September 24, 2012

Douglas M. Bell  
Chair, Trade Policy Staff Committee  
Office of the United States Trade Representative  
1724 F Street, N.W.  
Washington, DC 20508

RE: Request for Comments Concerning China’s WTO Compliance, Docket No. USTR-2012-0020

Dear Mr. Bell:

In response to a request from the Office of the United States Trade Representative (“USTR”), the American Iron and Steel Institute (“AISI”), on behalf of its U.S. member companies, hereby submits comments to the interagency Trade Policy Staff Committee (“TPSC”) regarding China’s compliance with the commitments it made upon its accession to the World Trade Organization (“WTO”). Of the categories listed in USTR’s request, these comments particularly relate to import regulation, export regulation, internal policies affecting trade, intellectual property rights, and other WTO commitments.

Executive Summary

More than 10 years after it acceded to the WTO, China continues to fail to comply with its obligations. In fact, there is a broad consensus that China has abandoned its policy of liberalizing its economy and instead increasingly follows a policy of state capitalism that is antithetical to the principles of free and fair trade. This trend is a major problem, both for American steel producers and for other U.S. manufacturers, and AISI strongly urges the U.S. government to take a more aggressive approach to this issue. The key points in support of AISI’s argument are summarized as follows:

-- The current U.S.-China trade relationship is taking a tremendous toll on U.S. manufacturers. Over the last decade, the U.S. trade deficit with China has more than tripled, the United States has lost millions of manufacturing jobs, thousands of U.S. factories have been shuttered, and the American steel industry has been severely disrupted. The United States must take much bolder and more imaginative steps to address this chronic problem.

-- From 2000 to 2011, Chinese crude steel production increased by 555 million metric tons (“MT”) – a volume well over six times total crude steel production in the United States. China’s increased production has been made possible, in large part, by massive government

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subsidies. The U.S. Department of Commerce ("DOC") has specifically identified numerous subsidies benefiting Chinese steel producers. China not only maintains policies that will lead to further subsidization going forward, but also manipulates its value added tax ("VAT") system to manage and promote exports of its steel products.

-- Although China pledged, as part of its WTO accession, that it would not “influence” commercial decisions of its state-owned enterprises, the Chinese government maintains a heavy amount of control over state-owned steel producers. Moreover, China’s recent policies (its 12th Five-Year Plan and 12th Five-Year Program for Steel) leave no doubt that the Chinese government intends to strengthen its control over its steel industry.

-- China has taken numerous measures to inappropriately aid its producers in securing access to raw materials and to manipulate raw material prices in a manner that gives Chinese producers an unfair advantage over their U.S. competitors. AISI commends USTR for recent cases it has brought at the WTO that challenge certain export restraints as violating China’s WTO commitments. However, given China’s pervasive use of export restraints and other measures to control raw material prices, winning these challenges will only be the first step to bring China’s policies into compliance with its WTO commitments.

-- Despite years of complaints by American manufacturers – and widespread criticism from government officials and other experts – China continues to keep the value of its currency at artificially-low levels that give Chinese producers an unfair advantage in the U.S. market, the Chinese market and third country markets. Indeed, this year China has let its currency depreciate further as part of an effort that experts agree is aimed to promote its exports.

-- Effective enforcement of intellectual property rights ("IPR") has still not been achieved in China, and IPR infringement remains a serious problem. Moreover, China’s “indigenous” innovation campaign – which has already caused U.S. firms to lose market share – appears to violate many of China’s commitments to protect IPR and not raise technical and other non-tariff barriers to trade. China has promised to revoke a limited number of measures related to its indigenous innovation policy. However, it appears not only that China has not followed through with its promises but also that key elements of its indigenous innovation policy remain intact.

-- The fact that China has not fully complied with its WTO obligations underscores the importance of effective enforcement of U.S. trade remedy laws. Among other things, the United States should continue to treat China as a “non-market” economy for purposes of U.S. antidumping laws, begin to countervail subsidies that were bestowed prior to China’s WTO accession, and ensure that Chinese companies are not circumventing U.S. trade remedy laws by, among other things, shipping merchandise through third countries. The U.S. government should also effectively exercise its authority, under the WTO and U.S. law, to impose product-specific safeguards on Chinese imports where appropriate.

-- As part of an effort to promote true market competition, the U.S. government should seek to change international tax rules that place U.S. companies at an unfair disadvantage vis-à-vis countries like China that rely on a VAT system.
Pursuant to China’s WTO accession, Chinese imports are subject to WTO agreements relating to product safety. The U.S. government should fully exercise its rights under the relevant agreements to keep unsafe Chinese products out of this market.

Each of these points is discussed in more detail below.

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

This submission identifies numerous specific examples of China’s failure to comply with its WTO obligations. Before turning to those examples, however, AISI would like to emphasize that China’s substantial, long-term breach of its WTO commitments is having serious consequences for American steel producers, other American manufacturers, and the U.S. and world economies.

