UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS

David McCall
International President

March 1, 2024

<u>Via Email</u>
U.S. Senate
Washington, D.C. 20510

RE: United Steelworkers urges your opposition to the proposed merger of United States Steel and Nippon Steel Corporation.

Dear Senator:

On behalf of the United Steelworkers union (USW), I write to urge you to join many of your colleagues in opposing the proposed merger of United States Steel (USS) and Nippon Steel Corporation, as well as to encourage continued Congressional scrutiny of the deal's long-term implications for workers, their communities, and our national security.

A strong domestic steel industry is vital to our nation's defense and economic wellbeing. However, Nippon's proposed acquisition of USS imperils this security in a number of ways. First, it threatens tens of thousands of direct jobs, including those of 12,000 USW members in six states, as well as the more than 1.9 million jobs throughout the country that the domestic steel industry indirectly supports.[1]

Our labor agreement with USS includes strong protections for workers and retirees that we negotiated to apply in this very circumstance. However, USS has a long history of broken promises, and it is clear that both USS and Nippon are choosing to ignore the portions of our contracts they find inconvenient. This includes Nippon's attempt to push off our labor agreements and pension and benefit plans onto parties with questionable willingness and ability to support these obligations, jeopardizing workers' futures. While USW is currently pursuing these complaints through our contract, neither company shows any urgency in addressing these fundamental problems.

The proposed merger also stands to undermine the communities in which our members live and work. Our facilities require consistent investment and improvement so they can stay on the cutting edge of the industry – which is why we negotiate capital investments into our contracts. USS's board of directors had several viable options for the future direction of the company, but chose to act upon what can only be described as short-sighted greed. If this merger occurs, shareholders will get their

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[1] American Iron and Steel Institute, "The Economic Impact of the American Iron and Steel Industry", May 23, 2018.

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payout, executives will get their bonuses – but hard-working USW members, and their communities, will bear the burden of USS's decision long after the corporate interests evaporate.

Finally, we are actively engaged with the Committee on Foreign Investment in the United States (CFIUS) to raise our concerns about the ramifications this proposed deal will have on our national security, critical infrastructure, and supply chain, which includes Nippon's current export practices and its financial interests in the People's Republic of China. This merger poses meaningful risks, and included with this letter are materials explaining why CFIUS must block Nippon's proposed acquisition of USS.

Of the materials included with this letter, one document regards the union's concerns under CFIUS and another regards the union's rights under the Collective Bargaining Agreement. Please use these materials. American jobs are at stake, and failure to protect one of our core domestic industries presents opportunities for foreign competitors and countries, like China, to undermine our economic and national security.

Do not hesitate to reach out with questions about the union's position on this, or any issue. Our Legislative Department is more than willing to meet with your office to discuss any concerns that may be raised in the attached papers. Meeting requests should go to Roy Houseman, USW Legislative Director, at rhouseman@usw.org, and Carolyn Keys, USW Executive Assistant, at ckeys@usw.org.

Sincerely,

David McCall

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International President

UNDERSTANDING WORKER PROTECTIONS IMPLICATED BY THE UNITED STATES STEEL/ NIPPON STEEL MERGER AND UNITED STEELWORKERS' ACTIONS TO ENFORCE THE NEGOTIATED PROTECTIONS

The United Steelworkers (USW) union has an 87-year collective bargaining history with United States Steel (USS). In addition to providing industry leading wages, benefits, pensions, and workplace safety rights, the Basic Labor Agreement (BLA) with USS also includes strong protections for hourly workers when management decides to pursue a transaction that would otherwise threaten rights and benefits negotiated over decades.

SUCCESSORSHIP CLAUSE: USS is a publicly traded company. Having a labor agreement is an important matter because it with allows us to bargain with the party that actually controls the business. To protect workers' interests over the long term, our BLA with USS includes a "successorship clause" language that requires USS to guarantee that the ultimate parent company of the new corporate owner will itself assume the labor, benefits, and pension agreements rather than assigning the obligations to a subsidiary that has limited control of its business or finances. Ensuring that the successorship clause is properly implemented is paramount when faced with a transaction like the one USS and Nippon are proposing.

Nippon's hollow promises to adhere to our successorship clause are not adequate. At first, USS and Nippon decided that a U.S. holding company that does not report its financials publicly and that has limited holdings in the United States would assume our agreements. Then, USS and Nippon changed course, and said that Nippon Steel, a Japanese corporation that does not do business in the United States, would assume the contract. We say this is a hollow promise because, should Nippon take the position, as many foreign corporations have done, that it is beyond the jurisdiction of our courts, we will be left with little recourse to enforce our BLA.

