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STEEL IMPORTS POSE NO THREAT TO NATIONAL SECURITY

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INTRODUCTION

The United States is the fourth-largest steel producer in the world, producing nearly 80 million tons of crude steel in 2016.¹ However, U.S. steel production has declined by more than 20 percent in the past decade, from more than 98 million tons in 2007 to about 78 million tons in 2016.² The United States also imported more than 30 million tons of steel in 2016,³ making it the world's leading importer of steel.⁴

1. The World Steel Association, *Steel Statistical Yearbook 2017*, November 2017, p. 1. <https://www.worldsteel.org/en/dam/jcr:3e275c73-6f11-4e7f-a5d8-23d9bc5c508f/Steel+Statistical+Yearbook+2017.pdf>

2. *Ibid.*

3. International Trade Administration, "Steel Imports Report: United States," U.S. Dept. of Commerce, August 2017, p. 2. <https://www.trade.gov/steel/countries/pdfs/imports-us.pdf>.

4. *Ibid.*, p. 1.

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Pursuant to powers granted to the president under Section 232 of the Trade Expansion Act of 1962,⁵ in April 2017, President Donald Trump issued a memorandum that directed Commerce Secretary Wilbur Ross to investigate whether steel is being "imported into the United States in such quantities or under such circumstances as to threaten to impair the national security."⁶

Under Section 232, the U.S. Department of Commerce (Commerce) has 270 days to issue its determination, making the report due Jan. 15, 2018.⁷ If Commerce finds in the affirmative, the White House is required to submit a report to Congress and can take steps to restrict imports in ways that would alleviate the purported national security threat. Such action must be made within 90 days of receipt of Commerce's report.⁸

The investigation is being led by Commerce's Bureau of Industry and Security (BIS). Some reports suggest that, in a break with past Section 232 investigations, BIS has chosen not to conduct a thorough survey of U.S. companies.⁹ Perhaps in response to the perception that the investigation was being rushed, it was reported in early July that Defense Secretary James Mattis had moved to slow it by directing the

5. 19 U.S.C. §1862

6. President Donald J. Trump, "Presidential Memorandum for the Secretary of Commerce," The White House, Apr. 27, 2017. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-commerce>.

7. Ana Swanson, "Trump Promised to Protect Steel. Layoffs Are Coming Instead," *The New York Times*, Dec. 22, 2017. https://www.nytimes.com/2017/12/22/business/economy/trump-steel-industry-layoffs.html?rref=collection%2Fbyline%2Fana-swanson&action=click&contentCollection=undefined®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection&r=0.

8. *Ibid.*

9. Megan Cassella, "Defense Department Drills Down on Steel Report," *Politico*, July 7, 2017. <https://www.politico.com/tipsheets/morning-trade/2017/07/07/defense-department-drills-down-on-steel-report-221212>.

Defense Logistics Agency to “undertake a 60-day review of steel use in U.S. defense applications.”¹⁰

Although the investigation applies to imports from all countries, there is reason to believe the administration’s focus is mainly on China. This is because China is by far the largest steel producer in the world—producing more than 800 million tons of steel in 2016, which is roughly half of the world’s output.¹¹ Moreover, Chinese steel production approximately doubled over the past decade, up from 421 million tons in 2006.¹² Much of this growth, however, is due to misguided industrial policy, such as the provision of subsidies to continue building superfluous steel mills. Given the magnitude of its output, China’s policies have led to a saturation of the global steel market and have put downward pressure on steel prices.

At the press briefing shortly after Commerce announced the investigation, Secretary Ross said that “steel imports [...] have continued to rise despite Chinese claims that they were going to reduce their steel capacity.”¹³ Likewise, at July’s G-20 summit in Hamburg, Germany, President Trump offered pointed criticism of China’s steel overcapacity.¹⁴ In an attempt to head off potential steel tariffs, China proposed to cut its steel capacity voluntarily by 150 million tons by 2022.¹⁵ However, over the summer of 2017, Trump rejected the offer and thus the Section 232 investigation continues.¹⁶

The theory that underlies Section 232 and the World Trade Organization’s (WTO) Article XXI is a straightforward one that allows countries to impose trade restrictions in the name of national security. In this case, the argument is that low-priced foreign steel – whether it is subsidized, dumped or simply the natural result of comparative advantage – will drive out domestic competition. Once domestic suppliers have been driven out of business, foreign enemies could exert disproportionate power by threatening to withhold steel supplies.¹⁷ If this came to pass, proponents argue that

it would pose an enormous threat to national security, given the U.S. Armed Forces’ heavy reliance on steel products.

