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Submitted for the Record
United States Trade Representative (USTR)
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Public Comments on China's Compliance with
Commitments Made in Connection with its Accession
to the World Trade Organization
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Introduction

Good morning. This is AISI's seventh submission detailing China's non-compliance with its WTO commitments. Despite clear evidence that China has repeatedly violated its WTO obligations, China continues to practice market-distorting behavior, and its steel industry continues to grow. When we provided our first submission in 2004, China had produced 280 million MT of crude steel and held a 26% global market share. Today, China is on pace to produce over 600 million MT of crude steel, with a 47% share of global production. Given that it has now been almost a full decade since China joined the WTO, the U.S. government should alter its approach and send a clear signal that China must end its trade-distorting policies and practices and finally comply with all of its WTO obligations.

I. China's Non-Compliance With Its WTO Obligations Remains a Severe and Growing Problem for American Steel Producers and Other U.S. Manufacturers

China acceded to the WTO in December 2001 and, by 2006, USTR had acknowledged that it was "clear that some parts of the Chinese government did not yet fully embrace the key WTO principles of market access, non-discrimination and transparency." By 2008, USTR was viewing a "trend toward a more restrictive trade regime," and it made similar observations in 2009. Likewise, the U.S.-China

Economic and Security Review Commission found in its November 2009 report that, instead of movement to a full market system, it was seeing "steps backward to greater government control."

The Status Quo of the U.S.-China Trade Relationship Is Unsustainable

The effects of China's non-compliance have been disastrous. Our trade deficit with China has risen from \$83 billion in 2000 to \$227 billion in 2009 – an increase of 173%. In 2000, China accounted for just over a quarter of our manufacturing trade deficit. By 2009, China's share was over 75%.

According to one estimate, between 2001 and 2008, our growing trade deficit with China resulted in 2.4 million jobs being lost or displaced. According to Commerce Secretary Locke, our trade deficit with China "simply can't be sustained." And last November, Treasury Secretary Geithner made a similar point when he stated that "previous global economic patterns were unsustainable ... [and] to ... avert future crises of this nature, we must rebalance global demand." The problem is: we're not seeing the rebalancing we need. In fact, our monthly trade deficit with China widened to more than \$26 billion in July 2010, which was the highest such monthly deficit with China since October 2008.

China's Massive Steel Industry Continues to Grow

Nowhere is the impact of China's increasingly restrictive trade regime as severe as in the steel industry. Chinese crude steel production soared from 222 million MT in 2003 to 568 million MT in 2009. During this same period, average annual crude steel production in the United States was less than 91 million MT. Over the last five years, China's steel production has increased by a volume of almost four times the average total production of the U.S. industry. The Chinese government anticipates that China will produce up to 630 million MT of crude steel in 2010, a 10% increase from last year's figure, even though China is now facing a falling domestic demand growth rate for steel.

Chinese Steel Continues to Injure the U.S. Steel Industry

China, which must import huge amounts of iron ore, is not a low-cost steel producer. Its massive capacity buildup has been aided by government subsidies, and does not reflect market factors or comparative advantage. In the process of becoming the world's largest producer and net steel exporter, surges of dumped and subsidized Chinese steel have caused injury to steel producers here and elsewhere. Indeed, the United States currently maintains AD orders on imports of four Chinese steel products, and we have both AD and CVD orders on imports of another eight. While these AD/CVD orders have helped, Chinese imports remain a significant problem for American steel producers.

Decisive Action Should Be Taken

The fact that China apparently has no intention of complying with its WTO obligations cannot be ignored by U.S. policymakers. Over the last decade, our trade deficit with China has almost tripled; we've lost millions of manufacturing jobs; thousands of U.S. factories have closed; and America's steel industry has been severely disrupted. For 10 years, U.S. policy has been largely reactive, as China pursued policies that created an enormous trade imbalance. This approach has not worked, and it's past time for a more aggressive approach.

