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O'DONOGHUE & O'DONOGHUE LLP

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ROBERT MATISOFF
SALLY M. TEDROW
OF COUNSEL

4748 WISCONSIN AVENUE, NW
WASHINGTON, DC 20016
(202) 362-0041
FAX (202) 362-2640
www.odonoghuelaw.com

THREE PARK PLACE
SUITE 301
ANNAPOLIS, MD 21401
(410) 263-6474

CONSTITUTION PLACE
SUITE 515
325 CHESTNUT STREET
PHILADELPHIA, PA 19106
(215) 629-4970



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PATRICK C. O'DONOGHUE
(1930-1979)
JOSEPH P. BOYLE
(1954-1998)

May 31, 2017

Via Electronic and Regular Mail

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: U.S. Department of Commerce's Investigation of Steel Imports
Under Section 232 of the Trade Expansion Act of 1962

Dear Mr. Botwin:

This letter is being submitted on behalf of the United Association Labor Management Cooperation Committee to assist the Department of Commerce (Department) in its Section 232 investigation of the impact of steel imports on national and economic security. These comments are prepared from the perspective of key stakeholders in the construction industry and the related pipe fabrication sector, which have strong interests in this matter.

I. Introduction

As demonstrated below, there is a compelling need for examining the nexus between domestic steel production, including steel pipe and pipe spools, and national defense and economic security. We, therefore, commend the Department for conducting this investigation. Due to global overcapacity in the steel pipe market, as well as widespread unfair trade practices, U.S. production of these materials is far below where it should be to ensure national security.

These comments review growing evidence of these factors and offer recommendations for necessary corrective actions. In addition, while this information is provided primarily for the instant

proceeding, we respectfully request that the Department also consider it when taking action on other trade-related issues, including its preparation of its pending report on trade deficits.¹

II. Critical Issues of National & Economic Security

This investigation was initiated due to President Trump's concern for national defense and is intended to evaluate the U.S.'s present and future national defense capabilities, specifically with respect to domestic steel production. We believe this concern is well founded and strongly support the Administration's efforts to ensure our national defense capabilities in this regard. Such efforts are imperative. Daily headlines reveal increasingly perilous conditions around the world, which range from rampant acts of terrorism to highly volatile geo-political situations in numerous countries, all of which directly or indirectly threaten U.S. national security. Unfortunately, these conditions significantly increase the chances of embroiling America in new military conflicts around the globe.

For these reasons, U.S. defense systems must be primed and ready, which requires key industrial sectors of our economy, especially domestic steel production, to have the capacity to independently meet current and future military demands. At present, this is *not* the case as U.S. steel capabilities have been severely eroded over the last several decades, a phenomenon driven by incessant unfair competition fueled by a host of illegal and otherwise unfair trade practices. As a result, President Trump was absolutely correct to commence the instant Section 232 proceeding.

Ensuring adequate capacity for U.S. steel production also means ensuring production of vital downstream steel products, including steel pipe and fabricated piping products, which are essential for a number of military and non-military applications. The following comments demonstrate how domestic production of these materials is critical not only to the defense industry and various military contracts, but also to many of our aging national infrastructure systems, which must be rebuilt so they can adequately support our national military and defense capabilities.

III. The United Association Labor Management Cooperation Committee

The United Association Labor Management Cooperation Committee (Committee) offers a unique perspective in this proceeding because it is a joint organization representing the interests of both pipe fabrication companies and front-line workers impacted by foreign steel imports. Specifically, the Committee is a non-profit labor-management organization created by the United Association of Plumbers and Pipe Fitters (UA) and the Pipe Fabrication Institute (PFI) and represents nearly 500 U.S. pipe fabrication shops on public policy and industry-related issues.

The UA is the nation's leading labor organization for piping professionals and represents 340,000 members employed in the piping trades; PFI is a trade association of companies engaged in pipe fabrication. Other UA-affiliated contractors (*i.e.*, non-PFI companies) operate several hundred additional pipe fabrication shops. These fabrication shops employ thousands of UA members throughout the U.S. and produce various piping products, generally known as pipe spools, by fabricating and configuring pipe, fittings, valves and other system components.

