December 3, 2015

The Honorable Michael B.G. Froman
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Froman:

In accordance with section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and section 135(e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Industry Trade Advisory Committee on Steel on the Trans-Pacific Partnership Agreement, reflecting a consensus advisory opinion on the proposed Agreement.

Sincerely,

C. Davis Nelsen II
Chair
Industry Trade Advisory Committee on Steel (ITAC-12)

The Trans-Pacific Partnership Trade Agreement

Report of the
Industry Trade Advisory Committee on Steel

December 3, 2015

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Industry Trade Advisory Committee on Steel (ITAC-12)

Advisory Committee Report to the President, the Congress and
the United States Trade Representative on the Trans-Pacific Partnership

I. Purpose of the Committee Report

Section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and section 135(e)(1) of the Trade Act of 1974, as amended, requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with a report not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations, and each appropriate policy advisory committee, must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Steel ("ITAC-12") hereby submits the following report on the Trans-Pacific Partnership ("TPP").

II. Executive Summary of Committee Report

As noted above, ITAC-12 must render an advisory opinion as to whether the TPP agreement promotes the economic interests of the United States, achieves the applicable overall and principle negotiating objectives, and provides for equity and reciprocity within the sectoral or functional area represented by the Committee. As described below, the Committee is unable to render an opinion either in support of or in opposition to the TPP.

On the first two questions, the Committee believes that it has had insufficient time to review the text to draw meaningful conclusions. One line of experience in the Committee notes that trade agreements have not generally promoted the economic interests of the United States, and especially its manufacturing sector. Another line acknowledges that, from a very brief review, the TPP appears to address the negotiating objectives that were set out for this Agreement -- although the objectives themselves were not necessarily focused on issues that are most important to the steel industry. However, in light of the short period of time the Committee was given to review an enormous volume of text, and the priority on addressing issues of greater specific concern to the Committee outlined below, the Committee is unable to express an opinion on the more general questions of whether the TPP promotes the economic interests of the United States or achieves its principle negotiating objectives.

On the issues of more specific concern to ITAC-12, the Committee notes initially that the steel industry is in a state of crisis that is rooted, in part, in trade-distorting practices pursued by many other countries. More specifically, as foreign government interventionist policies in the steel sector have fueled massive and growing global overcapacity in steel, we have documented unprecedented surges in steel imports into all aspects of the U.S. market. Moreover, steel trade with TPP countries excluding NAFTA is extremely unbalanced, with imports at 3,000,000 tons and exports at only 128,000 tons in 2014. And TPP will include one country, Vietnam, with a steel industry that is largely owned or controlled by the state. Against that background, we focused our limited time for analysis on how the TPP addresses the long-standing concerns of the steel industry, especially on rules of origin, currency and state-owned enterprises, and whether TPP provides for equity and reciprocity within the steel sector:

- ITAC-12 has long advocated that trade agreements include remedies for currency manipulation. TPP does not include such provisions. The Committee acknowledges that a separate "Joint Declaration of the Macroeconomic Policy Authorities of TPP Counties" is intended by the TPP parties to satisfy the Congressional negotiating objective in TPP on currency. However, the agreement is not enforceable under the trade laws and fails to provide the remedies under the trade laws long advocated by ITAC-12.

- ITAC-12 also has serious concerns regarding the rules of origin. There are significant differences between TPP and NAFTA, particularly for automobiles and automotive parts. Given the importance of the automobile industry to the domestic industry, the new, lower TPP threshold is a serious concern and threat to the health of the industry.

- ITAC-12 has long advocated for disciplines on state-owned, controlled or influenced entities that engage in commercial activities in competition with private firms. ITAC-12 recognizes that TPP includes the first-ever disciplines on a defined class of state-owned enterprises. This is an important first step; nonetheless, the Committee is concerned that the definition of state-owned enterprise is too narrow and that it does not extend to sub-federal entities.

- ITAC-12 has also reviewed several other provisions of TPP, including trade remedies, market access, government procurement, and dispute settlement. The Committee in general was satisfied with the outcomes on these provisions, though some concerns were noted in government procurement.

Based on the forgoing, the Committee is unable to render an opinion on whether the TPP itself will provide for equity and reciprocity in the steel sector. However, this decision is largely because trade in the steel sector does not appear to have been a negotiating priority for the TPP, and, with the exception of the rules of origin section, the Committee does not see the TPP as likely to have a material impact on steel trade or the trade-distorting practices practiced by countries that are not parties to the TPP. Accordingly, ITAC-12 expresses no opinion on the merits of the TPP relative to the steel industry.

III. Brief Description of the Mandate of ITAC-12

The Industry Trade Advisory Committee on Steel is established by the Secretary of Commerce and the United States Trade Representative pursuant to the authority of section 135(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. sec. 2155), as delegated by Executive Order 11846, as amended. In establishing the Committee, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in section 135(c)(2)(B) of the Trade Act. ITAC-12 is established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

ITAC-12 shall perform such functions and duties and prepare such reports as may be required by section 135 of the Trade Act with respect to industry trade advisory committees. ITAC-12 advises the Secretary and the USTR concerning trade matters referred to in section 135(a) (2) of the Trade Act.

ITAC-12 functions solely as an advisory committee in accordance with the provisions of the Federal Advisory Committee Act, with the exceptions set forth in the Trade Act. In particular, ITAC-12 provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting its sector; and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of ITAC-12

The TPP has been part of the ITAC-12 agenda since the United States joined the negotiations in 2008. ITAC-12 members have been briefed on the status of negotiations and on progress on individual chapters at regular meetings, at special sessions arranged in Washington for all cleared advisors, and in individual briefings arranged for ITAC-12 members.

In the course of those meetings and briefings, ITAC-12 members identified several principal areas of focus and concern for US negotiators. Chief among these concerns has been that any trade agreement should include enforceable remedies when nations manipulate currencies to gain a competitive trade advantage. With regards to rules of origin, ITAC-12 members have expressed the view that the rules should be consistent with and no less stringent than the rules of origin in the North American Free Trade Agreement. ITAC-12 members identified the inclusion of enforceable disciplines to regulate the conduct of state owned or controlled enterprises. ITAC-12 members also encouraged negotiators to pursue strong trade remedy provisions that did not weaken US AD/CVD laws, and to seek the removal of tariff and non-tariff barriers to trade in TPP countries for steel, steel products and steel-containing goods.

