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September 24, 2004

BY HAND DELIVERY

Kelly Parkhill
Director for Industry Support and Analysis
Import Administration, Room 3713
Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

RE: Comments on Advanced Notice of Proposed Rule
Making – Steel Import Monitoring and Analysis

Dear Mr. Parkhill:

On behalf of United States Steel Corporation ("U.S. Steel"), we submit the following comments in response to the advanced notice of proposed rulemaking issued by the Department of Commerce ("Department") regarding a steel import monitoring and analysis ("SIMA") program.¹ For the reasons given below, we urge the Department to act expeditiously to implement an effective and permanent import monitoring program that would cover an expanded group of steel products.

I. Background

As part of the decision by the President in March 2002 to implement safeguard relief under Section 201 of the Trade Act of 1974,² the Department was directed to put in place a SIMA program that would allow U.S. government officials – and other

¹ See Steel Import Monitoring and Analysis System, 69 Fed. Reg. 52211 (Dep't Commerce Aug. 25, 2004) (advanced notice of proposed rulemaking).

² See Presidential Proclamation 7529 of March 5, 2002 – To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products, 67 Fed. Reg. 10553 (Mar. 7, 2002).

interested parties – to monitor steel imports.³ The Department issued its final rule implementing this program on December 31, 2002.⁴ Since that time, imports subject to Section 201 relief have been covered by the SIMA program.

On December 4, 2003, the President announced that he was terminating all aspects of Section 201 relief other than the SIMA program.⁵ In connection with that decision, the President stated that:

To keep the positive momentum going, we will continue our steel import licensing and monitoring program so that my Administration can quickly respond to future import surges that could unfairly damage the industry.⁶

The Secretary of Commerce amplified these comments, making clear that the Administration intended not merely to preserve the current SIMA program, but to expand its coverage:

We've told the industry that the licensing program we put in place during the safeguard period will be extended. In fact, not only will it be extended for an indefinite period of time, but we'll expand it to include products that are not now included under the licensing program.⁷

The Administration's commitment to extend and enhance this program is reflective both of the success of the existing system, as well as the critical need – particularly in the context of the industry's recovery efforts and the repeated surges

³ See Presidential Memorandum on Steel (March 5, 2002), available at <http://www.whitehouse.gov/news/releases/2002/03/print/20020305-11.html> (last visited Sept. 17, 2004) (hereinafter "Presidential Steel Memo").

⁴ Steel Import Licensing and Surge Monitoring, 67 Fed. Reg. 79845 (Dep't Commerce Dec. 31, 2002) (final rule).

⁵ Presidential Proclamation 7741 of December 4, 2003 to Provide for the Termination of Action Taken with Regard to Imports of Certain Steel Products, 68 Fed. Reg. 68483 (Dec. 8, 2003) (hereinafter "Presidential Proclamation 7741").

⁶ See President's Statement on Steel (Dec. 4, 2003), available at <http://www.whitehouse.gov/news/releases/2003/12/20031204-5.html> (last visited Sept. 17, 2004).

⁷ Transcript of *Lou Dobbs Tonight* (Dec. 4, 2003) (Secretary Evans).

of imports that have occurred in the sector – to ensure the availability of timely and accurate data with regard to steel imports. The significant volatility that has been seen in world steel markets in recent months has only made the need for an effective and permanent monitoring system more evident. The system in no way limits or encumbers imports, is fully consistent with our WTO obligations, and serves to provide information critical to government officials and industry participants in responding to material changes in the sector – thereby significantly enhancing the efficiency and effective functioning of the market. In short, SIMA represents a common sense and vital program that should, in accordance with the Administration's previous commitment, be extended and expanded to cover other basic steel products.

II. Key Objectives for the SIMA Program

U.S. Steel urges the Department to focus on several straightforward enhancements to the current system in its rulemaking process. These suggestions track closely with what the Administration has already proposed, and would only require relatively simple changes to the existing program. Accordingly, the proposed enhancements should not require an extensive or time-consuming regulatory process, but rather, are conducive to expeditious implementation – something that is of the highest importance to the industry and other market participants.

- First, the program should be expanded to other basic steel products. As noted, the existing program is limited to products covered by the Section 201 relief, and therefore excludes a number of essential items – including, e.g., oil country tubular goods, various stainless products, etc. As described below, there appear to be clear and straightforward lines that can be drawn in expanding the product coverage, and the Department should act quickly to extend the existing program to these product areas.
- Second, the program should be made permanent in duration. The need for timely and accurate information on imports in this critical sector is not limited to a few months or years. Given the extraordinary volatility that has been witnessed in steel markets, as well as the history of unfair trade and disruptive import surges in this sector, it is essential that the Administration build on the success of the existing system to put in place a permanent SIMA program. This change would merely require an articulation of existing legal authority,⁸ and therefore should in no way slow implementation of a new system.

⁸ See *infra* at Section III.B.2.