China acceded to the WTO on December 11, 2001 – over ten years ago. This submission marks the ninth time that AISI has supplied the TPSC with detailed comments regarding China’s failure to comply with its WTO commitments.2 Time and time again, AISI has documented essentially the same facts – i.e., that China continues to use massive subsidies and other forms of government support to build an enormous steel industry in violation of market principles and China’s WTO commitments. Indeed, as USTR acknowledged in its annual report last year, there has been “a troubling trend in China toward intensified state intervention in the Chinese economy over the last five years” and that “China seems to be embracing state capitalism more strongly, rather than continuing to move toward the economic reform goals that originally drove its pursuit of WTO membership.”3 The United States-China Economic and Security Review Commission (“USCC”) reached a similar conclusion in its most recent annual report to Congress, stating that China’s “process {of economic liberalization} has reversed in the past five years” and it “has no intention of giving up direct command over large portions of the economy or of relinquishing its ownership of key industrial, financial, and high-technology sectors.”4

These facts are particularly significant because China is not just any WTO member. It is currently the world’s second-largest economy, and some experts believe that within the next 10 years it will become the world’s largest economy.5 The fact that such a major economic player is defying the rest of the

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2 See Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 14, 2004); Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 6, 2005); Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 18, 2006); Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 14, 2007); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 22, 2008); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 22, 2009); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 27, 2010); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 26, 2011).


WTO to pursue a market-distorting policy of mercantilism raises profound and troubling consequences for the U.S. and world economies. Indeed, the USCC concluded in its most recent report to Congress, letting China into the WTO may have been a mistake:

> The concerns that originally surrounded China’s accession to the WTO – that China’s blend of capitalism and state-directed economic control conflict with the organization’s free market principles – have proven to be prophetic. Although China did not meet all of the traditional requirements for accession, the WTO took a calculated gamble that China could effectuate the reforms necessary to conform to those requirements within a reasonable period of time. . . . Ten years later, China’s state-directed financial system and industrial policy continue to contribute to trade imbalances, asset bubbles, misallocation of capital, and dangerous inflationary pressures. Meanwhile, China’s legal reforms are in jeopardy from a bureaucratic backlash. China’s adherence to WTO commitments remains spotty despite the decade that the country’s rulers were given to adjust. These circumstances create an uneven playing field for China’s trading partners and threaten to deprive other WTO signatories of the benefit of their bargain.⁶

At the very least, it is clear that current U.S. policies are simply not sufficient to persuade China to comply with its WTO obligations. The U.S. government should adopt far more aggressive policies – including multilateral and even unilateral action where necessary – to address China’s recalcitrance.

A. China’s Unfair Trade Practices Are Hurting the U.S. and World Economies

A little over a decade ago, supporters of normalizing trade relations with China promised that China’s accession would lower our trade deficit, strengthen our manufacturing base, and create jobs.⁷ The facts have simply not borne out these assertions. Instead, as shown below, China’s entry into the WTO has contributed to numerous problems in the U.S. and world economies:

- **The U.S. Trade Deficit Has Soared.** The U.S. trade deficit with China more than tripled from $83.1 billion in 2000 to $295.4 billion in 2011.⁸ Furthermore, our trade deficit with China in the first half of 2012 was 8.77 percent greater than the deficit in the first half of 2011.⁹

- **The U.S. Manufacturing Base Has Been Dramatically Weakened.** In 2000, U.S. exports of manufactured goods were triple the amount of Chinese exports of the same goods.¹⁰ By 2010,
however, China’s manufacturing exports were 50 percent higher than U.S. manufacturing exports.\(^{11}\) Furthermore, the U.S. trade deficit with China, which is dominated by trade in manufactured goods, increased from $273.1 billion in 2010 to a record $295.5 billion in 2011.\(^{12}\)

- **Millions of U.S. Jobs Have Been Lost and Wages Eroded.** According to one estimate published last month, between 2001 and 2011 our growing trade deficit with China resulted in 2.7 million jobs being lost or displaced, over 2.1 million of which were in manufacturing.\(^{13}\) In addition, competition with low-wage workers in China has driven down wages for workers in U.S. manufacturing and reduced the wages and bargaining power of other workers throughout the economy.\(^{14}\)

- **Chinese Mercantilism Is Preventing a Necessary Rebalancing in Global Trade.** As early as 2006, Paul Krugman (a Noble Prize-winning economist) was warning that the U.S. trade deficit with China was “unsustainable” and that the economic consequences of this deficit “will be ugly.”\(^{15}\) For several years now, it has been broadly recognized that our relationship should be “rebalanced” so that the United States manufactures more goods and China consumes them.\(^{16}\) Yet there is little reason to believe that China will allow such a rebalancing in the absence of pressure from its outside trading partners. As the USCC has concluded, “increasing household consumption … and the subsequent emergence of a more assertive consumer class” would be “in direct contradiction to the Chinese government’s policy of keeping economic power firmly in the hands of the state and may compromise lending to many vested interests, including SOEs and the export sector.”\(^{17}\)

### B. China’s Unfair Practices Are Distorting Steel Markets

\(^{11}\) Id.