ITAC-12 has taken the further step of formally adopting a position statement on negotiating priorities for trade agreements. On July 21, 2015, ITAC-12 adopted its most recent version of this position paper. With respect to trade agreements, ITAC-12 set out the following goals:

1. **Promote US interests**-US trade policy should open up foreign markets to the export of US products and thereby support American jobs.

    a. The Administration should strongly implement the Buy America and Buy American provisions on projects with government-sponsored purchases. Additionally, the Buy American provisions for Defense procurement should be enforced.

    b. Non-tariff barriers (NTBs) that obstruct access to foreign markets by US producers should be eliminated.

    c. The disparity in the treatment of direct and indirect taxes under WTO rules with regard to border adjustability, which is one of the more egregious distortions facing US producers in both US and export markets, must be eliminated.

2. **Improve trade disciplines**-The current international trade rules for initiating trade actions against and prosecuting the unfair trade activities of foreign producers must be preserved. Proposed changes to the rules must improve, and not weaken, the disciplines on unfair trade practices and the right to initiate trade actions against them.

3. **Eliminate subsidies**-US trade policy should require that agreements include a review process to eliminate any direct or indirect government subsidies to foreign manufacturers.

4. **Prohibit currency manipulation**-US trade policy should recognize that currency undervaluation is a subsidy. Any trade agreement should be able to counter fundamental currency misalignments due to government currency interventions or manipulation.

5. **State-owned enterprises**-The rise of state-owned or sponsored enterprises is a challenge to the rules-based trading system. New rules are needed to ensure competitive neutrality and transparency with expedited trade remedies for the industries that compete against state-owned enterprises (SOEs) and state--supported enterprises (SSEs). Price undercutting that results in injury to a domestic industry needs to be addressed.

6. **Reduce raw materials export restrictions**- US trade agreements should eliminate raw material export restrictions. Negotiating allowable restrictions needs to be stopped.

7. **Fraud**- Agreements must be free of language that facilitates customs and trade law fraud, circumvention and evasion (such as changes to rules of origin to avoid legally imposed duties).

V. Advisory Committee Opinion on Agreement

General Comments -- The members of ITAC-12 take their responsibilities to review trade agreements very seriously. Each member of ITAC-12 has been subjected to a rigorous security clearance and vetting process in order to serve. We have been briefed on our obligations to protect classified and sensitive information, and have observed all restrictions and limits placed upon us with respect information disclosed to us in order to fulfill our statutory obligations. We also appreciate the willingness of USTR and DOC staff to hold briefings for Committee members at our regularly scheduled meetings and on other occasions when requested. However, it must also be noted that access to actual agreement text has been extremely limited, making it very difficult for the Committee to fulfill the role that Congress originally envisaged for trade advisory committees generally.

In the case of TPP, it is not possible for the Committee to do a thorough review within the statutory 30-day deadline and render a fully informed advisory opinion as to whether the Agreement “promotes the economic interests of the United States;” or if it “provides for equity and reciprocity within the sectoral or functional area” represented by ITAC-12. This is due to the scope and scale of the agreement, encompassing 12 countries and upwards of 5,600 pages, including numerous side agreements, that have only been available to us since the Presidential notification of intent to sign on November 5, 2015.

This point was also highlighted in a May 2015 letter from the ITAC Chairs to Ambassador Froman, and Secretary Pritzker, which was answered but never resolved. Ultimately, if the premise of our charter is to act in an “Advisory” capacity, that means giving advice, offering opinions and/or recommendations to guide negotiations and action. In this and earlier instances, we have not been permitted the opportunity to “Advise,” and have been simply asked to “Consent.”

The members of ITAC-12 believe that either the consultation process must be improved, or that the roles and purposes of the trade advisory committees should be reexamined. Recognizing that ITACs are composed of volunteers who are largely non-expert in trade law, and also largely non-resident in Washington, D.C., more meaningful and early consultations, including access to negotiating text along with explanatory materials, is needed. Unless this occurs, ITACs as currently constituted and operated are not in a position to render meaningful advice to the government. Without an improved process and better access, the Congress and Executive branch need to seriously reexamine the purposes for and expectations of the trade advisory committees.

Current Steel Industry Conditions -- Before turning to the TPP itself, it is important to place the issue of trade in context for our sector. ITAC-12’s consideration of TPP takes place at a moment of crisis for the domestic steel industry, a crisis that is rooted in trade-distorting practices pursued by many countries. The steel industry in the United States is currently suffering from a dramatic surge in imports from a number of countries around the world, many of which are dumped and subsidized. Total steel imports (finished and semi-finished steel products) increased by a dramatic 38 percent in 2014, reaching a volume almost equal to 2006 levels, when steel demand reached peak levels.

The crisis is fueled by massive steel overcapacity, much of it state owned, controlled or directed. Based on OECD data and World Steel Association data, the American Iron and Steel Institute (AISI) estimates that there were at least 638 million net tons of steel overcapacity in the world in 2014. Though it is not a TPP country, China is the largest source of global overcapacity with between 371-468 million net tons of overcapacity -- far more than half of the world’s overcapacity, and at least three times the capacity of the entire American steel industry. China's recent surge in steel exports are placing pressure on both TPP and non-TPP countries in the region and throughout the world. China exported a record 94 million MT of steel products in 2014, an increase of 52 percent from 2013. That trend continues into 2015 with Chinese steel exports rising to extraordinary levels in the first half of the year, exporting 52.6 million MT for that period, well on track to exceed 2014's record levels and surpass 100 million MT for 2015.