These products (hereinafter "*pipe spools*") are fabricated for use in the construction, maintenance and refurbishment of critical infrastructure systems, and for other applications, including

¹ Presidential Executive Order Regarding the Omnibus Report on Significant Trade Deficits (March 31, 2017).

military contracts. While piping systems can cover a wide range of materials, the bulk of the pipe fabrication process utilizes steel and steel alloy piping materials.

The union also represents tens of thousands of members employed in other sectors that utilize steel and steel products on projects vital to national defense and economic security (*e.g.*, military bases, shipyards, power systems, oil and gas industries, water and wastewater systems, and other critical infrastructure systems). Moreover, certain UA-affiliated companies supply pipe spools for Department of Defense (DoD) projects. For example, Team Industries Incorporated (Team Industries) currently serves as a subcontractor to prefabricate the pipe spools for the U.S. Navy Littoral Combat Freedom Class Ships. This military work represents approximately eight percent of Team Industries' total man hours and is key to maintaining a steady workforce in a relatively volatile construction market.

For these reasons, the Committee represents stakeholders in the pipe fabrication market. As demonstrated below, the Committee contends that for the sake of our national and economic security it is imperative that steps be taken to reverse the excessive importation of steel piping products, especially products being subsidized or otherwise facilitated by unfair and illegal trade practices that have significantly curtailed, and ultimately threaten to destroy, U.S. domestic production.

IV. Domestic Steel Production & National Security

The national security of the United States requires a strong, robust capacity in domestic steel production, including the production of steel pipe and steel pipe spools. Domestic production of these materials is essential for various military applications and is needed for rebuilding America's aging infrastructure systems—including energy pipelines, power plants and water/wastewater treatment plants—which, in turn, are vital to ensuring our nation's military defense and economic security interests. As Secretary Ross recently stressed in the context of the instant proceeding: “[o]ur industrial base is our most important, competitive weapon in any kind of global conflict.”²

A. Scope of Steel Investigation Clearly Incorporates Piping Materials

The Section 232 investigation into steel importation's impact on national/economic security must consider pipe and piping materials (including spools) given the broad reach of this investigation, our nation's DoD and infrastructure demand for such products and the connection that these downstream products have with the overall health of the industry. In the past, the Department has clearly recognized that pipes and tubes are among the core steel products that may be the focus of Section 232 investigations.³

Tubular products and fittings were also included in President Bush's March 5, 2002 proclamation following the International Trade Commission's investigation under Section 201 of the Trade Act of 1974. The Department has likewise recognized that tubular products and fittings

² Ana Swanson, *Ky. Town in Trade Policy's Cauldron*, WASHINGTON POST, May 30, 2017, at A-12.

³ *Frequently Asked Questions, Section 232 Investigations: The Effect of Steel Imports on the National Security*, Dep't of Commerce (Apr. 21, 2017), <https://www.commerce.gov/news/fact-sheets/2017/04/frequently-asked-questions-section-232-investigations-effect-steel-imports>.

encompass spools.⁴ Therefore, this investigation should encompass all important steel products, such as fabricated pipe and pipe spools.

B. Sufficient Domestic Capacity Required to Address National Security Needs

U.S. produced steel pipe and piping materials are vital components to national security in at least two major ways: (1) our defense agencies must have adequate access to these materials for military applications; and (2) these materials are critical for rebuilding our aging infrastructure systems, which are needed to support multiple facets of the defense industry, as well key industries throughout our entire economy.

While there is limited military use of steel pipe and pipe spools, such applications are critical, for example, the use of steel piping systems in navy vessels. Moreover, suppliers of these materials must rely on sales on *non-military applications* so they can keep their overall operations viable and continue to meet defense industry needs. This has long been recognized as a necessity for the larger steel industry:

While leading-edge defense applications represent only a small portion of overall domestic sales of steel products, defense-related materials are produced on the same equipment, using some of the same technology, and are developed by the same engineers who support the larger commercial businesses of steel companies in the U.S. Thus, the companies are not typical defense contractors who derive the majority of their sales and profits from their defense business. It is the overall financial health of U.S. steel producers, and not simply the profitability of their defense business, that is essential to their ability to be reliable defense suppliers.⁵

This same point applies with equal force and urgency to the steel pipe industry. For similar reasons, it's vital to protect the market capacity of pipe/pipe spool suppliers from being further eroded from illegal and unfair trade practices of foreign entities.

