



MARITIME EXCHANGE

for the Delaware River and Bay

Leading the Way to Port Progress

John T. Reynolds, Chairman
Uwe Schulz, Vice Chairman
Robert A. Herb, Treasurer
Dennis Rochford, President
Lisa B. Himber, Vice President
A. Robert Degen, Esq., Secretary/Solicitor

Via email to: Steel232@bis.doc.gov

May 19, 2017

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 NW
Washington, DC 20030

Re: USDOC Investigation of Imports of Steel – Section 232 Trade Expansion Act of 1962

Dear Mr. Botwin:

This letter is furnished pursuant to the *Federal Register* Notice of April 26, 2017 in which your office requests interested parties to submit comments in response to the Notice of Investigation of imports of steel under section 232 of the Trade Expansion Act of 1962.

We note that the scope of the investigation describes the subject merchandise only as “steel” and would therefore encompass all steel articles regardless of form (angles, shapes, bars, slabs, billets); commercial designation (beams, rod, wire); method of production (cold drawn, cold rolled, flat rolled), intended use, and alloy content.

Traditionally, in most investigations of product by the Department, it carefully defines the scope of the investigation to limit any effect of Commerce Department remedial action to that class or kind of imported merchandise which causes the complained of harm. By the same token, we note that the statute, as opposed to the Agency policy, directs the Secretary to focus on whether such imported products impair the “national security” of the United States.

By directive of the statute therefore, while, as part of its investigation, the Secretary may consider all steel imports for purposes of determining the extent to which such products have national security implications, as we understand the law, the Secretary cannot take any action against any specific steel product unless the Secretary first determines that the imports of that specific product are a threat to national security.

Stated differently, while the Secretary may commence an investigation of all steel products, he can only restrict the entry (or take other measures) against those specific steel articles, the entry of which pose a national security threat.

The Maritime Exchange for the Delaware River and Bay acts as a chamber of commerce for the Delaware River maritime industry and associated businesses in the tristate region of Pennsylvania, New Jersey, and Delaware. Shipments of steel are now the fourth largest commodity arriving at Delaware River ports. The Exchange’s constituency extends far beyond those companies

Mr. Brad Botwin
U.S. Department of Commerce
May 19, 2017
Page two

importing steel to include trade unions, truckers, customs brokers, ship's agents, warehouses, tug boat operators, ship's pilots, and the like. Any action by the Secretary which would extend to steel products beyond those used in the national defense would have an immediate and adverse impact on the businesses which deal both directly and indirectly in the trade of these goods. Clearly, the economic impact of imported steel products to the Delaware River regional maritime community is comprehensive and provides substantial contributions to the local economy in the form of direct, indirect, and induced jobs, personal earnings, and tax revenues.

Should the Department determine that action is necessary to protect the national security in the imports of steel, we strongly urge that the Department carefully limit any action only to those steel articles that directly relate to the national defense.

As the Department well knows, Article II (b) of the GATT 1947 Undertakings (adopted by the Marrakesh Protocol establishing the WTO) prohibits Member States from imposing duties beyond those in effect on the date of the Agreement, and Article XI calls for an end of the imposition of quantitative restriction (quotas) except that Article XXI of GATT 1947 creates an exception from both of these Undertakings when they are "taken in a time of war or other emergency in international relations."

Therefore, if the United States is to assert the national security exception in Article XXI, it is vital that the United States be able to establish some direct link between any goods against which it will take action and the identified security threat. Without such a direct link, it is virtually certain that the U.S. will face an allegation of Impairment under Article XXIII of the Agreement.

We will leave to each of the participants in this investigation the substantive arguments to be made on their behalf. However, our substantial concern is for those who are not direct industry participants, but who could be adversely affected by a flawed process. We therefore thought it appropriate to raise our concerns about the scope of any findings and recommendations with the Department.

Thank you for your consideration of this request. Please feel free to contact me at 215-925-2615 or at dennis.rochford@maritimedelriv.com with any questions or need for additional information.

Sincerely,

A handwritten signature in black ink that reads "Dennis Rochford". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Dennis Rochford
President

cc: Lisa Hember, Vice President