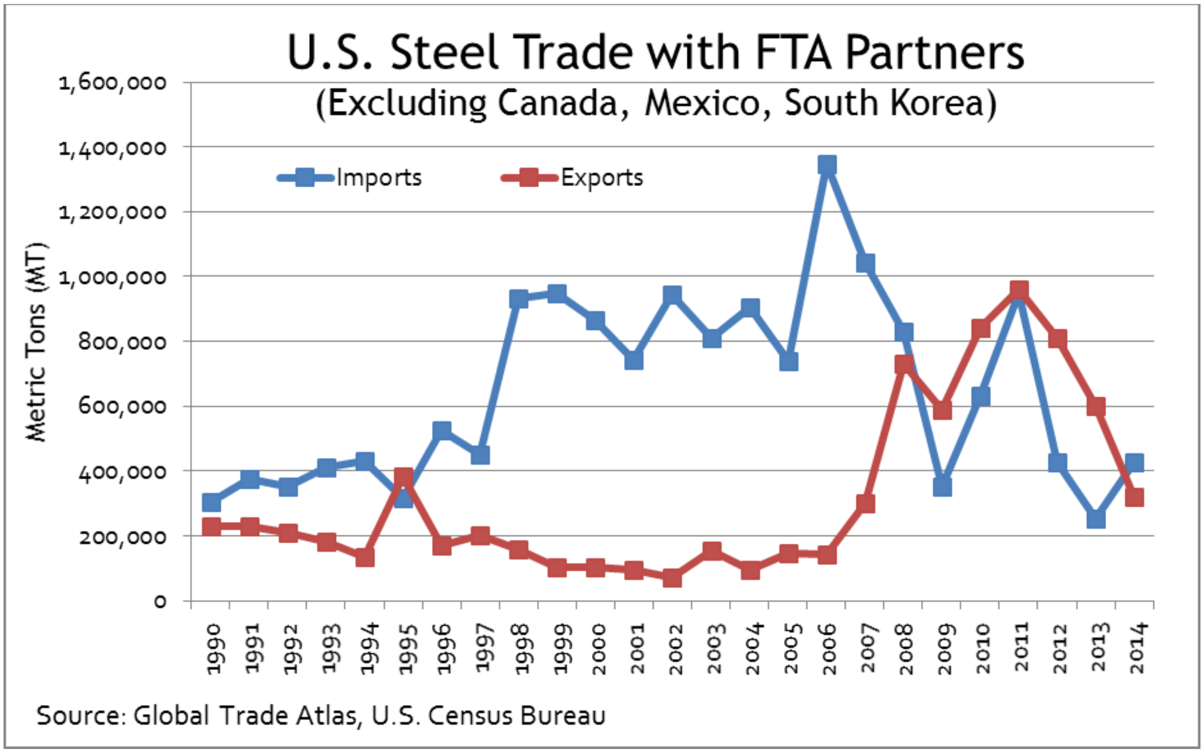
This crisis is not limited to steel mills; it impacts every segment of the industry. For example, along with mill steel, imports of fabricated steel for major industrial, energy and commercial projects throughout the country – including, incredibly, the reconstruction of the World Trade Center site – are also increasing, adversely impacting the domestic fabrication industry that is still recovering from the devastating recession in the construction industry. Announced job losses for the steelmakers, pipe mill and iron ore mining sectors of the industry alone are already over 12,000 jobs. To put this in context, in 2014 AISI estimated total direct steel industry employment at 150,000 people.

In terms of finished steel products, imports increased by 36 percent in 2014 and AISI estimates that these imports captured a record 28 percent of our steel market. This is highest annual average import market share calculated by AISI, topping the previous peak import market share of 26 percent for calendar years 1998 and 2006. This surge in imports is reminiscent of earlier surges in imports in the late 1990s, which had a devastating impact on the domestic industry, leading to a number of bankruptcies, mill closures and job losses**.** Furthermore, the high level of imports continues to take increased market share in 2015. In the first nine months of 2015, finished steel imports have increased by an additional 3 percent over the same period in 2014, and have now captured 30 percent of the steel market year-to-date.

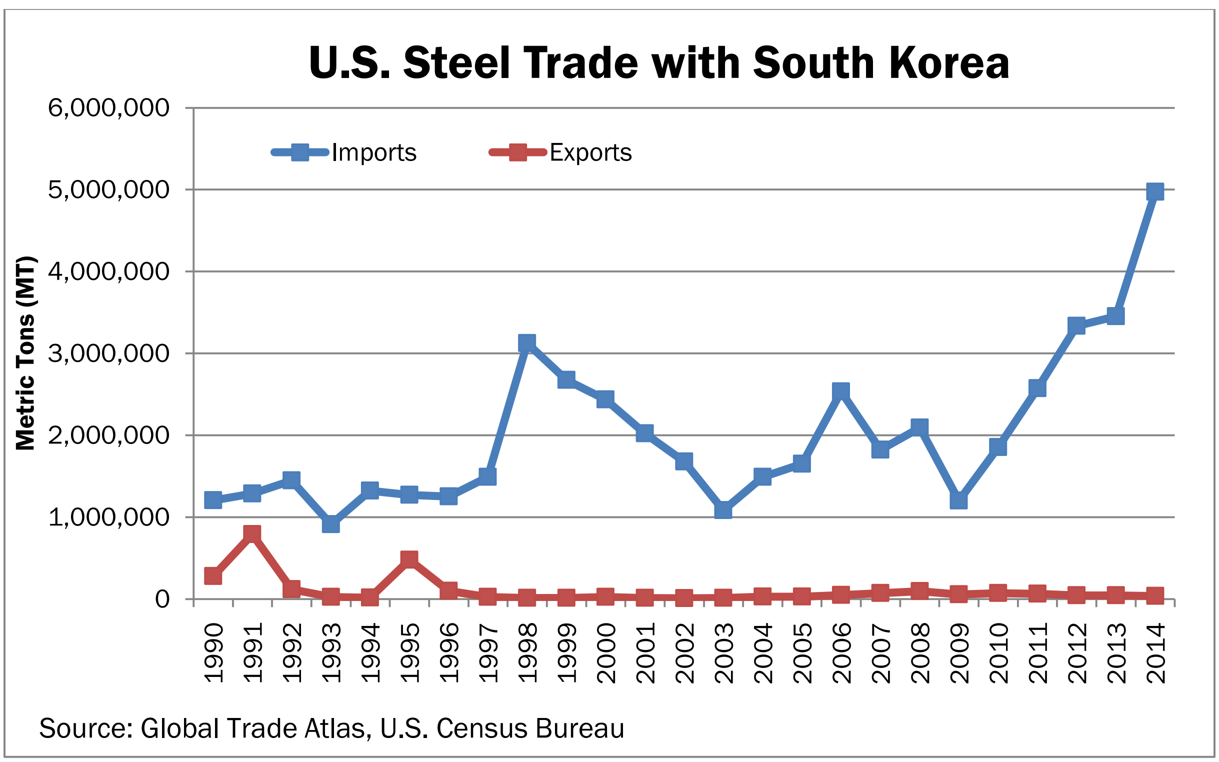
U.S. exports of steel products, by contrast, have been at a much lower level and relatively stable compared to import trends. Exports have in fact dropped somewhat in recent years, declining by 5 percent in 2014 and 7 percent in 2013. The vast majority of U.S. exports of steel products are destined for our NAFTA trading partners, Canada and Mexico. The result of these import and export trends has been a persistent trade deficit in steel in the United States. In fact, the United States is currently running a trade deficit in steel products with every region of the world except NAFTA.