Such a theory, however, is a farfetched one that, among other serious issues, is easily disproven by basic economics, as rising prices – from either increased demand or decreased supply – would inevitably attract alternative suppliers of steel either from domestic sources, from non-adversarial foreign countries or both. Moreover, the dynamics at play in the global steel market, as well as a very thin argument as to its potential threat to national security, suggest that to impose trade restrictions in this case would be both an economic and strategic mistake.

TRADE AND THE TRUMP ADMINISTRATION

Published in 1776, Adam Smith’s seminal *Wealth of Nations* famously undercut the prevailing mercantilist theories of trade. Later, in 1817, David Ricardo’s *On the Principles of Political Economy and Taxation* laid the groundwork for the theory of comparative advantage. But it was not really until the aftermath of World War II that a broad, bipartisan and international consensus emerged to tout the benefits of trade liberalization as a vital tool to shape both economic and foreign policy.¹⁸

Shortly after the war, 23 nations signed the General Agreement on Tariffs and Trade (GATT), which formed the basis of the global rules-based trading system.¹⁹ With the completion of the Uruguay Round of global trade negotiations in 1994, GATT morphed into the WTO, which now includes virtually every nation in the world in its membership.

Fostered by this rules-based trading system, the results of postwar globalization have been overwhelmingly positive. A recent study found that over the period from 1950 to 2016, the benefits from expanded trade to the United States alone total \$2.1 trillion per year.²⁰ Indeed, on a per-capita basis, every American enjoys \$7,016 more in inflation-adjusted gross domestic product (GDP) as a result of the trade policy liberalization and improved communications and transportation networks that made this growth possible.²¹

Despite these tangible benefits, trade liberalization and globalization more generally are not without their discontents, including some prominent politicians and critics from across the ideological spectrum. For this reason, foreign trade

10. Ibid.

11. Zhiyao Lu, “Chinese Steel Exports to the United States Dropped Dramatically in 2016,” Peterson Institute for International Economics, June 26, 2017. <https://piie.com/blogs/china-economic-watch/chinese-steel-exports-united-states-dropped-dramatically-2016>.

12. Ibid.

13. Dave Boyer and S.A. Miller, “Trump sidesteps direct blame on China as he orders investigation of steel dumping,” Washington Times, April 20, 2017. <https://www.washingtontimes.com/news/2017/apr/20/donald-trump-orders-steel-dumping-investigation>.

14. Demetri Sevastopulo and Shawn Donnan, “Donald Trump rejected China steel offer that his officials backed,” *Financial Times*, Aug. 28, 2017. <https://www.ft.com/content/1980fd1c-8c3b-11e7-a352-e46f43c5825d>.

15. Ibid.

16. Ibid.

17. Daniel Ikenson, “The Danger of Invoking National Security to Rationalize Protectionism,” China-US Focus, May 15, 2017. <https://www.chinausfocus.com/peace-security/the-danger-of-invoking-national-security-to-rationalize-protectionism>.

18. Douglas Irwin, “Historical Perspectives on U.S. Trade Policy,” The National Bureau of Economic Research, 1999. <http://www.nber.org/reporter/winter99/irwin.html>.

19. Douglas Irwin, “GATT Turns 60,” *The Wall Street Journal*, April 9, 2007. <https://www.wsj.com/articles/SB117607482355263550>.

20. Gary Clyde Hufbauer and Zhiyao Lu, “The Payoff to America from Globalization: A Fresh Look with a Focus on Costs to Workers,” Peterson Institute for International Economics, May 2017, p. 1. <https://piie.com/system/files/documents/pb17-16.pdf>.

21. Ibid.

featured prominently in the 2016 presidential election and was almost exclusively painted in an unflattering light. On the campaign trail, then-candidate Trump, in particular, routinely assailed various trade agreements the United States has entered in recent decades. At the core of his critique of trade liberalization is America's trade deficit in goods and services – which is to say, on net, that we import more than we export.²² In 2016, the trade deficit was approximately \$500 billion.²³

Trump's campaign rhetoric focused on the alleged hollowing out of the American manufacturing base. In speeches, he often alluded to shuttered steel mills and auto plants across the Midwest as emblems of our trade deficit. Promising to reverse this supposedly devastating trend, his message resonated with American voters in Rust Belt states like Ohio, Pennsylvania, Michigan and Wisconsin, and electoral victories in all four of those states carried him to the White House.

During the transition, the president-elect named a number of dissenters from the prevailing trade consensus to high-level positions in his administration. These included Wilbur Ross to run the U.S. Department of Commerce, Robert Lighthizer to run the Office of the U.S. Trade Representative (USTR), Steve Bannon to serve as counselor to the president²⁴ and Peter Navarro to lead the newly created National Trade Council. It is worth noting that now-Secretary Ross and Ambassador Lighthizer have both worked in the domestic steel industry and have profited handsomely from steel protectionism.²⁵

Shortly after his inauguration, one of President Trump's first official acts was to withdraw the United States from the Trans-Pacific Partnership (TPP), a promising free trade agreement (FTA) with 11 other Pacific Rim nations that was initiated by the George W. Bush administration, finalized by the Barack Obama administration and was awaiting congressional approval. In a blow to American credibility abroad, the TPP was the first FTA negotiated to completion by the United States that was not ratified by Congress.