With regard to the need for steel pipe and pipe spools for infrastructure purposes, it has been widely publicized that U.S. infrastructure systems are currently in need of massive upgrades. In its 2017 Infrastructure Report Card, the American Society of Civil Engineers (ASCE) provided

⁴ See Memorandum from Toby Vandall, International Trade Compliance Analyst, Office 1, AD/CVD Operations to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, International Trade Administration, U.S. Dep't of Commerce (Aug. 15, 2016) ("Final Scope Ruling for Engineered and Manufactured Pipe Spools Imported from the People's Republic of China as part of the current Scopes of the Orders on Carbon Steel Butt-Weld Pipe; Circular Welded Carbon-Quality Steel Pipe; Circular Welded Austenitic Stainless Steel Pressure Pipe; and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China" finding that engineered and manufactured pipe spools produced in China and imported by Westlake Vinyls Company fell within the scope of other antidumping duty and countervailing duty orders issued between 1992 and 2010, dismissing an argument that the products undergo a substantial transformation during the fabrication process so as to be considered new products).

⁵ *Steel and the National Defense*, the U.S. Steel Industry (2007), at 2, available at http://www.ssina.com/news/releases/pdf_releases/steel_and_national_defense_0107.pdf.

America's infrastructure system a D+ grade overall, while drinking water infrastructure received a dismal D, wastewater a D+ and energy a D+.⁶ Recent infrastructure projections underscore this need:

- ASCE estimates that the U.S. will need \$4.6 trillion in infrastructure investments from 2016 to 2025, including \$934 billion for electricity and \$150 billion for water/wastewater.⁷
- In a recent study on North American midstream infrastructure needs, ICF International projects that between 264,000 and 329,000 miles of pipelines will be required from 2015 through 2035.⁸
- According to Industrial Information Resources' 2017-2018 Outlook, 63 new natural gas fired combined cycle plant projects worth \$41.44 billion are projected nationwide during this time. Looking at the larger liquid natural gas construction outlook, 208 projects, worth \$384.27 billion are projected. Further, for all industrial construction, 4,282 projects worth \$469.64 billion are expected.

Thus, for purposes of national security, it's essential that the domestic pipe industry be capable of meeting these projected demands in terms of direct military application, as well as supplying efforts to rebuild our national infrastructure systems. As further discussed below, this means ensuring that adequate capacity in both capital resources, including plants, equipment and machinery, and human resources by maintaining a sufficient pool of properly trained workers who have the requisite skills to perform the unique and highly specialized work in this industry.

V. Impact of Unfair Trade Practices on U.S. Pipe and Piping Materials

A. United States Growing Increasingly Reliant on Foreign Pipe and Piping Materials

The United States has been growing increasingly reliant on foreign piping materials. Over the last ten years, when looking at the five Harmonized Commodity Description and Coding System categories covering tubes, pipes and fittings (7303, 7304, 7305, 7306 and 7307), the average worldwide trade deficit faced by the U.S. in these areas was \$5.8 billion as the nation imported, on average, \$11.5 billion in these products, according to the U.S. Census Bureau data presented in the International Trades Administration's TradeStats Express database. In addition, Secretary Ross has recently stressed that: "[i]n the first couple months of this year alone steel imports rose 19.6 percent year over year and are now more than 26 percent of the entire U.S. marketplace so it's a very serious impact on the domestic industry."⁹ As discussed below, imports of steel pipe and pipe spools have also dramatically increased.

⁶2017 *Infrastructure Report Card*, American Society of Civil Engineers (2017), at 5-6, <https://www.infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card.pdf>.

⁷*Id.* at 8.