As a result of the large increase in import market share in late 2014 and 2015, domestic steel shipments have declined by 10 percent in 2015 (year-to-date through August), and capacity utilization in the industry has averaged just 72.3 percent for the year through October 24, 2015, with the most recent weekly data showing that current utilization rates for the industry have dropped below 70 percent for the second time this year.

It is instructive to examine steel industry's experience with Korea since the implementation of the U.S.-Korea Free Trade Agreement. With the exception of Korea, steel trade with other current U.S. free trade agreement partners (excluding NAFTA) is relatively limited, with annual total steel trade for those FTA countries in the range of one million to two million metric tons per year. As noted in the chart below, U.S. exports of steel products increased for several years before falling back significantly in the most recent period.

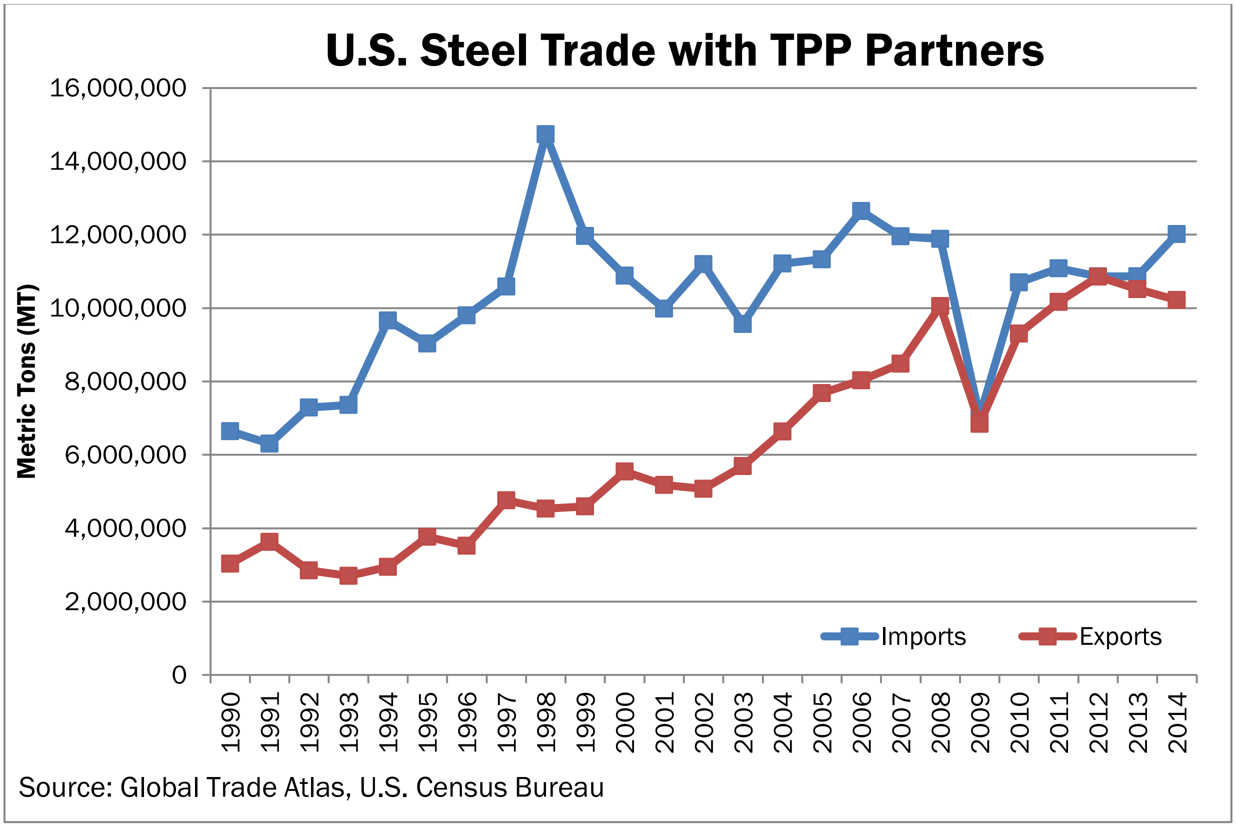


Trade in steel with Korea follows a very different trend. Korea is regularly one of the largest exporters of steel to the United States. Furthermore, its exports to the U.S. have dramatically surged in recent years, while U.S. exports of steel to Korea remain at very modest levels.



Looking forward to the TPP itself, the vast bulk of US steel trade with TPP nations is with Japan and NAFTA. Positive trade balances in NAFTA and a few other TPP countries are more than offset by the very large negative trade balance with Japan, along with smaller but significant negative trade balances with Australia and New Zealand. Detailed nation-by-nation trade balance data for 2014 appears in the table below. A chart showing the total steel trade balance with TPP nations from 1990 through 2014 follows. The bottom line is that, with the exception of the NAFTA countries, the US does not export much steel to TPP countries and is running a significant steel trade deficit with those non-NAFTA countries, led by the deficit with Japan. In 2014, the US exported only 128,000 tons to the region (excluding NAFTA) while importing slightly over three million tons from TPP nations (excluding NAFTA). This places the 2014 non-NAFTA steel trade deficit with the TPP nations at over 2.8 million tons.