22. Though it is much more complicated and driven by larger macroeconomic forces that involve rates of savings and investment rather than trade policy, a proper explanation of the trade deficit is beyond the scope of this paper. For a recent study that provides a more in-depth explanation of the causes of global trade imbalances, see Joseph E. Gagnon, "Do Governments Drive Global Trade Imbalances?", *Peterson Institute for International Economics Working Paper* No. 17-15, December 2017. <https://piie.com/system/files/documents/wp17-15.pdf>.

23. Bureau of Economic Analysis, "2016 Trade Gap is \$502.3 Billion," U.S. Dept. of Commerce, Feb. 7, 2017. https://www.bea.gov/newsreleases/international/trade/2017/pdf/trad1216annual_fax.pdf.

24. Steve Bannon departed the White House in August 2017 and returned to his prior role as executive chairman of Breitbart News.

25. See, e.g., Daniel Ikenson, "Wilbur Ross Has Made Billions of Dollars, but on Trade He Doesn't Make Any Sense," *National Review Online*, Dec. 7, 2016. <http://www.nationalreview.com/article/442853/wilbur-ross-commerce-secretary-not-so-fast>; and Daniel Ikenson, "Lighthizer Completes Trump's Protectionist Triumvirate," *Cato At Liberty*, Jan. 3, 2017. <https://www.cato.org/blog/lighthizer-completes-trumps-protectionist-triumvirate>.

Likewise, after coming close to withdrawing the United States from the North American Free Trade Agreement (NAFTA) in spring 2017, Trump ultimately announced he would instead try to renegotiate the agreement with Canada and Mexico. NAFTA renegotiation is currently underway, although progress has been slow.²⁶ Finally, amid rising tensions with North Korea over its nuclear program, Trump has threatened to withdraw the United States from the FTA with South Korea (KORUS), unless the bilateral trade deficit declines.²⁷

It is in the context of this renewed skepticism of trade liberalization generally by figures associated with the current administration that policymakers will need to address the narrower questions of whether to restrict steel imports and, more specifically, whether there could be a national security justification to do so.

HISTORY OF NATIONAL SECURITY-BASED TRADE RESTRICTIONS

Few issues unite economists as broadly as the consensus in favor of the free flow of goods and services across political borders. In fact, according to a 2012 survey from the University of Chicago's Booth School of Business, 85 percent of economists surveyed either agreed or strongly agreed with the proposition that: "Freer trade improves productive efficiency and offers consumers better choices, and in the long run these gains are much larger than any effects on employment."²⁸

However, although economists clearly prefer as few trade barriers as possible, they also recognize the theoretical case to restrict trade if it endangers national security. For example, Notre Dame Law School's Roger Alford has recently noted that Adam Smith himself supported the Act of Navigation, the effect of which was to establish an embargo against Holland by "prohibiting Dutch ships from trading with British settlements or with the British Isles."²⁹ Though England and Holland were not at war at the time, tensions between the countries were on the rise. On the topic of the shipping embargoes, Smith wrote that they were "as wise [...] as if

26. Ana Swanson, "Nafta Talks' Extension May Make for Slow, Painful Demise," *The New York Times*, Oct. 17, 2017. https://www.nytimes.com/2017/10/17/us/politics/nafta-negotiators-extend-talks-delaying-its-expected-demise.html?_r=0.

27. Michelle Ye Hee Lee, "Trump wants to end 'horrible' South Korea-U.S. trade deal. Koreans disagree," *The Washington Post*, Sept. 14, 2017. https://www.washingtonpost.com/world/trump-wants-to-end-horrible-south-korea-us-trade-deal-koreans-disagree/2017/09/13/fb528b3e-9627-11e7-a527-3573bd073e02_story.html?utm_term=.7a27b0b3d549.

