announced first quarter 2017 financial results. The company reported first quarter 2017 net income of \$201 million, or \$0.82 per diluted share, with net sales of \$2.4 billion. Comparatively, prior year first quarter net income was \$63 million, or \$0.26 per diluted share, with net sales of \$1.7 billion." (SDI Press Release of April 19, 2017.)

These results were substantially better than in 2016 despite the fact that 2016 was the best in the three-year period reported in the 2016 Annual Report, in which SDI reported the highest levels of operating income, net income, cash reserves and current assets. (SDI 2016 Annual Report at 56-57.) See also the AK Steel Holdings 2016 Annual Report at 44-46, in which it reported the highest net income, cash and cash equivalents, and current assets in the three years contained in the Annual Report.

In its assessment of the U.S. steel industry through the first quarter of 2017, the Department essentially came to the same conclusion, noting that the representative companies selected for its analysis collectively reported net earnings for 19 quarters, *i.e.*, since Q1 2009.⁸ Profits are up, cash reserves have increased, and prices have increased dramatically. This is clearly not an industry teetering at the brink of elimination. Nor is it an industry whose base production is so significantly at risk that it may have an impact on its ability to produce the products essential to this country's national security interests. It is an industry that is thriving, in part because of the benefits it has obtained from the over 150 antidumping and countervailing duty orders. AD and CVD orders do work, as the majority of the countries impacted by orders have reduced volumes or stopped shipping to the United States entirely. The fact that other countries sometimes stepped in to fill the gap is a reflection of a demand - supply imbalance, and does not mean the orders are not effective.

Clearly, the imposition of additional measures is unnecessary. Equally important, however, is that a determination to adjust imports based on an injury analysis could have very serious adverse consequences without resolving the issue that was the subject of much of the testimony at the Section 232 hearing – Chinese overcapacity. China is already under 154 antidumping and countervailing duty orders, many of which have been issued on a variety of steel products. These orders have effectively reduced imports from China. However, as has been frequently observed, they have had no impact on reducing Chinese capacity, which is the largest in the world.⁹ It is difficult to see how the imposition of measures against the Netherlands and the UK pursuant to the President's authority under Section 232 will have any additional impact in resolving China's overcapacity issues.

II. The Department Must Give Full Consideration to the Availability of Supply from Safe and Reliable Foreign Sources

In keeping with the proposition that a Section 232 proceeding protects the adequacy of supply for national security requirements rather than protecting the health of a domestic industry, the Department must give full consideration to the availability of supply from safe and reliable foreign sources. This factor has been emphasized—indeed, has been the basis for determinations of no threat to national security—in past Department determinations under Section 232. In the 1989 report by the Department on imports of Uranium, the availability of supply from Canada was the major reason for finding that imports posed no threat to national security. An equally relevant example was the department's 1993 analysis in Ceramic Semiconductor Packages.

⁸ *Steel Industry Executive Summary: May 2017*, at 17, Prepared by International Trade Administration, U.S. Department of Commerce.

⁹ See, for example, the discussion of Chinese production and capacity in the *Steel Industry Executive Summary: May 2017*, at 11 – 13.

There the domestic industry had shrunk dramatically, imports were found to be required for the supply of 85% - 92% of U.S. military needs and there was “a high degree of dependence on one foreign producer with a limited number of production facilities.” Yet the Department found that imports, which were from Japan, a safe and reliable supplier, did not threaten to impair U.S. national security. Finally, the fact that imports were predominantly from “safe and diverse suppliers” was a major factor in the Department’s finding of no threat to U.S. national security in Iron Ore and Semi-finished Steel (2001). Moreover, the reasons given for finding sources to be “safe and diverse” are instructive for the Department’s analysis in the present investigation: shared membership in NATO, large trading partner, participation in the Free Trade Area of the Americas initiative, and a party to NAFTA and a close ally. Here there is no doubt that any shortfall in supply from U.S. steel producers could be met by safe and reliable foreign suppliers.