	2014		
Metric Tons (MT)	**U.S. Exports**	**U.S. Imports**	**Balance**
Australia	17,509	259,448	-241,939
Brunei	68	0	68
Canada	6,169,305	5,574,851	594,454
Chile	10,823	503	10,320
Japan	19,596	2,434,582	-2,414,986
Malaysia	7,511	7,971	-460
Mexico	3,923,134	3,436,063	487,071
New Zealand	1,867	107,583	-105,716
Peru	38,727	48,986	-10,259
Singapore	21,805	6,140	15,665
Vietnam	10,069	139,358	-129,289
Total	**10,220,414**	**12,015,485**	**-1,795,071**



While the U.S. steel industry has seen some market access benefits from past trade agreements, the current trade situation for the industry is dire. The industry is once again suffering from high levels of dumped and subsidized imports that are taking significant market share from domestic producers and are resulting in reduced domestic production and low capacity utilization. Past trade agreements implemented under the trade authorities procedures have for the most part failed to address the critical policy issues underlying global steel trade trends, namely foreign government interventionist policies in the steel sector that have fueled massive and growing global overcapacity in steel. This experience necessarily raises ITAC-12's level of scrutiny with respect to the important negotiating objectives we have identified for TPP.

ITAC-12 Comments on TPP---The Committee offers comments on the following specific TPP chapters or issues.

1. **Currency**

The problem of currency manipulation is one of the most pressing issues facing the United States in the area of international economic policy. ITAC-12 has a long history of urging that trade agreements include provisions on currency manipulation. ITAC-12 cited the issue as a major deficiency in its April 27, 2007, report on the United States-Korea Free Trade Agreement, and in its addendum to the report dated February 17, 2011. ITAC-12 reiterated its position in its July 21, 2015, position paper on trade agreement negotiating objectives. Several potential parties to the TPP, including Japan, Malaysia, and Singapore, have been accused in the past of manipulating their currencies with the aim of gaining a competitive advantage in international trade. The TPP offered an ideal opportunity to address and resolve this issue in an effective manner. However, the agreement does not do so.

The TPP itself contains no provisions whatsoever regarding currency manipulation, notwithstanding the fact that the Trade Promotion Authority law contains principal negotiating objectives for both “Currency” and “Foreign Currency Manipulation” (Bipartisan Congressional Trade Priorities and Accountability Act of 2015, 19 USC 4202(b)(11 & 12)). Section 4202(b)(12) states that the negotiating objective “with respect to unfair currency practices is to seek to establish accountability through enforceable rules, transparency, reporting, monitoring, cooperative mechanisms, or other means to address exchange rate manipulation involving protracted large scale intervention in one direction in the exchange markets and a persistently under-valued foreign exchange rate to gain an unfair competitive advantage in trade over other parties to a trade agreement . . .”

Rather than negotiate an enforceable provision in TPP itself, the “macroeconomic authorities” of the TPP countries have issued a “Joint Declaration” regarding exchange rate policy. This declaration confirms that each country is bound, under the Articles of Agreement of the International Monetary Fund, to avoid manipulating currency values as a means of obtaining an “unfair competitive advantage” in international trade, pre-existing obligation of the parties to TPP. The Joint Declaration states that the monetary authorities in each country will “avoid persistent exchange rate misalignments,” refrain from competitive devaluation,” and “not target its country’s ex-change rate for competitive purposes.”

Part II of the Declaration also requires each authority to disclose a variety of currency-related data, and Part III of the Declaration establishes a “Group of TPP Macroeconomic Officials,” which will meet at least once a year to “consider the macroeconomic and exchange rate policies of each TPP country.”

However, the Declaration does not define what constitutes such an impermissible manipulation of exchange rates. There is no provision providing for the consideration of complaints by one TPP party that the monetary policies of another are inconsistent with the Declaration, nor for any investigation or review by TPP parties of such complaints. In sum, the commitments of the Declaration, such as they are, are unenforceable. While President Obama himself has stated that the Declaration "raises the bar" on currency policies, he also admits that the Declaration does not create any enforceable rights on the part of the United States.

While the Declaration's expanded transparency provisions are a positive development, in the opinion of ITAC 12, the absence of an enforceable currency manipulation provision, or even the adoption of a definition of currency manipulation and the creation of a mechanism for review by the TPP of parties' exchange rate policies, represents a serious flaw in the agreement. This is a flaw that should be remedied by Congressional action in TPP implementing legislation, or stand-alone legislation to confirm that currency manipulation is actionable under US trade remedy laws.

2. State-Owned Enterprises

ITAC-12 commends the TPP's important contribution of a chapter specifically designed to govern the conduct of state-owned enterprises ("SOEs") in the global marketplace. We recognize that this marks the first time that a trade agreements includes provisions governing the conduct of SOEs. The chapter's overarching recognition of the commercial distortions caused by governments' preferential treatment of SOEs is particularly important to ITAC-12's members, who have been harmed by competition with foreign state-owned steel producers.

The rules in this chapter make a number of important advances that should help to remedy certain harmful distortions, by:

- Requiring SOEs to operate in accordance with commercial considerations;
- Applying most-favored nation and national treatment principles to the commercial operations of SOEs;
- Limiting the provision of non-commercial assistance to SOEs that causes adverse effects to other Parties;
- Applying these rules not only to SOEs operating in their home countries, but also to covered SOE investments in the territory of other Parties and to SOEs operating in the territory of non-Parties; and
- Creating transparency requirements, which could be an important means of identifying and addressing problematic SOE conduct.

ITAC-12 is nonetheless concerned that certain aspects of the chapter could render these important disciplines ineffective in practice.

First, the chapter defines SOEs narrowly, as enterprises "principally engaged in commercial activities" and in which a government (i) directly owns more than 50 percent of the share capital; (ii) controls, through ownership interests, more than 50 percent of the voting rights; or (iii) holds the power to appoint a majority of the members of the board of directors. ITAC-12 appreciates the need for clear definitions but nonetheless believes that the limitation to majority ownership will allow governments to easily avoid the chapter's disciplines, while maintaining effective ownership and control over commercial enterprises. ITAC-12 is also concerned that other forms of control, such as loans provided to an entity by a government or government-controlled entity, could also lead to effective state control of the enterprise even if the loan is provided on commercial terms.