28. IGM Economic Experts Panel, "Free Trade," IGM Forum, March 13, 2012. <http://www.igmchicago.org/surveys/free-trade>.

29. Roger P. Alford, "The Self-Judging WTO Security Exception," *Utah Law Review* 2011: 3 (January 2017), p. 757. http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1336&context=law_faculty_scholarship.

they had been directed by the most deliberative wisdom.”³⁰ He also acknowledged that this contradicted his views on trade, but nevertheless conceded that: “[A]s defense [...] is of much more importance than opulence [...] the act of navigation is, perhaps, the wisest of all commercial regulations of England.”³¹

Indeed, both domestic and international trade law provides the United States with the authority to restrict trade in the name of national security. This is very likely due, at least in part, to the carnage of World War II that was fresh in the minds of the negotiators who arrived in Geneva in 1947 to negotiate the tariff reductions that became the GATT.³² Embracing Smith’s belief that free trade must give way to national security concerns under certain circumstances, Article XXI of GATT thus provides for “security exceptions.” Drafted by the delegation from the United States,³³ the provision allows a general exception to the legal obligations codified in GATT:

Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of its essential security interests (emphasis added)
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic ..in other goods and materials as is carried on directly or indirectly for the purpose of ...supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.³⁴

30. Adam Smith and Andrew Skinner, eds., *The Wealth of Nations Books IV-V* (Penguin Books, 1999), pp. 40-41.

31. *Ibid.*, p. 41.

32. “GATT Turns 60.” <https://www.wsj.com/articles/SB117607482355263550>.

33. Alford, p. 698. http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1336&context=law_faculty_scholarship.

34. General Agreement on Tariffs and Trade, “Article XXI: Security Exceptions,” 1947. https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXI.

However, providing that a member nation can suspend any trade rules “which it considers necessary” for its national security merely allows nations to invoke this provision without fear of judicial review by the WTO.³⁵ Known in legal parlance as “self-judging” authority,³⁶ this creates an enormous exception to generally applicable trade rules that scholars have noted is ripe for potential abuse.³⁷ Notwithstanding such extremely wide latitude, Article XXI has been used only sparingly and in relatively good faith.³⁸ As Alford has observed: “In over sixty years of international trade, invocations of the security exception have only been challenged a handful of times, and those challenges have never resulted in a binding GATT/WTO decision.”³⁹

Invocations of Article XXI by the United States

At various times, the United States has invoked Article XXI to justify trade restrictions on the world stage. In the late 1940s, during the early stages of the Cold War, Congress passed the Marshall Plan, part of which established an export-control regime.⁴⁰ Products that were in short supply or of particular military significance could be licensed freely to 16 Western European countries, but exports to Eastern Europe were controlled carefully.⁴¹

Czechoslovakia challenged the export-control regime, arguing that it violated the Most Favored Nation principle memorialized in Article I of GATT—essentially the cornerstone of the rules-based trading system.⁴² Czechoslovakian delegates argued that an expansive interpretation of Article XXI would undermine the entire premise of GATT.⁴³ In response, the United States asserted that Article XXI overrode Article I and permitted it to restrict exports to Eastern Europe.⁴⁴ By a 17-1 margin (with three abstentions and two absent) GATT’s Contracting Parties voted to support the U.S. interpretation

35. It should be noted that while Alford’s paper provides an excellent summary of various theories of interpretation of Article XXI, this paper will assume his overall point that the measure is self-judging based on myriad factors.

36. Alford, p. 702. http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1336&context=law_faculty_scholarship.

37. Alan S. Alexandroff et al., eds., *The World Trade Organization: Legal, Economic and Political Analysis* (Springer, 2005), p. 1572.

38. Alford, p. 699. http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1336&context=law_faculty_scholarship.

39. *Ibid.*

40. Alford, p. 710. http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1336&context=law_faculty_scholarship.

41. *Ibid.*, p. 709.

42. Most Favored Nation status is defined by the WTO as “the principle of not discriminating between one’s trading partners.” See, e.g., “Most Favored Nation,” World Trade Organization, 2017. https://www.wto.org/english/thewto_e/glossary_e/mfn_e.htm.

43. Alford, p. 709. http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1336&context=law_faculty_scholarship.

44. *Ibid.*

and thus to establish the self-judging aspect of the national security exception.⁴⁵

In May 1985, President Ronald Reagan utilized such an exception to issue an executive order that prohibited all trade between the United States and Nicaragua.⁴⁶ The administration justified the embargo on the grounds that the Sandinista government posed a national security threat to the United States.⁴⁷ The Nicaraguan government challenged the embargo,⁴⁸ arguing that it did not target an “essential security interest” [as required under Article XXI (a)] and that it was not established during a time of “war or other emergency in international relations” [as required by Article XXI (b) (iii)]. The Reagan administration countered that Article XXI’s national security exception granted GATT’s Contracting Parties exclusive rights to determine whether trade with a particular country threatened its own national security. An overwhelming majority of Contracting Parties to GATT agreed with the United States that Article XXI is essentially self-judging.⁴⁹

Section 232: Investigations and Import Restrictions

Following such international recognition of a broad national security exemption from generally applicable trade rules in GATT, the United States codified a similar provision domestically with its passage of the Trade Agreements Extension Act of 1955.⁵⁰ Eventually, that provision was superseded by Section 232 of the Trade Expansion Act of 1962,⁵¹ which authorizes Commerce to investigate whether imports of specific items pose a threat to “national security,”—a term that is not defined in the statute or in implementing regulations.⁵² Under the statute, Commerce must issue a report to the president within 270 days of initiating the investigation. Based on the report, the president can then limit and/or otherwise restrict imports, or “take such actions as the president deems necessary to adjust the imports of such article so that such

imports will not threaten or impair the national security.”⁵³ Further, the statute does not cap or otherwise limit tariffs or other import restrictions the president may impose.