\(^{14}\) Id.

\(^{15}\) Id.


\(^{17}\) 2011 USCC Report at 6.
The impact of China’s restrictive trade regime can be seen in its steel industry. Due in large part to trade-distorting practices, Chinese steel production continues to grow dramatically – even as the market plainly signals that Chinese mills are making too much steel:

- Chinese crude steel production soared from 128 million MT in 2000 to 683 million MT in 2011 – an increase of 555 million MT.\textsuperscript{18} To put this figure in context, consider that in 2011 the United States produced 86 million MT of crude steel.\textsuperscript{19} Over the last 11 years, therefore, China’s steel production \textit{increased} by a volume of over six times the \textit{total} production of the U.S. industry.\textsuperscript{20} Significantly, according to the China Iron and Steel Association (“CISA”), domestic production \textit{capacity} of crude steel reached 850 million MT by the end of 2011.\textsuperscript{21} In other words, China has enough \textit{excess} steel capacity – \textit{i.e.}, 167 million MT – to produce almost twice as much steel as the entire U.S. industry.\textsuperscript{22}

- It appears that in 2012 China will once again produce far more steel than market conditions justify. According to CISA, China is on pace to produce 700 million MT of steel this year.\textsuperscript{23} Total Chinese consumption of steel, on the other hand, is expected to reach only 670 million MT.\textsuperscript{24} Not surprisingly, experts such as Wang Guoqing, a senior analyst at Beijing Lange Steel Information Research Center, are almost uniformly concluding that “{s}teel production . . . exceeds domestic demand.”\textsuperscript{25} This overproduction has resulted in a huge inventory overhang. Traders were reporting by July that stockpiles of steel products in major Chinese cities have surpassed 15 million MT.\textsuperscript{26} ANZ Bank estimates that it may take nine months to unwind this “glut” of steel.\textsuperscript{27}

- It should also be recognized that in recent years, a significant portion of China’s excess steel production has been absorbed by the Chinese government’s stimulus spending on fixed asset investment.\textsuperscript{28} According to \textit{World Steel Dynamics}, this stimulus will have accounted for 380

\textsuperscript{18} World Steel Association, “Steel Production 2011” and "Monthly Crude Steel Production 2000."
\textsuperscript{19} Id.
\textsuperscript{20} 555 / 86 = 6.45.
\textsuperscript{22} 167 / 86 = 1.94.
\textsuperscript{23} Id.
\textsuperscript{24} World Steel Dynamics, "Chinese Steel Hits the Great Wall, Part III" (Feb. 2012) ("World Steel Dynamics") at 8.
\textsuperscript{28} World Steel Dynamics at 3-4.
million MT of Chinese total apparent steel consumption between 2009 and 2012. World Steel Dynamics has warned, however, that after 2012, “as the stimulus plans finish, the additional steel demand caused by the plan will be gone.”

- Remarkably, the Chinese steel industry continues to increase production and grow overall capacity even though domestic steel prices are falling and Chinese steel producers are losing money. According to one estimate, in the first quarter of 2012 China’s large and medium-sized steel enterprises had an overall profit margin of negative 33.75 percent, with total losses reaching more than $1.64 billion. Jiang Feitao, a steel policy researcher at the China Academy of Social Sciences, explains that the reason Chinese mills are increasing production even though prices and profits are falling is that “the big state-owned steel mills are motivated not so much to seek profits but to seek government support.”

- The Chinese steel industry must rely on exports to consume surplus production. China’s steel exports jumped 28 percent in the first quarter of 2012. By July 2012, China was exporting steel at the highest level in two years. Xu Zhongbo, a professor at the University of Science and Technology in Beijing, believes that “Chinese mills have to boost exports as they don’t have self-control on production.” Analysts at Steel Market Intelligence have accordingly warned that “the West is increasingly at risk from Chinese overproduction as steelmakers continue to cut export prices in an attempt to use the export market as a ‘supply relief valve’ to reduce pricing pressure at home.”

C. U.S. Steel Producers Have Been Shut Out of the Chinese Steel Market

It should be recalled that China’s accession to the WTO was supposed to provide an opportunity for U.S. manufacturers to participate in and profit from China’s rapidly growing economy. President Clinton stated that China’s accession “locks in and expands our access to a market of over one billion people” and would slash Chinese tariffs on U.S. manufactured goods. He further explained that,

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29 Id. at 4.
30 Id. at 5.
31 Steel Firms Compete for Declining Profits.
34 At Excess Capacity.
36 Id.
38 See, e.g., Permanent Normal Trade Relations for China.
“Considering that manufactured goods comprise a large proportion of American exports, the drop in Chinese tariffs is good news for our high-tech manufacturers and basic industries.”\(^{39}\) These predictions have not proven true for U.S. steel producers.