⁸ *North America Midstream Infrastructure through 2035: Leaning into the Headwinds*, Prepared by ICF International for The INGAA Foundations, Inc. (Apr. 2016), at 42, <http://www.ingaa.org/File.aspx?id=27962&v=ca80ac4a>.

⁹ Michelle Moons, *President Trump to Commerce Department: Steel Trade Industry a Matter of National Security*, BREIBART (April 20, 2017), <http://www.breitbart.com/big-government/2017/04/20/president-trump-to-commerce-dept-steel-trade-investigation-a-matter-of-national-security>.

China represents a significant share of the deficit. In 2002, the U.S. trade deficit with China across all categories was \$174.4 million as Chinese imports stood at \$200.2 million. By 2016, the deficit was \$780.8 million with imports from China valued at \$991.3 million. Even that was down from a ten-year peak trade deficit of \$3.9 billion in 2008 when imports stood at \$4.4 billion.

The deficit with Korea is also significant and may tell another story. The U.S. trade deficit in 2016 with Korea was \$726.1 million as Korean imports were valued at \$816.55 million. That was down from a high of a \$2.3 billion deficit in 2014 when Korean imports stood at \$2.5 billion. Notably, the deficit with Korea escalated quickly after 2009, shortly after the deficit with China began slipping.

As indicated by the Committee on Pipe & Tube Imports' analysis of American Iron and Steel Institute data, U.S. pipe and tube importation in the first quarter of 2017 constituted 62.6 percent of apparent consumption. While that represented an increase from 2016 levels (55.5%), it is in line with 2015, when import penetration was 64.7%. Thus, in recent years more than half of all pipe consumed in the United States is manufactured abroad, usually from foreign-made steel.

These imbalances are *not* simply to open market competition or even lower production costs from low-wage countries. Rather, as imports have climbed, so has the evidence of unfair trade practices, including dumping and subsidization of pipe and piping products. Specifically, since 2009 there have been more than a dozen investigations and orders involving pipes finding that either less-than-fair-market value imports (for antidumping duty (AD)) or subsidized imports (for countervailing duty (CVD)) materially injured (or threatened to materially injure) a competing U.S. industry.¹⁰ Many such orders have been applied to Chinese pipe and fittings. Further, such orders have been found to apply to pipe spools, rejecting arguments that such products underwent substantial transformations so as to become new products.¹¹

B. Producers of Foreign Piping Material Evade Existing Orders

Despite the growing number of antidumping and countervailing duty orders, more expansive efforts to curb unfair competition in the pipe and piping material sector are necessary. As the Department recognizes, current orders do not cover all products, producers subject to orders are adept at evading them, and orders are generally unable to stop “the broader structural economic harm to

¹⁰ See e.g., 74 Fed. Reg. 4136 (Jan. 23, 2009) (countervailing duty order on circular welded carbon quality steel line pipe from China); 74 Fed. Reg. 22515 (May 13, 2009) (antidumping duty order on circular welded carbon quality steel line pipe from China); 74 Fed. Reg. 11351 (Mar. 17, 2009) (antidumping duty order applied to circular welded austenitic stainless pressure pipe from China); 74 Fed. Reg. 11712 (Mar. 19, 2009) (countervailing duty order applied to circular welded austenitic stainless pressure pipe from China); 75 Fed. Reg. 69050 (Nov. 10, 2010) (countervailing duty on seamless pipes from China); 75 Fed. Reg. 69052 (Nov. 10, 2010) (antidumping duty order on seamless pipes from China); 76 Fed. Reg. 11757 (Mar. 3, 2011) (antidumping duty order on drill pipe from China); 76 Fed. Reg. 11758 (Mar. 3, 2011) (countervailing duty on drill pipe from China); 79 Fed. Reg. 42289 (July 21, 2014) (antidumping duties on welded stainless pressure pipe from Malaysia, Thailand and Vietnam); 80 Fed. Reg. 75056 (Dec. 1, 2015) (antidumping duty orders on welded line pipe from the Republics of Korea and Turkey); 80 Fed. Reg. 75054 (Dec. 1, 2015) (countervailing duty order on welded line pipe from Turkey); 81 Fed. Reg. 62865 (Sept. 13, 2016) (antidumping duty orders on heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico and Turkey); 81 Fed. Reg. 62874 (Sept. 13, 2016) (countervailing duty order on heavy walled rectangular welded carbon steel pipes and tubes from Turkey).

