



# Morris Manning & Martin LLP : Speaking Engagement

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Don Cameron's remarks at the AMM & WSD Steel Survival Strategies XXXII Conference on June 27th in New York. Please note that the views expressed are his own, not those of his clients. He focused his remarks on Section 232.

## 1. Steel Imports are not a National Security issue

I recognize that most US steel producers think import restraints are a good idea, and they believe that if it requires finding steel imports to be a national security issue, then so be it. Others, including Congressman Brady, the Republican Chairman of the Ways and Means Committee, have raised serious questions about the wisdom of this 'ends justifies the means' approach. In the hearing with Ambassador Lighthizer last Thursday, June 22, he suggested that Congress has passed a number of laws governing unfair trade-- which the US Steel industry has used to its benefit--and other laws such as Section 201 which was used in 2001 by President Bush for this same steel industry. While the US must act forcefully to combat unfair trade, Congress has provided the tools to do that, and those tools have been effective. He also suggested that is dangerous for the US to abandon the trading rules which have been developed, in large part, by the United States. To do so could lead others to do likewise -- to the detriment of the United States, which benefits from those rules far more than other countries. It brings to mind a quote from *A Man for All Seasons*, where Thomas More is talking to William Roper, his daughter's suitor, after Roper accuses More of respecting man's law over God's:

*'And when the last law was down, and the Devil turned round on you--where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast--man's laws, not God's--and if you cut them down--and you're just the man to do it--d'you really think you could stand upright in the winds that would blow then?'* *A Man for All Seasons*, Act 1, Scene 7.

Chairman Brady is right-- this is not the right approach to deal with steel imports, and like it or not, using bogus claims of 'national security' as a pretext for what amounts to naked protectionism will invite retaliation from our trading partners. They understand that there is no plausible basis to claim that the broad-based import restrictions on virtually all steel products reportedly being contemplated by the Administration conform to the narrow exception for national security provided in *Article XXI of the General Agreement on Tariffs and Trade*. As noted by the submission of the European Union in the 232 proceeding: 'While the GATT provides for security exceptions, the scope of these exceptions is circumscribed for specific situations and conditions that appear to be absent in this case.' That is an understatement.

Prior to the current Administration, that has also been the consistent position of the United States. In its October 2001 investigation entitled 'The effect of Imports of Iron Ore and Semi-Finished Steel on the National Security', which took into account the events of 9/11, the Commerce Department concluded that there was no national security issue with imports of semi-finished steel, and by implication imports of finished steel. To put the issue into perspective, Commerce dropped a footnote using the example of the newest aircraft carrier at the time -- the *USS Ronald Reagan*. 60,000 net tons of finished steel were required for the multi-year construction-- less than one tenth of 1 percent of annual US output. 'Accordingly, DOD could double the U.S. Navy's entire fleet of aircraft carriers, and still not substantially vary the total percentage of U.S. domestic output attributable to national security uses.' Put simply, there is no national security issue with steel.

According to Ambassador Lighthizer, the issue is one of Chinese overcapacity. There are serious issues. But they are the normal economic issues that all communities and nations face from global competition, and for which we already have other trade remedy laws available. This is not National Security, and redefining any meaningful adverse economic effect to any sector or industry from imports as 'national security' invites other nations to do the same.

I would note that at on June 22, 2001, the Bush Administration requested the US International Trade Commission to conduct an investigation of Steel pursuant to Section 201 of the Trade Act of 1974. The ITC issued its decision in December, 2001. The Commission made affirmative determinations in 12 product groups, 3-3 determinations that the President treated as affirmative determinations for 4 product groups, and negative determinations for 17 product groups. The President subsequently imposed import relief for the 16 product groups where affirmative determinations or tie votes occurred. I would note that ITC sent detailed questionnaires on 33 products to domestic producers, foreign producers, US importers, and U.S. purchasers. The injury hearings were conducted on 8 separate days, usually for a minimum of 8 hours, beginning on September 17 -- one week after 9/11 -- and ending on October 5. The Commission then held 3 days of hearings with respect to remedy for products where the Commission had made an affirmative or 3-3 determination. The ITC issued a 3 volume Report with the Determinations of the Commission and the Staff Report on each product. The ITC recognized the complexity of the issue and gave it the time and attention it deserved. Contrast this with the 232 process: on May 24, 2017, Commerce held a hearing on 232 that lasted, maybe, 2 hours. It issued no questionnaires to any interested party.