In 2001, the year of China’s accession to the WTO, China consumed a total of 168 million MT of crude steel but produced only 152 million MT of crude steel.\(^{40}\) Furthermore, by 2011 China’s demand for crude steel had reached 648 million MT – an increase of 286 %.\(^{41}\) If American mills had been able to participate in even just one percent of this increased demand for steel, then they would now be shipping approximately 4.8 million MT of steel products to China each year.\(^{42}\) But this has not happened. Indeed, Chinese imports of U.S. steel products have remained relatively flat since China acceded to the WTO. In 2001, China imported 60,000 MT of American steel products.\(^{43}\) Last year, it imported 110,000 MT of American steel products.\(^{44}\)

Unfortunately, it appears that China never intended to permit non-Chinese steel producers to benefit from the country’s growing market. In October 2011 China’s Ministry of Industry and Information Technology heralded as a “major achievement” the fact that “the domestic steel market share increased from 92% to 97%” over the five previous years.\(^{45}\) At the same time, it lamented that “a few key steel products are still dependent on imports” and found it necessary to “further improve” China’s steel industry so that it can “provide a complete suite of material solutions for downstream industries.”\(^{46}\)

\(^{39}\) Id.

\(^{40}\) World Steel Dynamics at 8; World Steel Association, "Annual Crude Steel Production, 2000-2009."

\(^{41}\) Id. \((648 – 168) / 168 = 2.86 = 286\%.

\(^{42}\) \((648 – 168) \times 1\% = 4.8.

\(^{43}\) Global Trade Atlas Data (total steel mill products), HS Codes: 720610, 720690, 720711, 720712, 720719, 720720, 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720851, 720852, 720853, 720854, 720890, 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721011, 721012, 721020, 721030, 721041, 721049, 721050, 721061, 721069, 721070, 721090, 721113, 721114, 721119, 721123, 721129, 721190, 721210, 721220, 721230, 721240, 721250, 721260, 721310, 721320, 721391, 721399, 721410, 721420, 721430, 721491, 721499, 721510, 721550, 721590, 721610, 721621, 721622, 721631, 721632, 721633, 721640, 721650, 721699, 721710, 721720, 721730, 721790, 721810, 721891, 721899, 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 721931, 721932, 721933, 721934, 721935, 721990, 722011, 722012, 722020, 722090, 722100, 722111, 722219, 722220, 722230, 722240, 722240, 722410, 722490, 722511, 722519, 722520, 722530, 722540, 722550, 722591, 722592, 722599, 722611, 722619, 722620, 722691, 722692, 722693, 722694, 722699, 722710, 722720, 722790, 722810, 722820, 722830, 722840, 722850, 722850, 722860, 722870, 722880, 722910, 722920, 722990, 730110, 730210, 730220, 730240, 730290, 730410, 730411, 730419, 730421, 730422, 730423, 730424, 730429, 730431, 730439, 730441, 730449, 730451, 730459, 730490, 730511, 730512, 730519, 730520, 730531, 730539, 730590, 730610, 730611, 730619, 730620, 730621, 730629, 730630, 730640, 730650, 730660, 730661, 730669, and 730690.

\(^{44}\) Id.


\(^{46}\) Id. at Art. I.I.1.
Thus, it seems clear that China’s mercantilist policies prevented American steel producers from receiving the promised benefit of the bargain of allowing China to accede to the WTO.

D. Chinese Steel Continues to Injure the American Steel Industry

There can be no question that unfairly-traded exports – another result of Chinese mercantilism – have also harmed American steel producers. The United States currently maintains antidumping (“AD”) orders on imports of hot-rolled steel, cut-to-length steel plate, rebar, and steel threaded rod from China. In addition, the United States maintains both AD and countervailing duty (“CVD”) orders on imports of light-walled rectangular pipe; welded standard pipe; welded line pipe; austenitic stainless pressure pipe; oil country tubular goods; pre-stressed concrete steel wire strand; steel grating; wire decking; seamless carbon and alloy steel standard, line, and pressure pipe; drill pipe; galvanized steel wire; and high pressure steel cylinders. Each of these 28 orders rests upon findings by the DOC that Chinese mills engaged in unfair trade and findings by the U.S. International Trade Commission (“USITC”) that Chinese imports caused or threatened material injury to the relevant domestic industry.

Furthermore, while the AD/CVD orders listed above have certainly helped, Chinese imports remain a significant problem for American steel producers:

- On November 4, 2011, the DOC completed an administrative review of the AD order on steel threaded rod from China. The DOC found that, even with the discipline of the order in place, Chinese firms were dumping steel threaded rod in the U.S. market at rates between 55.16 and 206.00%.  

- On March 1, 2012, the DOC completed an administrative review of the AD order on steel nails from China. The DOC found that, even with the discipline of the order in place, Chinese firms were dumping steel nails in the U.S. market at rates between 3.80% and 118.04%.

- In March 1, 2012, U.S. producers of stainless steel sinks sought AD and CVD relief from unfairly-traded imports from China.