Since its codification, the United States has performed a number of these investigations. As early as 1959, President Dwight Eisenhower was advised by the Defense Department’s Office of Defense Mobilization – then responsible for the advisory function of the process – that crude oil and crude oil derivative imports were threatening national security.⁵⁴ His administration responded by creating the Mandatory Oil Import Program, which established a system of oil import quotas. The program was adjusted and quotas were raised by the Kennedy, Johnson and Nixon administrations until it was ultimately abolished in 1973 and replaced with a system of import licensing fees.⁵⁵

However, there have also been notable cases where investigatory findings did not definitively support the administration’s claim of a threat to national security. For example, in 1987, the Anti-Friction Bearings Manufacturing Association petitioned the Department of Commerce to initiate a Section 232 investigation into whether imported ball bearings were jeopardizing national security.⁵⁶ Commerce performed the analysis and decided against recommending import restrictions, although Congress eventually mandated that the DOD purchase its ball bearings “from manufacturers that are part of the U.S. technology and industrial base.”⁵⁷

The most recent performance of a Section 232 analysis was in 2001, when the George W. Bush administration investigated whether iron ore and semi-finished steel imports jeopardized national security.⁵⁸ Ultimately, the administration declined to impose import restrictions on either iron ore or semi-finished steel, after Commerce again determined that imports were not a national security threat.⁵⁹

45. Alexandroff et al., p. 1574.

46. Bernard Weinraub, “Reagan, Declaring ‘Threat,’ Forbids Nicaraguan Trade and Cuts Air and Sea Links,” *The New York Times*, May 2, 1985. <http://www.nytimes.com/1985/05/02/world/reagan-declaring-threat-forbids-nicaraguan-trade-and-cuts-air-and-sea-links.html>.

47. Ibid.

48. Alexandroff et al., p. 1576.

49. Alford, pp. 713-14.

50. This was later amended by the 1958 version of the same law

51. See 19 U.S.C. §1862. There a number of domestic statutes that permit the United States government to restrict trade on national security grounds, including the Export Control Act, the International Emergency Economic Powers Act, the Exon-Florio Amendment to the 1988 Trade Act, and the Foreign Assistance Act. However, Section 232 of the Trade Expansion Act of 1962 (as amended) provides the basis for the current investigation into whether steel imports jeopardize national security.

52. Ibid.

53. 19 U.S.C. § 1862 (c)(3)(A)(ii).

54. U.S. Tariff Commission, *World Oil Developments and U.S. Oil Import Policies: A Report Prepared for the Committee on Finance*, United States Senate, October 1973, pp. 42-43. <https://www.usitc.gov/publications/other/pub632.pdf>.

55. Ibid., p. 44.

56. International Trade Administration, *The Effect of Imports of Anti-Friction Bearings on the National Security: An Investigation Under Section 232 of the Trade Expansion Act of 1962, as amended*, U.S. Dept. of Commerce, July 1988, p. 4. <https://www.bis.doc.gov/index.php/forms-documents/technology-evaluation/61-the-effect-of-imports-of-anti-friction-bearings-on-the-national-security-1988/file>.

57. Isabelle Hoagland and Jenny Leonard, “Sources: Section 232 steel report facing Defense Department objections,” *World Trade Online*, Dec. 8, 2017. <https://inside-trade.com/daily-news/sources-section-232-steel-report-facing-defense-department-objections>.

58. Bureau of Export Administration, *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security: An Investigation Under Section 232 of the Trade Expansion Act of 1962, as amended*, U.S. Dept. of Commerce, October 2001, pp. 1-37. <https://www.bis.doc.gov/index.php/documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>.

59. Ibid., p. 37.

This case holds particular significance as a point of comparison with the question of steel imports today. Given that Commerce considered and ultimately rejected national security-related import restrictions on steel then, it is highly unlikely that current threats or geopolitics have changed in such a way that would justify their imposition now. Further, the economics of steel import restrictions are as bad or worse than they were in 2001.