Second, Annex 17-D to the chapter provides expansive exemptions from rules governing commercial considerations, non-discrimination, and non-commercial assistance for sub-central SOEs for all Parties. There does not appear to be any clear economic logic behind exempting SOEs from these critical disciplines simply because they are not owned by the central government. ITAC-12 believes that the monetary thresholds under Annex 17-A adequately limit application of the rules to SOEs of a certain commercial scope. The exemptions for sub-central SOEs thus become a loophole that threatens the effectiveness of the entire chapter. We urge the U.S. government to limit these exemptions to the greatest extent possible in further negotiations pursuant to Annex 17-C.

Third, the chapter's transparency rules appear to provide Parties with unlimited discretion in claiming confidential treatment for any information provided pursuant to another Party's request. These rules should aim not only to increase transparency among governments, but also to increase transparency among the general public and the industries that must compete with SOEs in global markets. ITAC-12 understands the need to respect confidentiality of legitimate business proprietary and national security information, but the rules do not appear to allow Parties to request this type of sensitive information. Any request for confidential treatment should be justified by a clear need to protect proprietary information or information related to the national security of the Party responding to the request.

Fourth, all countries have claimed exceptions (or non-conforming measures (NCMs)) to these new disciplines on SOEs. The exceptions claimed by Malaysia and Vietnam are particularly broad, and serve to limit the usefulness of the SOE chapter.

While ITAC-12 sees Chapter 17 as a significant improvement over prior U.S. trade agreements, the Committee believes additional steps are necessary to ensure that its disciplines are effective in practice. In addition, we urge the United States to pursue even more aggressive disciplines on SOEs in future negotiations, including the Trade in Services Agreement, the US-EU Transatlantic Trade and Investment Partnership (TTIP), and the U.S.-China Bilateral Investment Treaty (BIT). Extension of the scope to sub-federal entities, tightening of the definition of SOEs, and limitations on the ability of Parties to claim confidential treatment of information should be pursued.

3. Rules of Origin

General---The rules of origin under TPP follow the basic outline of prior U.S. FTAs. Annex 3-D to TPP lays out the product-specific rules ("PSRs") covering products other than textiles and certain automotive goods. In general, these rules operate in ways that are common to many other U.S. FTAs, by requiring: (1) that the product under consideration have a different, specified tariff classification than any of the non-originating components or materials used in its production (i.e., undergo a "tariff-shift"), and/or (2) that processing in a TPP country have added a certain level of "regional value content" ("RVC") to the product.

With respect to the specific PSRs affecting primary iron and steel products, TPP largely tracks the rules laid out in agreements such as NAFTA and the U.S.-Korea FTA. Differences exist, however, between TPP and these agreements, the most important of which are described below.

Chapter 72 - With regard to iron and steel products classifiable in Chapter 72 of the Harmonized Tariff System ("HTS"), the rules of origin are overwhelmingly based on tariff-shifts. This is similar to other U.S. FTAs, such as NAFTA and the U.S.-Korea FTA.

In general, the TPP rules for inputs (alloys, scrap, pig iron, DRI) and semi-finished goods like slabs, billets and blooms are slightly less lenient than those of prior trade agreements. The rules also track prior agreements by not permitting cold-rolling, coating, slitting, cold drawing, or cutting-to-length to confer origin. Nor does the drawing of wire confer originating status under TPP.

Chapter 73 - The differences between the TPP and prior agreements are greater with regard to the rules on regarding the originating status of articles made of iron and steel, normally classified in Chapter 73 of the HTS. TPP differs from prior agreements, primarily by providing the option of showing origin through RVC for a larger number of products. While the U.S.-Korea FTA provided, for example, six rules under Chapter 73 that included optional RVC alternatives, there are 18 PSRs for Chapter 73 of TPP that include such RVC alternatives.

RVC rules do not apply to pipe and tube pipe fittings, railway materials, and sheet piling, which remain subject solely to tariff–shift rules that are identical to those of NAFTA and the U.S.-Korea FTA. Likewise, barbed wire, nails, tacks, pins, staples, bolts, screws, and needles remain subject solely to tariff shift rules and, in the case of barbed wire, nails, tacks/pins, and staples, these rule are stricter than the rules in place other under U.S. agreements.

However, RVC rules apply under TPP to items such as bridges/bridge sections, towers, lattice masts, columns, pillars, beams, girders, certain fencing, chain, anchors, grapnels, leaf springs, stoves/grills, radiators, cookware, sinks and sanitary items. These rules permit many of these goods to be considered originating if as little as 30% of its overall value is attributable to TPP-country materials and processing, when measured by the "build-up" methodology. While some of these products, such as chain, are subject to RVC rules in agreements such as the U.S.-Korea, FTA, the application of RVC in determining origin for products like bridges/bridge sections, towers, lattice masts, columns, pillars, beams, and girders appears to be new to TPP.

These new rules may not have a significant impact with respect to imports into the United States. U.S. standard tariff rates are already at zero on most Chapter 73 products, including bridges/bridge sections, towers, lattice masts, columns, pillars, beams, and girders. Thus, it is not clear that the expanded use of RVCs in TPP will lead to increased imports of these products (containing non-TPP steel) into the United States. This is an example of an area where more time and the ability to consult more broadly might alleviate the Committee's concerns.

Automotive---Finally, while ITAC-12 recognizes that other ITACs have considerable expertise and interest in the automotive rules of origin, the automotive market is enormously important to the health of the domestic steel industry. AISI estimates that total 2014 steel shipments by domestic mills, service centers and processors to the auto industry at 25.5 million tons. This represents 26% of all 2014 domestic shipments.

ITAC-12 notes that the automotive product-specific rules are significantly weaker in TPP than in NAFTA. Whereas an automotive good generally required more than 62.5% regional value content for automobiles (60% for parts) in order to be considered NAFTA origin, the TPP rules require only 45% regional value content using the net cost method. Further, many steel-intensive parts such as body stampings require only a 40% RVC to be deemed originating in TPP, other parts such as mufflers are even less. So, for example, a muffler or radiator with 65% non-TPP content would be considered originating in TPP and would contributes towards meeting the 45% RVC for the vehicle.

In the course of briefings, USTR staff has informed ITAC-12 members that methodology differences between NAFTA and TPP make a direct comparison between the two rules of origin difficult. NAFTA using a tracing list methodology, and the actual RVC of a NAFTA vehicle calculated using the net cost methodology would be lower than 62.5%, perhaps as low in the mid 50% range. Nonetheless, the fact remains that the TPP rule is considerably less stringent than the NAFTA rule and includes significant uncertainties.