- On June 8, 2012, the DOC issued the preliminary results of the first administrative review of the AD order on certain oil country tubular goods from China. The DOC found that, even with the discipline of the order in place, the Chinese firm being examined was dumping oil country tubular goods in the U.S. market at a rate of 185.84%.


49 Drawn Stainless Steel Sinks from China, USITC Pub. 4317, Inv Nos. 701-TA-489 and 731-TA-1201 (Preliminary) (April 2012) at 1.

On August 1, 2012, the DOC issued the preliminary results of an administrative review of the AD order on hot-rolled steel from China. The DOC found that, even with the discipline of the order in place, the Chinese firm being examined was dumping hot-rolled steel in the U.S. market at a rate of 90.83%.\(^{51}\)

These facts show that China’s oversupply of steel continues to have a negative impact on the United States steel industry.

E. U.S. Policymakers Must Respond Much More Aggressively

As the information above demonstrates, the fact that China has not complied – and apparently has no intention of complying – with its WTO obligations presents a crisis that can no longer be ignored. This fact has profound consequences for U.S. trade policy, which rests on the assumption that our trading partners will generally abide by internationally-accepted rules. Unfortunately, that assumption is not correct, because the world’s second-largest economy has effectively exempted itself from numerous WTO obligations. As shown above, the results of this market-distorting behavior have been disastrous.

Meanwhile, China has been aggressively initiating WTO cases against other members – especially the United States.\(^{52}\) Remarkably, seven of the nine cases brought by China at the WTO alleged violations by the United States – a country suffering from an enormous trade \textit{deficit} with China.\(^{53}\) In other words, while China apparently feels free to disregard its own WTO obligations, it sues other countries whenever it sees an advantage in doing so. These facts led the USCC to conclude last year that China was doing serious damage to the WTO system:

The United States and the European Union went to considerable lengths to design and negotiate a system of checks and balances that would permit China to accede to the WTO without jeopardizing the smooth functioning of the organization or endangering the position of existing members in the international trading system. From start to finish, that negotiation process took 15 years. In less than ten years, China has learned the nuances of WTO law and has begun to use it systematically to undo the finely wrought balance that U.S. and E.U. negotiators designed.\(^{54}\)

Nevertheless, for over ten years U.S. policymakers have remained relatively passive in the face of China’s ongoing – and unfair – attack on the U.S. and other markets. This approach has not worked. As Robert D. Atkinson, President of the Information Technology and Innovation Foundation, has


\(^{54}\) 2011 USCC Report at 38.
concluded, the “status quo is untenable” and the United States must take stronger and more creative action:

Despite ongoing efforts by successive U.S. administrations to engage the Chinese in dialogue, there is little evidence that this process is doing anything more than helping to manage particular issues that come up. In cold-war terms, that amounts to "containing," not "rolling back," Chinese mercantilism. It’s time to realize that China does what it does not because its policymakers don't understand the merits of the American system and the Washington consensus. They fully understand the arguments embedded in the Washington consensus. They just reject them in favor of the Beijing consensus. As a result, it is time that the United States – along with the market-based global trading community at large – takes stronger action to press China to join the community of trading nations and curtail its mercantilist policies.55

It is clearly time for a much more aggressive policy. At a minimum, the U.S. government should do the following:

- Ensure strong and effective enforcement of U.S. trade laws, particularly our AD/CVD laws;
- Pursue additional dispute settlement proceedings at the WTO as necessary to address China’s compliance failures;
- Immediately take effective steps to counter China’s manipulation of its currency; and
- Pursue bilateral and other consultations, utilizing the leverage of access to the U.S. market as necessary, to obtain true rectification of the market-distorting practices that China has used and continues to use to support its preferred industries.

Furthermore, it should be noted that while WTO litigation can and should be a part of U.S. plans to deal with China, such litigation cannot solve the whole problem. As the USCC has found, “WTO cases, while important, are frequently inadequate to address the full range of trade-distorting aspects of China’s industrial policies” and that “some of the most problematic issues in the U.S.-China trade relationship do not appear to be solvable using the WTO process.”56

Thus, U.S. policymakers should consider all available options to persuade Chinese officials to take their WTO obligations more seriously. One thing is certain: if we continue the same policies, then the market-distorting practices identified in this submission will not go away.


II. Issues of Particular Importance to American Steel Producers

This submission does not attempt to identify and discuss every outstanding issue with respect to China’s WTO compliance. Instead, it focuses on several issues of core concern that are imperative for the U.S. government to address. The primary issues addressed in this submission can be found in Figure 1. Many of these issues are directly relevant not only to the domestic steel industry, but to all U.S. manufacturers, many of whom are customers of AISI members.