Rather than request the ITC to conduct another investigation under section 201, the President circumvented the statutory mechanism for determining whether imports are the substantial cause of serious injury based on an informed record and turned instead to Section 232.

## 2. Impact of Antidumping and Countervailing Duty Investigations

To say that the United States has not taken strong action against steel imports is laughable. There are currently 166 AD and CVD Orders on steel mill products and pipe and tube from various countries. 84 of those AD and CVD Orders have been put into place since 2014. Despite complaints by various U.S. steel producers concerning the effectiveness of these Orders, there is

no question that they have done exactly what they were designed to do: they have reduced steel imports. Antidumping orders effectively establish a price floor on imports. The price floor varies with the level of the dumping margin, but it has the effect of raising the price of imports. Countervailing duty orders place a tax on imports in the form of countervailing duties to offset subsidies. That tax is borne by the importer of record.

The impact of the AD and CVD orders can be seen in the import statistics:

- Between 2014-2016, total apparent consumption of steel declined by 16.2 percent -- from 142.5 million tons in 2014 to 119.5 million tons in 2016.
- During this same period, total steel imports declined by 25.5 percent -- from 44 million tons to 33 million tons.
- As a result, imports as a percentage of apparent consumption declined from 31.1 percent in 2014 to 27.6 percent in 2016.

### 3. Industrial Policy and Downstream Industries

If the steel issue is not a national security issue, then what is this about? The answer to that question is that it is about 'industrial policy'. I'm not saying that there is anything wrong with industrial policy per se, - provided it conforms to WTO rules - but that is what the Administration is engaged in with the Section 232.

And the often overlooked point of industrial policy is that there are 'winners' and 'losers'. The broad economic question underlying industrial policy is whether the government is equipped to rationally weigh the benefits to competing interests to improve the overall outcome for the nation as a whole, compared to the outcome from market forces alone. That is a larger question than I want to tackle today. The more narrow question is whether the Administration is even attempting to weigh benefits and costs to different stakeholders, or whether it is simply racing ahead to a largely predetermined outcome that would allow the President to assert that he has delivered on a campaign promise.

If one thing has been abundantly clear from the limited testimony permitted before the Commerce Department on May 24, and from Ambassador Lighthizer's hearings before the Senate Finance Committee and the House Ways and Means Committee, it is that domestic downstream consumers of steel-- from U.S. auto manufacturers, to U.S. equipment and appliance manufacturers, to U.S. tire producers, to U.S. producers of containers-- are opposed to and extremely concerned with further restrictions on imported steel in the guise of Section 232. The reason is simple-- it will raise their costs and reduce their competitiveness. As the American Automotive Policy Council (AAPC) noted in its 232 submission, the price of steel in the United States is already significantly higher than in Asia or Europe, putting U.S. automakers at a significant competitive disadvantage. They conclude that if additional section 232 restrictions are imposed on imported steel:

'Sales of domestically built cars and trucks would fall, U.S. auto exports would shrink, and American auto sector jobs would be lost. In the end, this contraction could actually reduce the

amount of U.S. steel consumed by U.S. automakers, jeopardizing the very industry the remedy was intended to assist.'

The reality is that the U.S. steel industry employs far fewer workers than downstream producers that use steel. According to Dan Pearson of Cato Institute and former Chairman of the US International Trade Commission, steel mills employ 140,000 workers while manufacturers that use steel as an input employ 6.5 million workers. In addition, the economic value added by firms that use steel as an input was \$1.04 trillion in 2015 -- 29 times greater than the steel industry's.

Why is this relevant? For the reasons stated by the auto companies-- the result of steel restrictions will be to increase the costs of downstream producers and make them less competitive in export markets and in the US market. And if that happens, it won't be a result of unfairly traded steel, which is already being dealt with, and it won't be as a result of a comprehensive, detailed study that surveys all of the potential winners and losers in the deal.

There appears to be agreement in this room about one thing: we need new roads, bridges and infrastructure. That would increase demand for U.S. steel. And I agree, but I would point out that neither China nor any other foreign steel producer is responsible for the failure to act boldly with respect to infrastructure.