- Third, the Department should ensure that information is publicly released in the most comprehensive and specific manner possible. Under the existing program, information has only been released at the broad categories utilized in the Section 201 proceeding, significantly impeding the usefulness of the data. In implementing an expanded SIMA program, the Department should at a minimum ensure that information is released on a 10-digit HTS-level basis, along with value information and other data that can be provided consistent with confidentiality concerns.

These key objectives, along with other relevant considerations, are discussed in more detail below.

III. Discussion of Key Considerations

A. The Department Must Act Expeditiously to Implement a New Program

The current SIMA program is scheduled to expire in March 2005. This means that in less than six months – and unless action is taken to extend the system – market participants will no longer have access to expedited import monitoring data. Failure to implement a new program prior to expiration of the existing system would have highly negative consequences.

The volatility in world steel markets makes it absolutely essential that policymakers and the industry have the most up-to-date and accurate information possible. For example, for the first seven months of this year, total steel imports are up 33 percent compared to the same period last year.⁹ Demand for steel in China remains a major wild card affecting world markets, while Russia – now no longer subject to the so-called "comprehensive" steel agreement¹⁰ – is reportedly gearing up for significant shipments to the United States (something that is already becoming

⁹ "July 2004 Imports Continue at a High Level; YTD Total Outpacing Consumption Gains," American Iron and Steel Institute Press Release (Aug. 31, 2004), available at http://www.steel.org/news/pr/2004/pr040831_imp.htm (last visited Sept. 16, 2004) (hereinafter "AISI Press Release").

¹⁰ On July 12, 1999, the Department and Russia's Ministry of Trade entered into an agreement to restrict Russian imports of 15 major categories of steel products. *See Agreement Concerning Trade in Certain Steel Products from the Russian Federation* (July 12, 1999). By its terms, this agreement expired on July 12, 2004.

apparent in recent import data).¹¹ Under these circumstances, ensuring access to timely information on imports should be a matter of high importance for government policy makers and market participants.

In addition, failing to move quickly to implement a new program will only further delay access to *any* expedited import monitoring data with regard to products not currently covered by the program. As was noted by Secretary Evans, providing data with regard to non-covered products is one of the principal objectives and benefits of enhancing the program.

The fact is that the existing program has proven extremely useful to a wide variety of market participants and observers. The information provided – even with its current limitations – is regularly monitored and cited by a wide range of interested parties. More and better information will help all market participants. It makes the market more efficient by allowing parties to form rational expectations, and it allows those involved in the market, as well as policy makers, to respond quickly to significant changes in import patterns. All of these benefits would be lost if the program is allowed to lapse for any period of time.

B. The Necessary Adjustments to the Program Are Straightforward and Closely Track the Administration's Own Proposals

The adjustments needed to extend the SIMA program and make it truly effective for all market participants are clear and essentially reflect the commitments that the Administration made last December. There is no reason that these changes could not be completed in a matter of weeks.

1. Product Coverage

First, the Department should fulfill the Administration's commitment to expand the program "to cover more than just the products that were covered by the 201 safeguard."¹² Currently, a number of major steel products – such as seamless pipe and oil country tubular goods – are not part of the SIMA program, solely because they were not subject to Section 201 relief. There is no reason to restrict the program in this manner. Both government officials and market participants would benefit from expanding the program to cover additional products. Furthermore, there appears to be broad support among domestic producers regarding which additional

¹¹ See AISI Press Release (showing that Russian imports of finished steel products rose from approximately 3,000 net tons in July 2003 to approximately 132,000 net tons in July 2004).

¹² Transcript of *Nightly Business Report* (Dec. 4, 2003) (Secretary Evans).

categories from the Harmonized Tariff Schedule ("HTS") should be covered.¹³ The categories that should be covered include:

- (A) Headings 7206-7229 (relating to steel mill products)
- (B) Headings 7301-7308 (relating to rails, structurals, tubular products, fittings and flanges, and fabricated structurals)
- (C) Subheading 7310.10.00 (relating to barrels and drums)
- (D) Heading 7312 (relating to strand and rope)
- (E) Subheading 7313.00.00 (relating to barbed and fence wire)
- (F) Headings 7314, 7315, and 7317.00 (relating to fabricated wire)
- (G) Heading 7318 (relating to industrial fasteners)
- (H) Heading 7326 (relating to fence posts)

2. Duration

In addition, the Administration should act on its commitment to make the program "indefinite" in duration.¹⁴ In this regard, the existing program was promulgated under Section 203(g)(1) of the Trade Act of 1974, which gives the President authority to "provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under {Section 201}."¹⁵ By the terms of the promulgation, the existing program will expire on March 21, 2005.¹⁶

Making the SIMA program permanent in duration can and should easily be accomplished under existing legal authority. In particular, U.S. law provides the Secretary with broad authority to:

¹³ See Comments on Steel Import Monitoring and Analysis System Filed by the American Iron and Steel Institute, the Committee on Pipe and Tube Imports, the Metal Service Center Institute, the Steel Tube Institute of North America, and the United Steelworkers of America at 3 (Sept. 23, 2004). U.S. Steel fully endorses this submission, which reflects the views of virtually all major U.S. producers, workers and distributors of steel products.