KEY PROTECTIONS: Our contract with USS includes a number of other significant protections that the proposed merger threatens. For example, we negotiated profit sharing benefits that are a meaningful part of our members' earnings. The key to the profit-sharing program is complete transparency about company earnings, but these calculations will not be possible if USS becomes a subsidiary of a holding company and no longer reports its profits and losses. Steelmaking is a capital-intensive business, and the BLA restricts the company from taking money out of the business to pay shareholders and investors. These restrictions are at risk with the Nippon merger. The BLA also protects our members' work by requiring the company to operate our plants at full capacity and restricts its ability to replace production with imported product. This core protection, too, will be undermined if USS becomes a subsidiary of a global steelmaker.

RIGHT TO BID: The BLA with USS also includes a "Right to Bid" clause that requires USS to provide the USW with information about any proposed sale or merger and obligates USS's Board of Directors to fully consider an alternative bid supported by the union. Here, despite its contractual obligations, USS kept the USW in the dark throughout its four-month long sale process. The USW and USS are dealing with the Right to Bid violations, in addition to the successorship disputes.

GRIEVANCE PROCEDURE: One of the fundamental elements to collective bargaining is the grievance procedure, an internal dispute resolution process through which workers may address employer violations of a collective bargaining agreement. The USW has filed grievances protesting the way in which USS and Nippon proposed to proceed with their merger, and these grievances are currently being processed.

OUTSTANDING CONCERNS: In addition to the uncertainty that the USS merger with Nippon poses to rights under our BLA, the merger also poses risk to the public, particularly in relation to pensions. USS sponsors a single employer defined benefit pension plan which applies to workers hired before 2003 and provides benefits to 27,000 retirees and surviving spouses. USS also participates in a multi-employer pension plan, the Steelworkers Pension Trust (SPT), and which covers 8,450 employees hired after 2003.

Nippon Steel will become part of the controlled group for both pension plans. But, sitting outside the jurisdiction of U.S. courts, the ability of the Pension Benefit Guaranty Corporation to protect public interests in the event that USS fails, and the ability of SPT trustees to collect withdrawal liabilities if USS withdraws from the plan, will be at risk. In short, the risks inhering in this merger are not only a problem for 12,000 workers and more than 35,000, but for the U.S. government as well.

CRITICAL ISSUES TO OPPOSE THE NIPPON ACQUISITION OF US STEEL

FEBRUARY 23, 2024

UNITED STEELWORKERS

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Policymakers should block Nippon Steel's (NSC) proposed acquisition of US Steel (USS) as it would create unacceptable national security risks to the U.S. strategic iron ore supply and the diversity and resilience of domestic steel production capacity. Nippon Steel could divert a substantial percentage of the U.S. iron ore supply to its operations abroad; it could also fail to adequately invest in USS's production capacity or close USS furnaces and facilities, crucially weakening the nation's ability to maintain critical infrastructure and meet infrastructure goals.

NIPPON LIKELY IS MORE INTERESTED IN SELECT ASSETS OF USS, CALLING INTO QUESTION ITS LONG-TERM COMMITMENT TO USW-INTEGRATED ASSETS [8]

- First responses often speak volumes. On September 20, 2023, Nippon submitted a $9.2 billion bid to acquire USS's Mini-Mill business, which is the Big River operation in Arkansas, and the Keetac iron ore mine in Minnesota, whose production could support the Mini-Mill operations.
- On September 27, 2023, NSC repeated its initial bid for the Mini Mill business and the Keetac mine, while adding that a separate offer to buy all outstanding USS stock "would be for an enterprise value of $9.5 billion."
- On October 5, 2023, Nippon again submitted a proposal to purchase the Mini Mill segment and Keetac mine for $9.2 billion, while increasing its offer for all outstanding shares of USS to $41.40 per share. Based on the amount of USS outstanding shares implied by enterprise value of the final deal between the companies, the October 5 proposal for all USS operations was valued at $10.6 billion.
- USS eventually persuaded NSC to present a bid for the entire company. However, it cannot be ignored that NSC originally valued the USS integrated facilities at a value of only $300 million to $1 billion.
- Considering how little value NSC has placed on the USW-represented assets of USS, its stated commitment to maintaining these assets should be subject to question. Steelmaking is capital intensive, and the capital needs of the integrated steelmaking operations are ongoing. The blast furnaces at the USS Granite City, IL works (capacity 2.8 million tons) are both overdue for major relines, which could cost $100-$300 million for each furnace. Even in considering the $1 billion of capital expenditures required by the current labor agreement, $1billion of spending could represent a doubling or tripling of NSC's valuation of the assets (depending on which bid is used to value the assets). Given NSC's initial lack of interest in USS's integrated steelmaking operations, the level of capital investment required and its failure to address ongoing capital investment, NSC's commitment to USS's integrated steelmaking is in doubt.