THE ECONOMIC CASE AGAINST STEEL IMPORT RESTRICTIONS

While at first, it may seem that import competition from China's overcapacity is decimating beleaguered American steel producers, a closer look reveals a different story. Between 2006 and 2016, Chinese steel exports to the United States dropped from 5.26 million tons to 0.95 million tons – a decline of more than 80 percent.⁶⁰ This is slightly more than 3 percent of all steel imports into the United States. In fact, “less than 1 percent of Chinese steel exports were sold to the United States in 2016.”⁶¹

Like China's interventions to prop up its own steel industry, the United States also has intervened in the steel market to blunt market forces. Domestic law allows Commerce to slap tariffs on products it determines were priced at unfairly low levels or received unlawful government subsidies in their country of origin. These duties are known as antidumping and countervailing duties, or AD/CVD. With approximately 150 AD/CVD orders on the books,⁶² including 24 that apply to Chinese imports,⁶³ steel is already one of the most heavily protected industries in the United States.⁶⁴ In fact, in 2016, four new AD/CVD duties against Chinese steel products were levied, which led to a significant decline of steel imports from China between 2015 and 2016.⁶⁵

Accordingly, imposing further restrictions, such as tariffs or tariff-rate quotas, would be an economic mistake for myriad reasons. For starters, restrictions on imported steel would hurt downstream domestic manufacturers. According to 2015 census data, steel mills employ 140,000 Americans and add about \$36 billion to the economy, or about 0.2 percent

of GDP.⁶⁶ Meanwhile, steel-consuming industries, including manufacturers, who rely on steel imports employ 6.5 million workers and add about \$1 trillion to the GDP.⁶⁷ As Dan Pearson, former chairman of the International Trade Commission, has written: “Manufacturers are particularly vulnerable to artificially high steel costs because many of them compete directly with goods produced at lower costs in other countries. It is hard to be a successful producer of automobiles or air conditioners, for instance, if US policies give overseas competitors a built-in cost advantage.”⁶⁸ Other industries reliant on steel, such as construction, also would be hard hit by import restrictions.

Much like a regressive sales tax, import restrictions on steel products would raise costs for consumers of products with steel inputs. For this reason, in July 2017, every living former chair of the Council of Economic Advisers signed a letter urging President Trump not to invoke Section 232 to impose tariffs or other import restrictions on steel.⁶⁹ As the signatories wrote: “The diplomatic costs might be worth it if the tariffs generated economic benefits. But they would not. Additional steel tariffs would actually damage the U.S. economy. Tariffs would raise costs for manufacturers, reduce employment in manufacturing, and increase prices for consumers.”⁷⁰

For evidence of such claims, one need not look further back than the second Bush administration's foray into steel protectionism. In 2002, President George W. Bush acquiesced to the domestic steel industry's demands and imposed steep tariffs, known as “safeguards,” on imported steel products pursuant to Section 201 of the Trade Act of 1974. It is estimated that these steel tariffs resulted in nearly 200,000 job losses and cost nearly \$4 billion in lost wages, much of it borne by “metal manufacturing, machinery and equipment and transportation equipment and parts sectors.”⁷¹ The steel safeguards were successfully challenged at the WTO by a number of nations.⁷² After the United States lost the case at the WTO, the Bush administration initially announced it would let the tariffs stand and face the WTO-sanctioned retaliation against American exports. In response, the European Union

60. Ibid.

61. Ibid.

62. “Steel Imports Report: United States,” p. 7. <https://www.trade.gov/steel/countries/pdfs/imports-us.pdf>.

63. Ibid.

64. “Comments of Daniel R. Pearson, Senior Fellow, Herbert A. Stiefel Center for Trade Policy Studies, Cato Institute, to the Section 242 National Security Investigation of Imports of Steel, U.S. Dept. of Commerce,” May 31, 2017, p. 1. <https://www.bis.doc.gov/index.php/232-steel-public-comments/1773-daniel-pearson-cato-public-comment/file>.

65. “Chinese Steel Exports to the United States Dropped Dramatically in 2016.” <https://pii.com/blogs/china-economic-watch/chinese-steel-exports-united-states-dropped-dramatically-2016>.

66. Dan Pearson, “If Trump wins on steel, US manufacturers lose,” CNN, Aug. 2, 2017. <http://www.cnn.com/2017/08/02/opinions/steel-trump-higher-prices-opinion-pearson/index.html>.

67. Ibid.

68. Ibid.

69. See, e.g., “Former CEA Chairs Urge President Not to Impose Steel Tariffs,” American Action Forum, July 12, 2017. <https://www.americanactionforum.org/insight/former-chairs-presidents-council-economic-advisers-urge-president-imposing-steel-tariffs>.

70. Ibid.

71. Dr. Joseph Francois and Laura M. Baughman, “The Unintended Consequences of U.S. Steel Import Tariffs: A Quantification of the Impact During 2002,” Trade Partnership Worldwide, LLC, Feb. 4, 2003. http://www.tradepartnership.com/pdf_files/2002jobstudy.pdf.