II. Issues of Particular Importance to U.S. Steel Producers

Subsidies

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Subsidies and Countervailing Measures. Notwithstanding these commitments, Chinese manufacturers – including Chinese steel producers – continue to benefit from massive government subsidies. As Deputy USTR Marantis recently observed, Chinese subsidies "across a wide range of favored sectors harm U.S. manufacturers and workers, and through their effects impede or displace U.S. exports to

China and third country markets." Given that China has subsidized its steel industry for years and that Chinese government policy provides for further subsidies going forward, a more aggressive approach is needed. The U.S. government should vigorously enforce CVD law against subsidized imports from China. Commerce should investigate currency subsidy allegations; it should treat China's manipulation of VAT rebates as both a countervailable subsidy and as a prohibited export subsidy under WTO rules; USTR should investigate the allegations of Chinese government subsidies to "green technologies" in the Section 301 case filed recently by the United Steelworkers; and USTR should pursue additional WTO litigation as appropriate against Chinese government subsidies.

State-Owned Enterprises

When it acceded to the WTO, China committed that it "would not influence, directly or indirectly, commercial decisions on the part of state-owned enterprises." However, China's steel-producing SOEs, which account for most of Chinese steel production, continue to operate in accord with bureaucratic policies, not market principles. This is a clear violation of China's WTO commitments and a significant distorting force in steel markets around the world. USTR should take all possible steps – including WTO litigation as appropriate – to address this problem. These market distortions are now being exacerbated by the government of China's new "go abroad strategy," which is encouraging large SOEs such as Anshan Steel to invest, with government support, in American and other third country steel facilities -- based more on strategic and political aims than on market factors.

Raw Materials

China has taken numerous inappropriate measures to help its producers secure access to raw materials and manipulate raw material prices to give Chinese producers an unfair advantage in the marketplace. These measures include imposing raw material export restraints and using public resources to assist

Chinese steel producers in acquiring raw materials overseas. In light of these actions, we urge USTR to continue to pursue vigorously the ongoing WTO case regarding China's raw material export barriers. We also urge Commerce to find that these export restraints – and the government of China's ongoing assistance to help Chinese companies obtain raw materials overseas – constitute subsidies that should be countervailed, because they confer an unfair financial benefit to Chinese producers.

Currency Manipulation

In January 2009, in Senate testimony as part of his confirmation hearings, Treasury Secretary Geithner stated that “President Obama – backed by the conclusions of a broad range of economists – believes that China is manipulating its currency.” Yet, this Administration, like the one before it, has refused to cite China as a currency manipulator. In June, Treasury expressed optimism that China was prepared to allow a more flexible currency regime. But two months after China announced it would allow the RMB to fluctuate, China's currency had risen only 0.8% against the dollar. In light of these facts, the Administration should work urgently with the current Congress to craft and pass legislative remedies to address the priority concern of China's currency manipulation. This is a huge unfair tax on U.S. exports; it's a major jobs issue; it's a serious problem for U.S. manufacturing; and it's time to make currency manipulation of the type practiced by China actionable under U.S. trade remedy laws.

Intellectual Property Rights

When China accepted the WTO “TRIPS” Agreement, it “took on obligations ... to protect and enforce the intellectual property rights (IPR) held by U.S. and other foreign companies and individuals in China.” Nevertheless, USTR reports that “effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China.” Indeed, there is now growing concern as

China pursues its so-called "indigenous innovation" campaign, which appears to violate many of China's commitments to protect IPR and not to raise technical and other non-tariff barriers to trade.

Effective Enforcement of U.S. Trade Laws

Given that China has not fully complied with its WTO obligations, the United States must effectively enforce its trade remedy laws. Under the terms of its WTO accession, China agreed that other members could treat it as a non-market economy ("NME"). Nevertheless, China has urged the United States during recent meetings of the U.S.-China Strategic and Economic Dialogue to treat it as a "market economy" for purposes of our AD law. This would be improper and contrary to U.S. law.