¹¹ See Memorandum from Toby Vandall, *supra* note 4.

the U.S. steel industry caused by massive global overcapacity and unfair foreign competition.”¹² Indeed, the findings of a 2016 General Accountability Office (GAO) report demonstrate the ineffectiveness of the current antidumping/countervailing duty system from a high-level perspective.¹³

Specifically, based on a review of antidumping and countervailing duty bills from fiscal year 2001 through 2014, the GAO estimates that, as of May 2015, \$2.3 billion in antidumping and countervailing duties owed to the U.S. government remained outstanding.¹⁴ Further, orders related to pipe and piping products, especially fabricated products such as pipe spools, are particularly susceptible to evasion by foreign producers. The following are just a few examples:

- In some cases producers that face AD/CVD orders on piping materials export fabrication to another country that does not have tariffs or duties, which permits the U.S. purchaser to evade these obligations.
- Lax inspection of fabricated materials coming into the country (*i.e.*, electronic scanning) encourages importers to freely ship products inside containers with little concern as to whether components’ country of origin will be examined.
- Foreign fabricators may also hire import brokers who are used, in part, to assign product codes that have no antidumping or countervailing duties assigned to them, even though the selected code has no association with pipe fabrication.
- Although the country of origin must be marked on any imported products, in some cases the country’s markings may be obscured due to paint or insulation; therefore it is difficult to readily identify country of origin on the imported spools.

These examples, along with the larger issues with AD/CVD orders demonstrate that more options are needed to curb the excessive importation of pipes, pipe fittings and pipe spools.

Even if in the absence of unfair or illegal trade competition, the U.S. would be compelled—for the sake of national and economic security—to take action to eliminate the huge trade deficits in steel and steel piping materials we are now facing. The fact is, however, that our domestic producers of steel pipe are being severely undercut by a plethora of relentless unfair trade practices that are making it virtually impossible to compete. As a result of these conditions, U.S. capacity is being steadily eroded and increasingly threatened, and corrective actions are urgently needed.

C. Illegal & Unfair Practices Pose a Direct, Lethal Threat to Domestic Capacity

Importation of fabricated pipe and pipe spools presents a multifaceted problem given that domestic production requires continuous capital investments and the use of highly specialized, skilled

¹² *Frequently Asked Questions: Steel Anti-dumping (AD) and Countervailing Duty (CVD) Order*, Dep’t of Commerce (Apr. 21, 2017), <https://www.commerce.gov/news/fact-sheets/2017/04/frequently-asked-questions-steel-anti-dumping-ad-and-countervailing-duty>.

¹³ *GAO-16-542: Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk*, U.S. General Accountability Office (2016), <https://www.gao.gov/assets/680/678419.pdf>.

¹⁴ *Id.* at 13.

workers capable of producing safe, reliable, competitive products. Maintaining adequate human and capital resources—including facilities, equipment, machinery and the latest, most efficient computer-aided technology—requires enormous resources.

Equipping workers with the requisite skills requires time for proper classroom and hands-on training as well as a serious investment by affected employers and unions. For example, the United Association invests over \$250 million annually on skill training and workforce development for all the piping trades it represents. However, due to the unique and highly specialized needs of pipe fabrication, the UA and PFI have developed an apprenticeship training program dedicated solely to pipe fabrication.

However, for U.S. firms to have the capacity to meet the future needs for both our military defense and infrastructure systems, it's critical that we maintain and expand the pool of skilled workers currently used in this sector. Other essential personnel utilized in this production process must also be maintained and likely expanded, including those employed as estimators, engineers, quality control and project management.