Figure 1: Issues Regarding Key China WTO Commitments

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<tr>
<th>Commitment</th>
<th>Time Frame</th>
<th>Issue</th>
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<tbody>
<tr>
<td>Limit and/or eliminate trade-distorting subsidies (SCM Agreement).</td>
<td>On accession</td>
<td>China continues to provide significant subsidies to its steel producers.</td>
</tr>
<tr>
<td>Ensure that the government does not interfere with state-owned enterprises (Report of the Working Party on the Accession of China).</td>
<td>On accession</td>
<td>China continues to micromanage state-owned enterprises, including steel producers.</td>
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<tr>
<td>Dismantle export restrictions (GATT Article XI).</td>
<td>On accession</td>
<td>China continues to impose WTO-inconsistent restrictions on export of key raw materials.</td>
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<tr>
<td>End export subsidies (SCM Agreement Article 3).</td>
<td>On accession</td>
<td>China continues to provide a variety of export subsidies.</td>
</tr>
<tr>
<td>Enforce intellectual property laws (WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)).</td>
<td>On accession</td>
<td>Effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China. Of particular concern is China’s “indigenous” innovation program.</td>
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<tr>
<td>Allow other Members to treat China as a non-market economy (“NME”) (WTO Protocol on the Accession of China at § 15(a) (i)).</td>
<td>Agreed to allow NME treatment except where it is clearly shown that market economy conditions prevail in the industry under investigation</td>
<td>The U.S. government should continue to treat China as an NME and should reject the notion that China’s NME status limits the application of U.S. CVD laws to subsidized goods from China.</td>
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<tr>
<td>Permit imposition of product-specific safeguards against Chinese imports where necessary and appropriate (WTO Protocol on the Accession of China at § 16).</td>
<td>Agreed to allow special rules for 12 years after accession</td>
<td>The U.S. government should ensure that product-specific safeguards serve as a viable remedy.</td>
</tr>
<tr>
<td>Implement neutral and transparent application of tax laws (GATT Article III).</td>
<td>On accession</td>
<td>China continues to manipulate its VAT system to benefit Chinese companies.</td>
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A. Subsidies

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Subsidies and Countervailing Measures (“SCM Agreement”). In particular, China committed that

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by the time of its accession it would eliminate all subsidies prohibited under Article 3 of the SCM Agreement. China also agreed that other WTO members could apply CVD measures against Chinese imports consistent with the SCM Agreement and could address prohibited and actionable subsidies through WTO litigation. Notwithstanding these commitments, Chinese manufacturers – including Chinese steel producers – continue to benefit from massive government subsidies. The evidence on this point is overwhelming. Indeed, USTR’s 2011 report on China’s WTO compliance states that “China continues to provide injurious subsidies to its domestic industries, and some of these subsidies appear to be prohibited under WTO rules.”

1. **China Has Failed to Properly Notify WTO Members of its Subsidy Programs**

As an initial matter, it should be noted that China’s failure to comply with its WTO obligations makes it impossible to measure precisely the scope of China’s government subsidies. Pursuant to Article XVI of the General Agreement on Tariffs and Trade (“GATT”) and Article 25 of the SCM Agreement, China is required to notify members of its subsidy programs every year. In fact, China did not submit any such notification until April 2006, over four years after it acceded to the WTO. Furthermore, as USTR has recognized, this notification was woefully incomplete. Despite USTR repeatedly expressing concern over this issue, China has not provided any further subsidies notifications to the WTO – a failure that represents yet another violation of its WTO obligations. Last October, this situation forced the United States to submit information to the WTO identifying nearly 200 subsidy programs that China had failed to notify as required under WTO rules. In conjunction with this submission, the U.S. Trade Representative stated that China’s “lack of transparency severely constrains the ability of WTO Members to ensure that each government is playing by the rules.”

2. **Notwithstanding China’s Lack of Proper Notification, Additional Evidence of Subsidies Has Recently Come to Light**

Despite the lack of transparency surrounding China’s government subsidies, however, further evidence of Chinese steel subsidies has come to light since USTR’s last report regarding China’s WTO compliance. Indeed, this year the DOC has issued three final affirmative CVD determinations in

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59 China Protocol of Accession at ¶ 15.

60 2011 USTR Report at 12.

61 USTR, 2010 Report to Congress on China’s WTO Compliance (Dec. 2010) at 44.

62 *Id.*

63 *Id.*


65 *Id.*
investigations involving steel products – *i.e.*, steel wheels; galvanized steel wire; and high pressure steel cylinders. As part of these investigations, the DOC specifically identified numerous subsidies benefiting Chinese companies, including the following:

- Provision of inputs for less than adequate remuneration;
- Provision of electricity for less than adequate remuneration;
- Direct transfers of government funds to steel producers in the form of grants, including grants that are contingent on export performance;
- Preferential lending through state-owned commercial or policy banks;
- Preferential tax treatment for certain foreign invested enterprises, enterprises purchasing domestically produced equipment, enterprises located within “free trade zones;” and enterprises that are designated as “important high- and new-technology enterprises that are necessary to be supported by the state;”
- Exemptions from paying import tariffs for certain “encouraged industries;”
- Reimbursement of fees for export credit insurance;

The DOC also issued a preliminary decision last month in the CVD investigation involving stainless steel sinks from China. In its preliminary determination, the DOC identified a significant number of subsidies provided to Chinese producers of stainless steel sinks, including: the provision of various inputs (including stainless steel coils, land, and electricity) for less than adequate remuneration, various grant programs (including grants contingent on export performance, and grants to “expand international

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67 Issues and Decision Memorandum in *Steel Wheels* at 23-26; Issues and Decision Memorandum in *Galvanized Steel Wire* at 11-16; Issues and Decision Memorandum in *Steel Cylinders* at 17-21.