¹⁴ Transcript of *Lou Dobbs Tonight* (Dec. 4, 2003) (Secretary Evans).

¹⁵ 19 U.S.C. § 2253(g)(1). See Presidential Steel Memo.

¹⁶ See Presidential Proclamation 7741, 68 Fed. Reg. at 68484 (stating that the SIMA program "remains in effect and shall not terminate until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program").

collect information from all persons exporting from, or importing into, the United States . . . or from the owners, or operators of carriers engaged in such foreign commerce or trade, and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, *as he deems necessary or appropriate* to enable him to foster, promote, develop, and further the commerce, domestic and foreign, of the United States and for other lawful purposes.¹⁷

This statutory authority is clearly sufficient to allow for implementation of a permanent SIMA program.

3. Release of Information

One of the core benefits of the steel import monitoring program obviously resides in the public dissemination of critical import information on an expedited basis. While the existing program has in general functioned well, its potential usefulness has been hindered significantly by limitations in the amount of data that has been publicly released. For example, the Department collects data on the basis of Harmonized Tariff Schedule ("HTS") codes, but releases data only on the basis of the product remedy groupings used during the Section 201 litigation. The Department also collects data regarding the expected port of entry, but does not release these data at all.

A critical enhancement that must be made in the context of a new SIMA program is to expand the amount of information provided publicly. At a bare minimum, key import and value data must be released on the basis of 10-digit HTS codes. In addition, the Department should, consistent with confidentiality considerations, release data by port of entry – and in any event by customs district. (Note that U.S. Census Bureau already releases – albeit at a later date – import data by 10-digit HTS code and customs district. Port of entry data is similarly available from PIERS, a private service.¹⁸) Making these data public would significantly enhance the information that can be gleaned with regard to market trends and developments, thus significantly increasing the program's usefulness and its benefits in terms of market efficiency.

¹⁷ 13 U.S.C. § 301(a) (emphasis added).

¹⁸ PIERS – the Port Import Export Report Service – is a subsidiary of Commonwealth Business Media that collects data from bills of lading and then sells that data to interested parties. *See generally* PIERS's website at <http://www.piers.com>.

Release of this expanded information – which again is *already* collected – should in no way increase any burden on the government. In this regard, U.S. Steel is confident that market participants are equipped to handle – and would welcome – the simple provision of raw data in these areas, without the need for the type of analysis or charts that has accompanied certain types of SIMA data in the past.

* * *

It should be emphasized that *none* of the proposals discussed above requires importers to supply different types of information than what is already collected for the products covered by SIMA, erects any limitations or barriers to imports, or in any way contravenes U.S. obligations under international agreements. They essentially reflect the basic enhancements the Administration has previously suggested to a program that is already operational and fully functional, and these changes could easily be completed well before the current program expires next March. U.S. Steel strongly urges the Department to make these adjustments as soon as possible.

C. Additional Enhancements

The items outlined above represent the core improvements in the program that can and must be implemented at the earliest possible date. Other enhancements to the program should be considered if they can be included without delaying implementation of the new program. To the extent they cannot be adopted immediately, proposed enhancements should be considered for adoption at a later date.

Perhaps the most import potential enhancement in this area would be to move up the deadline for importers to secure an export license. Under the existing SIMA program, importers must obtain a license – and list the license number on entry summary (Customs Form 7501) – at the time they complete their Customs Entry documentation¹⁹ – which can be filed as late as 10 working days after time of entry.²⁰ While obtaining license information at that time does allow for earlier release of import information than would otherwise be available, it obviously does not serve as the "early warning" system that it could if license information were available earlier. Given that exporters and importers would clearly have the information necessary to obtain a license well in advance of entry date (or the time of filing an entry summary), it would not appear unreasonable or burdensome to require that a license be obtained prior to entry – e.g., 15 days in advance. Such a change would significantly enhance the effectiveness of the program and the timeliness of the data

¹⁹ See 19 C.F.R. § 360.101(b).

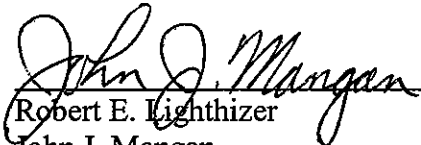
²⁰ *Id.* § 142.12(b).

involved. Again, U.S. Steel would urge immediate consideration of such a change if it can be done without slowing down implementation of the program. If not, this improvement should be considered at a later date.

IV. Conclusion

The current SIMA program has proven itself as an effective program to provide more up-to-date and accurate information with regard to market conditions, while in no way encumbering imports. Extension and enhancement of the program as described above – and as promised by the Administration in connection with the decision to terminate Section 201 relief – should be implemented at the earliest possible date.

Respectfully submitted,



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On behalf of United States Steel
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