Ensuring a properly skilled workforce and adequate staffing levels for these facilities has its own unique challenges in terms of recruiting, training and retaining qualified workers. Under normal circumstances, this is challenging enough. However, trying to maintain such a labor force in the midst of a virtual sea of unfair trade competition is extremely difficult. These practices not only undermine wages of American workers but also make it nearly impossible for domestic fabrication shops to compete and survive.

What's more, U.S. fabrication shops have collectively invested tens of millions of dollars over the years in all aspects of steel pipe production that must be persevered and expanded. Such investments are required for various equipment, machinery, tools and technology, as well as the production facilities themselves. Maintaining adequate capacity, in terms of both capital and human resources is vital to protecting this industry and ensuing national defense and economic security.

Dumping and subsidization of pipe and piping materials, especially those that are fabricated, have already seriously eroded our domestic capacity and threaten to further diminish the limited capacity we now have. If domestic producers are unable to compete and offer the resources necessary to maintain a skilled workforce and adequate physical capacity, national security interests will be further impaired. Moreover, it is highly unlikely that low-paid, low-skilled workers in many foreign countries are properly trained to ensure safe, reliable products for needed for our domestic uses.

It is difficult to quantify the amount of damage caused by foreign fabrication and unfair trade practices impacting this particular market. However, some industry experts estimate that approximately 25,000 jobs have been displaced as a result of the importation of fabricated pipes (estimated using project man hours and annual imports).

VI. Recommendations to Address Detrimental Pipe Imports

To combat unfair trade practices, the Committee submits that the Trump Administration should also apply quotas to all steel pipe, pipe fittings and pipe spools – all of which are vital for addressing U.S. national security and infrastructure needs. In particular, the Department should recommend trade relief in the form of quotas on all imported steel products covered by HTSUS

Chapters 72 and 73. This would cover not only steel itself, but also steel products such as pipe and pipe spools, which generally are classified for tariff purposes based on the pipe they contain.

The quotas should be based on the average import levels for 2010 and 2011, which reflect a period prior to China's capacity increases that led to injurious import surges. To the extent some other action is taken against steel imports, *e.g.*, flat rolled steel, such action should also encompass pipe, pipe fittings and pipe spools. Otherwise, there will be an incentive for any producer of the primary good to have that item shipped to a different country, transformed into a non-covered product and shipped to the U.S. from that country.

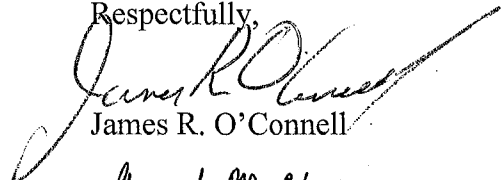
In addition, for those situations where antidumping or countervailing duty orders are in place, the Administration should ensure that they are enforced to the fullest extent possible, including cases involving pipe spools. Finally, to extend their reach, the government should consider substitutable products for those in which orders are in place. The government should also be vigilant to ensure that downstream products such as fabricated pipe and pipe spools are not inappropriately imported under tariff categories outside of Chapter 72 and 73 of the HTSUS.

VII. Conclusion

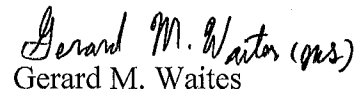
The current capacity utilization of the domestic steel industry falls far below the level needed for ensuring our national defense and economic security. Imports are denying domestic producers of steel and downstream products the ability to earn sufficient return on investment to remain competitive. As demonstrated above, the pipe and piping material sector of this industry is vital for meeting U.S. military needs and rebuilding critical infrastructure systems. Mounting evidence indicates that the capabilities of this sector have been restricted and, in fact, severely eroded due to unfair and illegal foreign trade practices.

For these reasons, we respectfully request the Department consider the information set forth herein for purposes of this Section 232 investigation and recommend to the President the imposition of quotas on all imports under Chapters 72 and 73 of the HTSUS, as well as increased efforts to ensure that future trade policies and new enforcement efforts encompass vital downstream products, especially fabricated pipe and pipe spools.

Respectfully,



James R. O'Connell



Gerard M. Waites (ms)

Gerard M. Waites