72. “Cold Steel,” *The Economist*, Nov. 13, 2003. <http://www.economist.com/node/2206255>.

(EU) circulated a list of targets for potential retaliation, which included politically sensitive products like Harley-Davidson motorcycles, textiles from the Carolinas and citrus products from Florida, where President Bush's brother was governor at the time.⁷³ Sensing a trade war was about to erupt, the Bush administration relented and withdrew the tariffs, but not before significant damage was done

During the summer of 2017, European Commission President Jean Claude Juncker warned that the EU would retaliate in similar fashion against new steel import restrictions imposed by the United States.⁷⁴ And, because the country exports very little steel to Europe, the EU's list of potential targets for retaliation was rife with politically sensitive exports, including bourbon, dairy products and orange juice.⁷⁵ For example, bourbon is one of the main exports from Kentucky, the home of Senate Majority Leader Mitch McConnell, while dairy is one of the primary exports from Wisconsin, the home of House Speaker Paul Ryan. Not only could steel export restrictions trigger retaliation against unrelated American products, they could also cause unwanted domestic political problems for the White House.

Finally, steel protectionism under the guise of national security poses a grave threat to the rules-based trading system. As previously established, the keys to understanding the enormous powers of the national security exception is twofold. First, the power is self-judging – that is, the invocation of national security to suspend trade concessions is unlikely to be reviewed by the WTO and there is no agreed upon definition of “national security” under Article XXI. As Daniel Ikenson, director of the Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute, has written, “It is simply implausible that international trade jurists would seriously question a member government’s interpretation of a threat to its own national security.”⁷⁶

Second, because the power is self-judging, the national security exception needs to be used sparingly and judiciously because “[i]f abused, [it] could undermine the entire WTO regime.”⁷⁷ Thankfully, by and large, the exception has been invoked in good faith in the roughly 70 years since GATT went into effect.⁷⁸ That, however, could change quickly if the United States invokes Article XXI to justify its steel restrictions.

73. Ibid.

74. Shawn Donnan, “EU targets Kentucky bourbon in steel retaliation,” *Financial Times*, Jul. 7, 2017. <https://www.ft.com/content/c7alc0f4-6240-11e7-91a7-502f7ee26895>.

75. Ibid.

76. “The Danger of Invoking National Security to Rationalize Protectionism.” <https://www.chinausfocus.com/peace-security/the-danger-of-invoking-national-security-to-rationalize-protectionism>.

77. Alford, p. 702.

78. Alford, p. 699.

As the world’s largest economy and the most important member of the WTO, the United States occupies a unique position in the rules-based trading regime. If the Trump administration decides to use its exception power to protect the domestic steel industry, other nations – freed from the norms against arbitrary claims – would almost surely respond in kind to protect their own politically sensitive industries on flimsy national security grounds. This back and forth of dubious claims could unravel the entire trading system, the negative consequences of which could be disastrous for the United States and the global economy.

THE NATIONAL SECURITY CASE AGAINST STEEL IMPORT RESTRICTIONS

Moreover, the national security case in favor of steel import restrictions is as weak as the economic case against them is strong. There is no doubt that steel is essential for the Defense Department and its suppliers. Nevertheless, a closer examination of our suppliers, treaties and other agreements, as well as of current geopolitics makes it apparent that steel imports do not jeopardize national security.

For starters, steel used by the military and defense establishment constitutes only a small portion of total domestic steel consumption. As part of Commerce’s 232 investigation into iron ore and semi-finished steel imports in 2001, the Defense Department estimated that it needed about 325,000 net tons of finished steel products per year – less than 0.3 percent of the domestic industry’s output for the year.⁷⁹ With protracted wars in the Middle East, that number has surely increased, but only about 3 percent of steel shipped domestically in 2016 was used for national defense and homeland security.⁸⁰

We also have plenty of options to source steel from allies and non-hostile trading partners. Between January and October 2017, the most recent available data from the International Trade Administration shows that about 60 percent of imported steel mill products came from six countries, none of which could plausibly be considered a threat to national security:⁸¹ Canada, which accounted for 16 percent of steel imports during this period; Brazil, which accounted for 13 percent; South Korea, which accounted for 10 percent; Mexico, which accounted for 9 percent; Turkey, which accounted for 6 percent; and Japan, which accounted for 5 percent.⁸² In fact, of the top ten exporters of steel to the United States in 2016,

79. *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security*, p. 13. <https://www.bis.doc.gov/index.php/documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>.

80. *Profile 2017*, American Iron and Steel Institute, 2017, p. 6. <https://www.steel.org/-/media/Files/AISI/Reports/2017-AISI-Profile-Book.pdf>.