ITAC-12 members are also uncertain about the potential impact of Appendix 1 to Annex 3-D of Chapter 3. The Appendix establishes an alternate method for establishing TPP origination for many vehicle parts undergoing any one of a number listed, but apparently undefined, operations or processes. It is not known how this alternative system differs from existing rules regarding a tariff classification change following a substantial transformation, and how it might ultimately result in more non-TPP content becoming deemed as originating in a TPP country. While ITAC-12 continues to have concerns about the basis and need for the alternative methodology, at a minimum, ITAC-12 strongly recommends that the operations listed in Table B of Appendix 1 be defined in a Statement of Administrative Action.

ITAC-12 is very concerned that these rules are likely to lead to greater use of non-U.S. and non-TPP steel in vehicles and automotive goods, which is a negative result for both U.S. steel companies and U.S. manufacturing in general. The TPP should not confer an advantage to producers whose primary supply chain is located outside the TPP region. ITAC-12 believes that the lower TPP RVC standard will diminish the benefits currently accruing to NAFTA steel producers, their integrated supply chains, and the NAFTA economy.

4. Trade Remedies

Chapter Six explicitly does not alter any of the rights or obligations of member countries' antidumping and countervailing duty laws. It is important that the agreement does not weaken any existing U.S. AD/CVD laws, which need to remain strong to allow for maximum protection against dumped and subsidized steel imports. While not obligating other countries to change their AD/CVD laws, the TPP does include language recognizing the importance of key procedural and due process protections, including adequate notifications, maintenance of public files, and disclosure of key facts on which decisions were based. These assurances can only help U.S. steel producers participating in foreign AD/CVD proceedings.

Chapter Six also created transitional safeguard measures allowing countries to suspend lowering customs duty called for by the Agreement or to increase the duty back to the rate in effect before the Agreement. This safeguard is in addition to, and does not affect, GATT safeguards under Article XIX of GATT 1994. TPP safeguards cannot last longer than three years, will only remain in effect until the reduction or elimination of the tariffs required by the Agreement, and must be accompanied by concessions of equivalent trade effect in the amount of the additional expected duties resulting from the safeguard measure. Because U.S. tariffs on steel are already at zero, the safeguard would not assist U.S. companies in the event of a surge of imports from TPP countries.

In sum, the overall effect of Chapter Six of the Agreement on trade remedy laws is neutral, which is viewed as positive for U.S. steel producers.

5. Market Access

Overview---TPP attempts to provide greater market access by reducing or eliminating tariff and non-tariff barriers. Given the price sensitivity of certain steel products, tariffs can be significant impediments to gaining market access for U.S. exports of steel products. Furthermore, non-tariff barriers, such as onerous import licensing systems or voluntary export restraints on raw materials, significantly affect market access for U.S. steel producers. While the Agreement reduces some tariffs and barriers to trade, it is unclear whether it will significantly increase market access for U.S. steel exports.

Effects on Tariffs---Elimination of Tariffs: This chapter of the Agreement provides for elimination and reduction of tariffs between the Parties. The United States already has trade agreements with six of the 11 Parties, which already eliminated duties on imports of U.S. steel products. Additionally, Brunei has no base duties on the vast majority of steel products. Although Japan and New Zealand will eliminate the relatively low base duty rates on steel products when the Agreement goes into force, the Agreement expressly permit Malaysia and Vietnam to maintain tariffs on most steel products for up to 11 years.

Effects on Non-Tariff Barriers---Export Taxes: In addition to elimination of tariffs, this chapter of the Agreement also prohibits non-tariff barriers. Specifically, Parties are prohibited from maintaining any restrictions on importation or exportation. This includes no export and import price requirements (other than in AD/CVD proceedings), import licensing conditioned on the fulfilment of a performance requirement, or voluntary export restraints. It also prohibits export duties, taxes or other charges, with the exception of certain products from Malaysia and Vietnam.

The Agreement allows Malaysia to keep its 10% export duty on steel scrap. Vietnam may maintain export taxes on steel scrap ranging between 15% to 17% for up to 15 years, but it must eliminate these export taxes in year 16. Vietnam also has a 40% export tax on iron ore. Vietnam is required to reduce this export tax to 20% by year 6, through annual reductions of about 3.33%. From year 7 to year 15, Vietnam may keep its export tax at 20%. In year 16, it is required to eliminate this export tax.

Conclusion---While the Agreement eliminates some non-tariff barriers and facilitates greater transparency and communication between the Parties, the Agreement is unlikely to provide significant new market access for exports of U.S. steel. As noted above, despite the existence of free trade agreements with a number of TPP parties, the United States the 2014 non-NAFTA steel trade deficit with the TPP nations was over 2.8 million tons. The ratio of non-NAFTA imports to exports is over 23:1, with only 128,000 tons exported to the region.

6. Government Procurement

One of the primary negotiating objectives adopted by ITAC-12 is to protect and promote U.S. interests through the strong and consistent application of Buy America and Buy American provisions that have been an integral part of domestic government procurement practices for decades. These provisions are especially important to the use of domestically produced and fabricated steel. The TPP's government procurement chapter (Chapter 15), is consistent with prior free trade agreements and includes a core commitment on national treatment and most-favored-nation treatment. This chapter requires that procurement is fair and transparent, and that procurement opportunities are communicated clearly and in a timely manner. In addition, Chapter 15 provides for flexible and non-discriminatory technical specifications that focus on performance and functional requirements, are based on available international standards, and do not create unnecessary barriers to trade. ITAC-12 believes that, with proper implementation, these commitments should help to ensure that U.S. exporters are able to fully and fairly compete for TPP procurement opportunities, and that U.S. companies and workers are able to benefit from this agreement.