Moreover, steel supply from the European Union—of which Tata Steel Europe represents a major part – is unquestionably safe and reliable. The United States, the UK and the Netherlands, along with other countries, are in fact security partners in NATO. The UK, along with Canada, the United States, Australia, and New Zealand, is also a member of the “five eyes” global surveillance arrangement. Moreover, each country is one of the leading trade partners of the other. For example, the U.S. is in the top ten trading partners of the Netherlands and the Netherlands is in the top fifteen of the United States. These are factors cited by Mr. Leo Gerard, the International President of the United Steelworkers International Union, at the Section 232 hearing. It was in this context that Mr. Gerard requested that Canada be exempted from any measures that may be imposed as a result of this investigation. While the UK and the Netherlands do not share all of the same common bonds evident in the U.S.-Canada relationship, they do share a number of equally significant ones, as noted above, as well as being significant investors in each other’s countries. Finally, the UK and the Netherlands have a demonstrated history of free and fair trade. Neither country was mentioned at the Section 232 hearing and neither receives government support on their exports. This is evident in the USITC’s list of outstanding antidumping and countervailing duty orders. The USITC only identifies two orders for the UK and one for the Netherlands, neither being a CVD order. Clearly, the UK and the Netherlands are safe and reliable trading partners to the United States.

Tata’s history in the United States is an example of the reliability of European supply. It and its predecessor companies have supplied steel to U.S. purchasers for over sixty years. Tata’s U.S. marketing has emphasized close and continuing relationships with its limited portfolio of U.S. customers, partnering with them to develop and produce steel products tailored to those customers’ requirements. In case after case before the International Trade Commission, it has been demonstrated that the great majority of Tata’s U.S. sales are to a small group of customers that Tata has served for decades. In addition, Tata’s investment in its U.S. production facilities and workers at Thomas Steel Strip Corporation in Warren, Ohio and Apollo Metals in Bethlehem, Pennsylvania is further evidence of its commitment to the U.S. market and its reliability as a supplier to these and other U.S. customers. Clearly, Tata Steel Europe is and will continue to be a safe and reliable source of supply of steel.

III. The Section 232 Initiative Must Avoid Disrupting Relationships in Which Foreign Steel Producers Serve as Complementary Sources of Supply for Products that U.S. Producers Have Chosen Not To Emphasize

Marketing steel involves complex choices for a producer, both as to which product categories on which to concentrate and as to which geographic regions in which to market. Such choices turn on factors such as the likely volume of purchases, the “fit” with production of larger-volume products, and the cost of working with a customer to design products suited to the customer’s requirements. In making these choices, domestic producers often choose not to focus on certain products, and/or not to market in certain regions, with the result that customers may turn to foreign producers as complementary suppliers.

In the case of Tata, the great majority of its U.S. sales are made to customers who require Tata to work with them to develop specifications, grades, sizes, and tolerances, but who find that U.S. producers would prefer to concentrate on higher-volume products that do not require such extra (and sometimes costly) effort. For example, in the ITC investigation of Non-Oriented Electrical Steel, Curtiss-Wright, a customer of Cogent Power Inc., a Canadian subsidiary of Tata, testified that Tata was the only approved supplier of the NOES used by Curtiss-Wright in Nuclear Power Plants because no U.S. supplier would guarantee a steady source of supply for this critical application use.

The inability to find a U.S. producer willing to meet its requirements, also forced Tata to import the feedstock purchased by Thomas Steel Strip Corporation and Apollo Metals, two U.S. subsidiaries of Tata that produce copper, brass, nickel and zinc-nickel plated cold-rolled strip products in Warren, Ohio and Bethlehem, PA, respectively. In both cases, although buying from U.S. producers for some of its needs, the companies had to look to battery-quality hot band and other specialized hot-rolled sheet produced by Tata in the Netherlands because domestic producers were not interested in producing to the extremely tight tolerances and specifications required by both of these companies in their production of the coated cold rolled strip that is used in batteries and other applications.

The hearing testimony of Mr. Robert Budway, the president of the Can Manufacturers Institute, again points out the need for supplemental sources of production. First, Mr. Budway pointed out that tinsplate steel is used in manufacturing cans, not defense or national security applications. Critical to his industry, however, is his statement that the U.S. production of tinsplate does not meet the demand in the U.S. market. Clearly, then, if such imports are curtailed in any way, U.S. production of cans will suffer and, along with that, U.S. employment.

Such complementary roles played by foreign steel producers have led in many cases to the development of long-standing relationships that promote, rather than threaten, U.S. national security. In Tata’s case, for example, the majority of its U.S. sales are made to customers with whom Tata has a relationship going back decades. These are product-specific relationships with companies that otherwise purchase the great majority of their steel from U.S. mills. They also

satisfy a portion of their supply requirements from Tata because Tata, unlike the U.S. mills, has worked cooperatively with them for many years, doing cooperative product development for relatively small-volume products for which U.S. firms choose not to make that investment in time, cost and effort.