68 Issues and Decision Memorandum in *Steel Wheels* at 27-28; Issues and Decision Memorandum in *Galvanized Steel Wire* at 16-17; Issues and Decision Memorandum in *Steel Cylinders* at 21-22.

69 Issues and Decision Memorandum in *Steel Wheels* at 28-33; Issues and Decision Memorandum in *Galvanized Steel Wire* at 17-19; Issues and Decision Memorandum in *Steel Cylinders* at 22-23.

70 Issues and Decision Memorandum in *Steel Wheels* at 14-19; Issues and Decision Memorandum in *Steel Cylinders* at 14.

71 Issues and Decision Memorandum in *Steel Wheels* at 19-21, 34; Issues and Decision Memorandum in *Steel Cylinders* at 15-16.

72 Issues and Decision Memorandum in *Steel Wheels* at 21-23; Issues and Decision Memorandum in *Steel Cylinders* at 16-17.

73 Issues and Decision Memorandum in *Steel Wheels* at 33.
markets”), preferential lending through state-owned policy banks, and tax exemptions for certain foreign-invested enterprises.  

3. **China’s Industrial Policies Encourage Continued Subsidization**

China apparently intends to continue subsidizing steel production. As a research paper prepared for AISI and the Steel Manufacturers Association in October 2010 demonstrates, China’s steel industry has been governed by a number of industrial policies since 2005 that specifically cover the steel industry. Each of these policies has provided for massive subsidies to steel producers:

- In July 2005, China’s National Development and Reform Commission (“NDRC”) issued the Steel and Iron Industry Development Policy (“Steel Policy”). The Steel Policy mandated direct government subsidization of the steel industry in the form of tax refunds, discounted interest rates, funds for research and other policy support for major iron and steel projects utilizing newly developed domestic equipment. The policy also encouraged indirect government support by – among other things – restricting foreign investment, discriminating against foreign equipment and technology, and providing various export credits.

- In March 2009, China’s Ministry of Industry and Information Technology (“MIIT”) issued an update to the Steel Policy entitled the Steel Adjustment and Revitalization Plan (“Revitalization Plan”). The Revitalization Plan provided for direct and indirect government subsidization of the steel industry through measures including tax reimbursements for exports, loans for technical improvements and research and development, and export credits for metallurgical equipment.

- In June 2010, China’s chief administrative body, the State Council, released its “Advice for the Promotion of Energy Saving, Emissions Reduction and Industrial Structure Adjustment” (“State Council Policy”). The State Council Policy mandated subsidies and government support such as special privileges with respect to land usage, loans, credit, and capital market financing.

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74 Drawn Stainless Steel Sinks From the People’s Republic of China, 77 Fed. Reg. 46717 (Dep’t Commerce Aug. 6, 2012) (prelim determ.).
76 Id. at 11 (citing NDRC, “Steel Industry Development Policy” (July 20, 2005) at Articles 16, 20).
77 Id. at 12-13 (citing Gov’t of the PRC Steel Adjustment and Revitalization Plan, (Mar. 23, 2009).
78 Id. at 13-14 (citing State Council’s “Advice for the Promotion of Energy Saving, Emissions Reduction and Industrial Structure Adjustment” (June 17, 2010)).
China’s provinces have issued their own industrial plans that provide for numerous subsidies to the steel producers located within their provincial territory.\(^\text{79}\)

In recent years, China has continued to issue policies that provide for steel subsidies. In March 2011, China issued its 12\(^{th}\) Five-Year Plan to govern its economic and social development from 2011 through 2015.\(^\text{80}\) The 12\(^{th}\) Five-Year Plan states that China needs “to fully strengthen the role of industrial policies,”\(^\text{81}\) “stick to the fundamental economic system to keep public ownership in a dominant position,”\(^\text{82}\) and “maintain the current advantages in exporting.”\(^\text{83}\) In October 2011, the MIIT issued a development plan specific to the steel industry – i.e., the Development Plan of the 12th Five-Year Program for the Iron and Steel Industry (“12\(^{th}\) Five-Year Steel Program”).\(^\text{84}\) All evidence suggests that China will continue to provide subsidies to the steel industry over the next five year to achieve the specific goals it has set in these two plans. Indeed, in September 2011, the China Securities Journal disclosed that the Chinese government plans to “use taxes and subsidies to support the alloy steel and stainless steel industries over five years through 2015” and “may spend several hundred billions of yuan on research and development.”\(^\text{85}\)