[8] https://investors.ussteel.com/sec-filings /all-sec-filings/content/0001104659-24-006070/0001104659-24-006070.pdf. Pages 39 & 40.

NIPPON'S RECENT CLOSURES OF INTEGRATED MILLS IN JAPAN SUGGEST CONCERNS FOR INTEGRATED STEELMAKING IN THE U.S.

- Nippon's actions in Japan show that it likely will look to reduce integrated steelmaking capacity in a mature, slower-growing market like the U.S.
- Over the last four years, Nippon Steel has undergone a major restructuring. **The Company shut down four blast furnaces or 8.6 million net tons of steelmaking capacity and related downstream operations, displacing over 6,000 workers.**
- A fifth blast furnace (No. 3) at its East Nippon Works Kashima Area (capacity 5.4 million net tons) is scheduled to be shut down by the end of 2024.

NIPPON'S PLEDGES THAT THERE WILL BE NO LAYOFFS ARE UNDERCUT BY ITS ENDORSEMENT OF US STEEL STRATEGY

- Despite assurances in public statements and talking points being used in meetings with members of Congress that this acquisition will not result in immediate layoffs, Nippon has already endorsed curtailment of USW-represented facilities.
- In the weeks preceding the announcement of the proposed acquisition by Nippon, U.S. Steel indefinitely idled its blast furnace at its Granite City, Ill. facility at the end of November 2023 and permanently shut down its UPI finishing mill in Pittsburg, Calif. in December 2023. Nippon Steel has not proposed to change these decisions.
- On a December 18, 2023 analyst call with USS discussing the proposed merger, Takahiro Mori, EVP, Head of Global Business Development for Nippon Steel Corporation, was asked if Nippon would continue US Steel's plan for Big River 2 (expansion of its EAF mill in Arkansas), which has been accompanied by reducing production elsewhere. [9]
    - Specifically, he was asked, "[t]he concept with U.S. Steel was to offset Big River Steel 2 production with closures elsewhere. Would that still be the plan under your ownership?"
    - Without hesitation, Mr. Mori answered: "We are supportive of U.S. Steel's plan for production in the future. So we're just following the current U.S. Steel production plan. And I think, I believe that the (sic) U.S. Steel is planning to shift some quantity from the other mills to Big River Steel 2. So I'm thinking our plan is to follow that plan."

[9] https://d1io3yog0oux5.cloudfront.net/_7afb3a881b64ad5b12b6254fb8726d04/ussteel/db/3195/30218/file/TRANSCRIPT+-+Nippon-+%26+U.+S.+Steel+Investor+Call+-+20231218.pdf. Page 7.