Another issue presented by China's NME status concerns the application of U.S. CVD law. In November 2007, Commerce decided for the first time to apply CVD law to China. Unfortunately, it determined that the "uniform date" from which it will identify and measure Chinese subsidies is December 11, 2001, when China became a WTO member. AISI strongly disagrees with this decision. We believe that to decline to countervail subsidies bestowed prior to China's WTO accession is inconsistent with Commerce's usual practice, China's WTO commitments and Congressional intent.

A third issue regarding trade law enforcement involves circumvention of AD/CVD orders. A growing concern is that Chinese trading companies are providing "services" to their clients to evade AD/CV duties on steel and other products exported to the U.S. and other countries. One such company, "Globe Success," advertises openly its ability to assist in evading the payment of such duties by sending containers of subject merchandise to third countries and then re-exporting the containers to the U.S. using documents that originate from the third country. AISI strongly urges USTR to use all possible means to persuade China to end this open and blatant circumvention of U.S. trade laws.

Lastly, in contrast to the United States – where the application of U.S. trade laws is fully transparent, consistent with our WTO obligations and administered in a manner that provides ample due process for all parties -- China has increasingly been applying its trade remedy proceedings in WTO-inconsistent ways, and not as a legitimate tool to defend against unfair trade. In the AD/ CV duties China has imposed on imports of grain oriented electrical steel from the U.S., the Chinese authorities denied U.S. exporters fundamental due process, denied them access to key information needed to defend their interests and applied WTO-inconsistent methodologies to find dumping, subsidies and injury. AISI supports the U.S. government’s filing of a new WTO case against China in this matter.

Enforcement of China-Specific Safeguard Provision

As part of its WTO accession, China also agreed that, for 12 years, other members could impose product-specific safeguards against Chinese imports. This provision – implemented into U.S. law under Section 421 of the Trade Act of 1974, as amended – is critical to ensuring that U.S. industries and workers do not suffer market disruption as a result of surges in Chinese imports. While this essential trade remedy was in effect a “dead letter statute” between 2002 and 2005, the Obama Administration breathed new life into Section 421 in 2009 by granting safeguard relief with respect to tire imports. AISI commends the Administration for providing relief in this case, and we urge the Administration to ensure that Section 421 serves as a viable remedy for U.S. companies and workers.

International Tax Rules – Border Adjustability

USTR has previously recognized that China manipulates its VAT system to help Chinese steel producers and other manufacturers. At a larger level, there’s a fundamental disparity caused by international rules that unfairly reward countries like China (which rely on VAT systems) and penalize

the U.S. (which relies principally on an income tax system). While this is not technically a compliance matter, it plays a significant role in our trade imbalance with China and other major trading partners. As a result, U.S. exports to China and other major markets are essentially double-taxed, while Chinese and other foreign producers can sell here largely tax-free. By one estimate, this distortion of free trade represents a net disadvantage for U.S. exporters in excess of \$100 billion a year. There is no legitimate economic justification such a practice, and Congress has long complained about it. USTR should aggressively pursue this issue in the ongoing Doha Round Rules negotiations.

Product Safety Issues

As Reps. Pete Visclosky and Tim Murphy stated in February 2009, "China has a proven track record of making dangerous, substandard products, including steel." This issue also involves WTO concerns. Pursuant to China's WTO accession, Chinese imports are subject to WTO agreements that give the U.S. government broad authority to restrict imports that endanger the health and safety of Americans. The Administration should work with Congress to ensure that the U.S. government fully exercises its rights under the relevant WTO agreements to keep unsafe products out of this market.

III. Conclusion

In conclusion, China's ongoing WTO non-compliance continues to have serious, long-term consequences for American steel producers, other American manufacturers and our economy as a whole. Unfortunately, China sees its own economic success over the past decade, coupled with the global economic crisis, as an affirmation that "China holds the philosophical high ground" and that "Western policies of free trade and open markets do not work as well as previously thought." The U.S. government must therefore alter its approach so as to send a clear signal to China that it must end its trade-distorting policies and practices and comply fully with all of its WTO obligations. Thank you.