Thus, the complementary role of foreign steel producers has led to the development of long-standing relationships – both with U.S. customers and U.S. producers – in which foreign steel producers, including Tata – play a complementary role that enhances, rather than detracts from, the availability of steel needed to meet U.S. national security requirements. Whatever else is done in the Section 232 proceeding, it would be immensely counterproductive to “adjust” imports by measures that would interfere with these complementary and cooperative supply arrangements. Particularly harmful would be imposition of a commercially disruptive tariff or of quantitative restrictions that did not allow the continued fostering of these relationships.

IV. If a Threat to the Supply of Steel Needed for National Security Requirements Is Found, Any Measures Imposed Must be Limited to Specific, Narrowly-Defined Products or Assistance to U.S. Producers, and Not a General Adjustment of Imports

Tata respectfully submits that it would be wholly improper to determine that there is inadequate supply available to meet U.S. national security requirements for steel as a whole or for any broadly defined steel product category, such as hot-rolled, cold-rolled or corrosion-resistant carbon flat products; tin plate, or electrical steels. The great majority of these broad product categories have been the subject of recent antidumping/countervailing duty proceedings, in each of which the U.S. producers of the product in question have informed the International Trade Commission that the domestic industry has ample capacity to supply the entire needs of the U.S. market (which would, of course, include national security requirements). The domestic producers have confirmed this sworn testimony by providing to the Commission data showing that they have substantial available capacity. In general, they reported that they are operating in the range of 70% to 80% capacity utilization.

Accordingly, the only remote possibility of a finding that national security is threatened might relate to some narrowly defined product, probably high tech or with specifications that U.S. mills find difficult to meet. As to such a product, “adjustment” of imports would be counter-productive, denying to U.S. defense contractors the available source of such material. Rather, the proper action would be government assistance to U.S. producers to enhance their capacity to supply the needed product.

There is ample precedent for providing support to domestic producers rather than “adjusting” imports. Indeed, such assistance has been provided in Section 232 proceedings far more frequently than import restrictions. In this regard, the Department should review the 1989, 1994 and 2000 oil determinations and the determinations in:

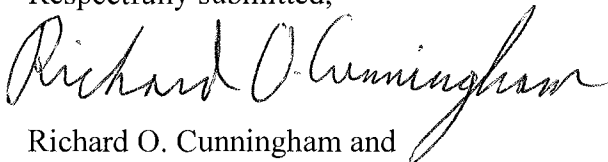
- Chromium, Manganese and Silicon Ferroalloys (1982),

- Machine Tools (1980),
- Anti-friction Bearings (1988)
- Gears and Gearing Products (1992), and
- Ceramic Semiconductor Packages (1993).

In summary, Tata believes that it is unlikely that the Department will find that imports of steel or any steel product threaten the availability of adequate supply to meet national security requirements. That issue – adequacy of supply – must be the sole focus of this case. The Department should not base its determination on any alleged threat of injury to the U.S. steel producing industry. Such a determination would be factually incorrect – as the industry members’ own annual reports and quarterly results indicate, this industry is doing exceptionally well and fully expects those results to continue. Moreover, as SDI’s decision to increase dividends was issued before this investigation was announced, its expectations of continued growth are totally independent of this present action. Not only would a decision to issue broadly defined measures be factually incorrect, it would also be legally incorrect to base a determination on injury to the U.S. industry and contrary to U.S. precedent. Therefore, it could also open up the United States to a challenge of its strongly held position that it has the unchallengeable right to make national security determinations.

Tata fully respects the ability of the United States, and all countries, to make determinations and take actions in defense of their national security. Tata submits, however, that the standards on taking that action must be specific and reflect a threat to specific products that cannot be satisfied domestically or through safe and reliable imports. Measures cannot be based on an amorphous and unsupported general threat to an industry at large. It could very easily prove to be contrary to U.S. national security interests to issue broad remedies under Section 232 for steel and non-specified downstream products on the basis of an alleged threat to the 97% of the industry that is unrelated to any national security application.

Respectfully submitted,



Richard O. Cunningham and

Joel Kaufman

Counsel to Tata Steel Europe