ITAC-12 supports the TPP's position on "Buy America" requirements relating to iron and steel, and its exclusion of certain procurement from coverage. Specifically, similar to prior agreements, the United States continues to exclude from coverage the Buy America requirements attached to federal funds for state and local mass transit, highway, and water projects; small business and other set-asides; procurement of transportation services; and other programs. Furthermore, the TPP states that the United States makes no commitments to cover state or local government procurement at this time. ITAC-12 believes that the TPP should not cover procurement by U.S. state and local governments. FTA's that increasingly work to globalize the government procurement market may have the unintended consequence of curbing the U.S. government's ability to use discretionary fiscal policy as a way to manage the overall economy. Strong Buy America programs are vital to the health of the domestic steel industry, and ITAC-12 commends the TPP for ensuring that these important programs were not weakened in the agreement.

ITAC-12 understands that under the TPP, Canada will receive new market access to seven federally-owned power and utility entities in the United States, the largest being the Tennessee Valley Authority. However, it is unclear why these concessions were made and what concessions the United States received from Canada in return. It is critical that covered government procurement under the TPP is firmly rooted in the principle of reciprocity. To this end, the United States should continue to exclude from coverage state and local government procurement unless and until other TPP Parties, including Canada, provide the United States with reciprocal coverage. It seems likely that if the current TPP Agreement is ratified, this section of the government procurement chapter will add yet another wrinkle to the already complicated landscape surrounding government procurement between the United States and Canada.

Furthermore, it is imperative that policies and procedures are in place to ensure that the commitments set forth in the agreement are implemented in practice. As the TPP recognizes, many governments in the Asia-Pacific region and elsewhere have formal policies as well as informal barriers, such as a lack of transparency, predictability, and fairness in tender procedures, and uncertain, variable rules, which place U.S. and other bidders at a competitive disadvantage. The TPP must ensure that all TPP Parties are held to the same high standard of transparency in the procurement process if this agreement is to truly level the playing field for U.S. businesses and workers.

Finally, ITAC-12 is aware that the United States Trade Representative has the authority, under the Trade Agreements Act of 1979 (TAA) and Executive Order 12260, to grant waivers with respect to countries that become parties to international agreements if those countries provide "appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products." As noted in Section V of this report, steel trade with TPP countries excluding NAFTA is very limited and extremely unbalanced, with exports of approximately 128K tons and imports of over 3 million tons. The trade imbalance with non-NAFTA TPP countries is enormous, so even if the U.S. gets access to TPP government procurement markets, the domestic steel industry does not anticipate it will result in a significant amount of steel exports from the U.S.. Therefore TPP and future trade agreements should not erode or modify existing Buy America provisions."

7. Dispute Settlement

ITAC-12 believes that dispute resolution provisions of the TPP at Chapter 28 are likely to promote the economic interests of the United States by providing an effective, timely and transparent dispute settlement mechanism.

The dispute settlement mechanism of the TPP agreement provides for the resolution of disputes that arise between sovereign states (*i.e.*, governments or TPP Parties). The TPP enables Parties to have recourse to an independent tribunal that has the ability to determine whether a Party has failed to meet its obligations under the TPP agreement. This mechanism also allows for a suspension of benefits if a Party fails to come into compliance with the results of the proceedings.

The Dispute Settlement chapter applies to a full range of issues, including market access to labor, environment, services trade, cross-border data flows, state-owned enterprises ("SOEs"), and intellectual property rights. Among the features of the TPP's dispute resolution provisions are:

- Transparency requirements that ensure that submissions are made publicly available, hearings are open to the public, written submissions are made public, final decisions by panels are made publicly available, and non-governmental entities have the right to request making written submissions to panels during disputes;

- Specified timeframes for consultations between the disputing Parties, selection of arbitrators, presentation of the arbitrators' initial report to the disputing Parties, presentation of a final report to the Parties, and public release of the final report;

- Dispute settlement panels composed of three arbitrators who are objective international trade and subject-matter experts;

- Requirement that panelists adhere to a code of conduct to which the Parties agree, which ensures the integrity of the proceeding;

- Use of trade retaliation (*i.e.*, suspension of benefits or payment of a monetary assessment) if a losing Party fails to fix the problem determined by the panel concerning the Party's failure to abide by the agreement; and

- Inability of a Party to provide for a private right of action under its domestic law, against any other Party, for failure to carry out obligations under the TPP agreement.

ITAC-12 emphasizes the ability of the dispute resolution provisions to create strong and enforceable rules over SOEs and state-supported enterprises (SSEs), in particular. SOEs and SSEs may not operate on market principles and therefore have the potential to create market distortions and carry out anti-competitive behavior. Thus, the ability for a non-governmental entity to make written submissions to panels is a commendable provision of the Dispute Settlement chapter that should be encouraged and asserted in practice. Significantly, this provision has the potential to enable U.S. steel companies to engage in a dispute and actively oppose the significant and unfair disadvantages presented by SOE and SSE competitors.

8. Closing and ITAC-12 Opinion on TPP

In closing, based on our concerns regarding rules of origin, currency, state-owned enterprises as well as constraints on our ability to comprehensively review the agreement within the thirty day statutory deadline, the Committee is unable to render an opinion on whether the TPP itself will provide for equity and reciprocity in the steel sector. However, this decision is largely because trade in the steel sector does not appear to have been a negotiating priority for the TPP, and, with the exception of the rules of origin section, the Committee does not see the TPP as likely to have a material impact on steel trade or the trade-distorting practices practiced by countries that are not parties to the TPP. Accordingly, ITAC-12 expresses no opinion on the merits of the TPP relative to the steel industry.

VI. Membership of Committee

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Mr. C. Davis Nelsen II
Chairman and Chief Executive Officer
Nelsen Steel Company, L.P.

Primary Vice-Chairman
Mr. Thomas J. Gibson
President and Chief Executive Officer
American Iron and Steel Institute
Council of U.S. Producers

Secondary Vice-Chairman
Mr. David Zalesne
President
Owen Steel Company, Inc.

Mr. Philip K. Bell
President
Steel Manufacturers Association

Mr. Dana A. Beyeler
Sr. VP – Defense Engagement
Ellwood Group, Inc.

Mr. Gerald G. Call
Chief Executive Officer
American Foundry Society

Mr. Daniel G. Hennessy
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Mr. William M. Hickey, Jr.
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Mr. Marcus J. Lyons III
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Mr. Patrick J. McFadden
General Manager, Public Affairs
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Mr. Billy D. Milligan
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Mr. Bradford D. Muller
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Mr. Michael A. Salamon
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Mr. Serge G. Vinograd
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