A NIPPON ACQUISITION OF US STEEL WOULD TRANSFER CRITICAL U.S. STRATEGIC RESOURCES OUT OF DOMESTIC CONTROL

- USS owns and controls iron ore mines and pellet plants which produced 44% of the iron ore produced in the United States in 2023, including the country's largest – the Minntac mine in Virginia, Minnesota – as well as the Keetac mine in Keewatin, Minnesota and a minority interest in the iron ore mining assets of Hibbing Taconite Company. These facilities produced 22.1 million net tons of iron ore pellets in 2023, representing 44 percent of the approximately 50 million net tons of iron ore produced in the U.S.
  - Beyond production, the mines themselves are an important strategic asset. Mines owned and controlled by USS contain proven and probable reserves of 449 million net tons of iron ore.
  - If this proposed transaction were to proceed, Nippon Steel would control this iron ore and could easily divert it abroad, depriving the United States of a foundational and strategic resource.
    - Nippon Steel consumed approximately **55 million dry net tons** of iron ore and **28 million wet net tons** of coking coal in FY 2022. The Company owns minority shares of iron ore and coking coal mines in Australia and Brazil. However, approximately 80% of Nippon Steel's raw material requirements are purchased from third parties (i.e. **44 million dry net tons** of iron ore and **22 million wet net tons** of coking coal).
    - U.S. Steel Minntac and Keetac and its share of Hibbing Joint Venture have combined production capacity of **23 million net tons** of iron ore pellets. The Company's Flat Rolled Steel Products segment produced 8.8 million net tons of raw steel in 2022, utilizing approximately **14 million net tons** of pellets. U.S. Steel reports that it has agreements to supply iron ore pellets to third-party customers over the next several years. Thus, USS currently has approximately **10 million net tons** of excess iron ore pellet capacity -- which would increase if Nippon Steel shut down additional blast furnaces. It could divert this iron ore to its other affiliates at attractive prices.
    - In the December 18, 2023 call with analysts and US Steel announcing the proposed acquisition, Takahiro Mori, EVP, Head of Global Business Development for Nippon Steel Corporation, was asked about shipping pig iron to Japan, an intermediate good produced by smelting iron ore in a blast furnace. [10]
      - The questioner asked, "[s]o there is no plan to, let's say, ship pig iron from the U.S. to Japan?"
      - Mr. Mori responded, "[n]o, no. We don't have such plan *at this moment.*" [emphasis added]

[10] https://d1io3yog0oux5.cloudfront.net/_7afb3a881b64ad5b12b6254fb8726d04/ussteel/db/3195/30218/file/TRANSCRIPT+-+Nippon-+%26+U.+S.+Steel+Investor+Call+-+20231218.pdf. Page 7.

THE LOSS OF US STEEL INTEGRATED STEEL MILLS POSES A THREAT TO U.S. CRITICAL INFRASTRUCTURE

- The U.S. Department of Homeland Security has defined 16 sectors or categories of infrastructure that are considered critical to the nation[11]. The incapacitation or destruction of any of these sectors would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.
  - Iron and Steel Mills and Ferro Alloy Manufacturing are the "core" of the Critical Manufacturing Sector, and are crucial to the proper functioning to other industries within the Critical Manufacturing Sector – and indeed many of the other 15 sectors of critical infrastructure. These include the Energy Sector, the Transportation Sector, Water and Wastewater Sector, the Defense Industrial Base, and others.
- The Department of Commerce has on multiple occasions – once in 2001, and again in 2018 – reaffirmed the centrality of domestic steel production capacity to U.S. national security, in particular critical industries. Most recently, the Department of Commerce's **2018 Section 232 Investigation** report determined that domestic steel production was crucial for all 16 sectors of critical infrastructure[12].
  - "Increased quantities of steel will be needed for various critical infrastructure applications in the coming years. The American Society of Civil Engineers estimates that the United States needs to invest $4.5 trillion in infrastructure by 2025, and a substantial portion of these projects require steel content."
  - The 2018 Section 232 Investigation also found that in the prior ten years, the demand for steel in critical industries increased by 63 percent.
- The impact of rebuilding infrastructure requires a significant amount of steel – which should be sourced domestically. According to the American Iron and Steel Institute, "Funding roads and bridges, ports and waterways, water infrastructure, the electric grid and investing in electric vehicle systems, all will require a lot of steel . . . [passage of the Infrastructure Investment and Jobs Act] provides a tremendous boost to our industry, as demand for American steel could increase by as much as **five million tons for every $100 billion in new investment.**" [emphasis added][13]
- Policymakers have also emphasized supply chain security. The President, in Executive Order 14017 on February 24, 2021, underscored this point, noting that "[t]he United States needs resilient, diverse, and secure supply chains to ensure our economic prosperity and national security. Pandemics and other biological threats, cyber-attacks, climate shocks and extreme weather events, terrorist attacks, geopolitical and economic competition, and other conditions can reduce critical manufacturing capacity and the availability and integrity of critical goods, products, and services." [14]

[11] https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/resilience-services/infrastructure-dependency-primer/learn/critical-infrastructure-systems.