81. International Trade Administration, “Steel Industry Executive Summary: December 2017,” U.S. Dept. of Commerce, Dec. 2017, p. 3. <https://enforcement.trade.gov/steel/license/documents/execsumm.pdf>.

82. Ibid.

only China, which accounts for only 3 percent of all steel imports,⁸³ could be considered a potential threat.⁸⁴ Russia, which supplied 2.3 percent of imported steel in 2016, is the 11th largest exporter to the United States and could also be considered a strategic threat.⁸⁵

The other top exporters of steel to the United States either would not be considered threats or are actually allies. Further, many of the United States' top suppliers are either already covered by FTAs like NAFTA and KORUS or are members of the North Atlantic Treaty Organization, which requires its members to defend American security and provide assistance during emergencies. This is consistent with the findings from the Section 232 investigation from 2001, in which the Defense Department found that even if national security necessitated more steel than was produced domestically, the supplies would come from "diverse and reliable trading partners."⁸⁶

Not only does the United States maintain solid trading and strategic relationships with its largest steel suppliers, the Defense Department has a number of tools at its disposal to receive supplies necessary for national security. First, the United States has a number of defense procurement memorandums of understanding (MOUs) with our allies.⁸⁷ These obligate both parties to remove impediments to the purchase and procurement of items necessary for national security. Likewise, the Defense Department has a number of "security of supply" arrangements⁸⁸ that are intended to "ensure the mutual supply of defense goods and services."⁸⁹ These bilateral agreements allow the Defense Department "to request priority delivery for DoD contracts, subcontracts, or orders from companies in these countries."⁹⁰ In other words, it is simply implausible that the United States would be unable to receive supplies of steel necessary for national security.

Further, under current law, the Pentagon prepares an annual report to Congress on the "national security strategy for

the national technology and industrial base."⁹¹ As part of that survey, the Defense Department is required to examine the defense supply chain to ensure the military can meet its national security objectives. Recent reports from 2013-2015 show little concern about steel sources.⁹² If the United States were threatened by steel imports, these would surely highlight the problem and thus their silence on the matter speaks volumes.

Accordingly, a haphazard decision by the Trump administration would almost certainly alienate important strategic allies, as well as some of the president's most trusted advisors. It is perhaps for this reason that, "the 'only way' Defense Secretary James Mattis will agree to any trade restrictions [for steel imports] Commerce suggests is if there are significant carveouts for U.S. allies."⁹³ Indeed, exclusions are apparently being considered for Australia, Mexico, Canada, the United Kingdom, Japan and South Korea.⁹⁴

CONCLUSION

While there is no question that President Trump has the authority under domestic and international law to restrict steel imports in the name of national security, to do so would be a mistake. Steel protectionism would harm the domestic economy, jeopardize the rules-based trading system and needlessly provoke allies. While the administration may be able to bolster a small slice of the domestic steel industry by imposing such restrictions, any benefits would be greatly outweighed by the damage done. In light of this, the Trump administration should reject the imposition of import restrictions on steel.

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83. "Chinese Steel Exports to the United States Dropped Dramatically in 2016." <https://piie.com/blogs/china-economic-watch/chinese-steel-exports-united-states-dropped-dramatically-2016>.

84. "Steel Imports Report: United States," p. 3. <https://www.trade.gov/steel/countries/pdfs/imports-us.pdf>.

85. *Ibid.*, p. 5.

86. The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security, p.27. <https://www.bis.doc.gov/index.php/documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>.

87. Copies of the various Memorandums of Understanding with our allies can be viewed at https://www.acq.osd.mil/dpap/cpic/ic/reciprocal_procurement_memo-randa_of_understanding.html.

88. The United States has such arrangements with Australia, Canada, Finland, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

89. "Security of Supply," U.S. Dept. of Defense, 2017. <http://www.businessdefense.gov/security-of-supply>.

90. *Ibid.*

91. 10 U.S.C. § 2501

92. See Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, *Annual Industrial Capabilities: Report to Congress for 2013*, U.S. Dept. of Defense, September 2016. <http://www.businessdefense.gov/Portals/51/Documents/Resources/2013%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf?ver=2017-04-18-072624-537>; Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, *Annual Industrial Capabilities: Report to Congress for 2014*, U.S. Dept. of Defense, September 2016. <http://www.businessdefense.gov/Portals/51/Documents/Resources/2014%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf?ver=2017-04-18-072624-770>; and Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, *Annual Industrial Capabilities: Report to Congress for 2015*, U.S. Dept. of Defense, September 2016. <http://www.businessdefense.gov/Portals/51/Documents/Resources/2015%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf?ver=2017-04-18-072624-770>.

93. Hoagland and Leonard. <https://insidetrade.com/daily-news/sources-section-232-steel-report-facing-defense-department-objections>.

94. *Ibid.*