[12] https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

[13] https://www.steel.org/2021/11/aisi-applauds-house-passage-of-bipartisan-infrastructure-bill/

[14] https://www.govinfo.gov/content/pkg/FR-2021-03-01/pdf/2021-04280.pdf

- Steel is no different. The U.S. must maintain domestic control over strategic resources like the iron ore mines and integrated steel mills owned by US Steel. The secure maintenance of American critical infrastructure, as well as the viability of infrastructure development via the Bipartisan Infrastructure Law and the IRA, are dependent on USS's blast furnaces and cannot alone be met by recycled steel produced in electric arc furnaces (EAF).
- If Nippon diverts iron ore to its operations abroad, USS and other American steel producers will be even more reliant on scrap, which remains in short supply. Although a number of observers have projected a global increase in available scrap the increase will not meet the demand for scrap and the growth will be in obsolete scrap centered in East Asia or China, not NAFTA or Europe. In short, the U.S. will be reliant on China for steel production. What's more, industry observers project a global shortage of the clean, low-residual steel scrap or DRI, necessary to support higher value-added products, such as sheet, SBQ and advanced grades (including automotive exposed sheet and AHSS steels). The domestic supply of clean scrap is in short supply and continues to shrink as U.S. manufacturing generally shrinks.
- This raises the specter of the United States, yet again, becoming dependent on a geopolitical rival for strategic supplies.
- **The United States cannot afford to lose yet another strategic industry to China and this transaction creates an environment where this is at risk.**

THE LIKELIHOOD OF SHUTDOWNS OR UNDERINVESTMENT BY NIPPON IN USS FACILITIESWOULD COST THE UNITED STATES CRITICAL SKILL AND KNOWLEDGE

- Congress made clear in 2018 that CFIUS should view as a national security threat the loss of knowledge or skill critical to producing items necessary for defense or federal procurement. Similarly, National Security Strategies of Republican and Democratic Administrations have emphasized the importance of maintaining a skilled workforce. Steel mills are highly complex operations that depend on skilled employees with decades of on-the-job experience. This professional knowledge can only be developed and maintained through stable employment. If Nippon were to close production facilities, the United States would lose technical expertise critical to maintaining steel production.
- The 2018 Foreign Investment Risk Review Modernization Act ("FIRRMA") states that, when evaluating national security risks, CFIUS may consider the control of U.S. "industries and commercial activity by foreign persons as it affects the capability and capacity of the United States to meet the requirements of national security, *including the availability of human resources*." [15]

[15] Pub. L. 115-232, Section 1702(c)(4), emphasis added.

- Congress explained that the availability of human resources includes "*potential losses of such availability resulting from reductions in the employment of United States persons whose knowledge or skills are critical to national security,* including the continued production in the United States of items that are likely to be acquired by the Department of Defense or other Federal department or agencies for the advancement of the national security of the United States." [16]
- Similarly, the Biden Administration's 2022 National Security Strategy emphasized that U.S. national security depends on making "strategic public investments in America's workforce, and in strategic sectors and supply chains, especially critical and emerging technologies." [17] This principle aligns with the Trump Administration's 2017 National Security Strategy, which noted that a "healthy defense industrial base is a critical element of U.S. power. . . the ability of the military to surge in response to an emergency depends on our Nation's ability to produce needed parts and systems, healthy and secure supply chains, and a *skilled U.S. workforce.*" [18]
- Steelworkers with this type of critical knowledge and skills are the result of years of training, experience, and stable employment. Steel mills are highly complex operations that depend on employees with decades of experience – knowledge that can only be gained through on-the-job training and apprenticeships in demanding work environments surrounded by molten metal, coke dust, acid mist and high temperatures. To properly function, a large integrated steel mill requires approximately 600 skilled operators and 1,000 multi-craft maintenance technicians. Skilled control room operators are responsible for managing multimillion-dollar furnaces, rolling mills and galvanizing lines. These skilled workers control hot metal chemistry and flow, understand computer systems and programming, and direct support crews to maximize production, productivity, and quality. Maintenance Technicians include both highly skilled multi-crafts (combining the skills of positions of Millwright, Rigger, Welder, Pipefitter and Mobile Equipment Operator) and electrical multi-crafts (combining the skills of the positions of Motor Inspectors, Electricians, Electronics, and Instrument Repair).
- Nippon has indicated that it is likely to shut down, or not adequately invest in, USS's integrated blast furnace operations. Not only will this reduce physical plant capacity for steel production, but it will also put thousands of skilled workers out of jobs and thereby reduce the human resources – the knowledge and skills – necessary to produce steel. Ultimately, this will lead to a displacement of a skilled and trained workforce over the long term and undermine the ability of the United States to produce steel products vital to maintaining U.S. critical infrastructure.

[16] *Id.*

[17] White House, National Security Strategy (Oct. 2022), https://www.whitehouse.gov/wp-content/uploads/2022/11/8-November-Combined-PDF-for-Upload.pdf.

[18] White House, National Security Strategy of the United States of America (Dec. 2017), https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf.

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