Furthermore, this past May, China’s National Development and Reform Commission announced that the government approved the investment of $23 billion in new steel mills as part of a “selective stimulus.”\(^\text{86}\) The funds would be used for Baosteel to build a steel mill in Zhanjiang, Guangdong province; Shougang Group to build a cluster of steel production facilities in Qian’an, Heibei province; and Guangxi Iron and Steel Group to build a steel mill in Fangchenggang, Guangxi Zhunang autonomous region.\(^\text{87}\)

In light of these facts, it is not surprising that the Financial Times reported in March that "Chinese groups will continue to flood markets with steel even when they are making it at a loss.”\(^\text{88}\)

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79 Id. at 15-16. See also Oliver Melton, “Understanding China’s Five-Year Plan: Planned economy or coordinated chaos?” China Insight Economics (Nov. 9, 2010) (“Understanding China’s Five-Year Plan”) at 6-7 (discussing the role of provincial and municipal governments in implementing policies that have been issued by the central government).
81 Id. at ¶ 7.
82 Id. at ¶ 40.
83 Id. at ¶ 46.
84 12\(^{th}\) Five Year Steel Plan.
87 Id.
4. VAT Export Rebates to Manage and Promote Exports

China also manipulates its VAT system to manage and promote exports of its steel products. As USTR recognized in its 2012 National Trade Estimate Report, China uses its VAT rebate system to make larger quantities of primary and intermediate products available domestically at lower prices than the rest of the world, giving China’s downstream producers of finished products a competitive advantage over foreign downstream producers. It does this by reducing or eliminating VAT rebates on the primary or intermediate products, resulting in increased domestic supply and lower domestic prices. China’s downstream producers, in turn, benefit from these lower input prices as well as full VAT rebates on export of their finished products.

Over the course of 2007 and 2008, for example, China eliminated VAT export rebates on some, but not all, steel products. As a result, “Chinese steel producers shifted their production to value-added steel products for which full or partial VAT export rebates were still available . . . causing a surge in exports of these products – many of which ended up in the U.S. market.” For example, one of the products for which VAT export rebates were still available was oil country tubular goods (“OCTG”). Significantly, U.S. imports of OCTG from China tripled from 725,027 NT in 2006 to 2,197,556 NT in 2008. In 2009, as USTR has recognized, “in the face of the economic crisis and in apparent contradiction to its stated goals of discouraging excess capacity, China eliminated most steel export duties and raised VAT rebates on many steel products while continuing to apply differential border tax treatment to encourage the export of more value-added products.”

In 2010, China announced that it was cutting the VAT export rebate for a number of commodity-grade steel products. The result of these cuts, however, was simply to encourage exports of value-added steel products for which the VAT export rebates were still available. Indeed, one steel-industry analyst called these cuts a “Trojan Horse” – i.e., “a seeming benefit that’s actually a problem.”

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90  Id.
91  Id.
93  Id.
94  Id.
99  Id.
These same incentives to produce and export value-added steel products were maintained throughout 2011 and 2012. For example, most hot-rolled and long steel products receive no VAT rebate at all, whereas cold-rolled and galvanized steel products, drill pipe, and oil country tubular goods receive a VAT rebate between 9 to 13 percent.

China continues to treat VAT manipulation as a key element of industrial policy. In July 2012, the MIIT stated that it was considering revising the VAT rebates again such that steelmakers would receive a full VAT rebate (i.e., 17% rebate) for exports of certain “high end steel products.” Steel products that would be eligible for the full rebate include silicon steel, shipbuilding steel, oil pipe, and galvanized steel. Qiu Xiuli, Vice Secretary General of CISA, explained the purpose of the proposed revision to the VAT rebates as follows: “Supply outstrips demand in the domestic market, leading to a rapid fall in steel produce prices – and we hope that increasing exports will ease the problem.”

5. Export Finance Support

China has made export financing a “focal point” of its export promotion strategy, launching what one expert has called “the most aggressive export credit financing campaign in history.” As part of this campaign, China has provided a staggering amount of export financing support to its companies. For example, China has provided one company, telecommunications equipment manufacturer Huawei, with a $30 billion line of credit for export financing.

Furthermore, China’s official government system of export financing is supplemented by lending from commercial banks that are owned or otherwise controlled by the government. For example, the China Development Bank is directed to extend loans that are consistent with the goals of China’s economic plans, which include producing “national champions” that are able to compete on a global scale. In addition, the China Export and Credit Insurance Corporation (“SINOSURE”), was created


101 Id.


103 Id.


106 Id. at 7-8.

107 Id. at 8.


109 Id.
in 2001 to “fulfill the Chinese government’s diplomatic, international trade, industrial, fiscal and financial policies.” In light of these multiple sources of Chinese export financing, the U.S. Export-Import Bank stated its most recent report to Congress that “the scale and scope of the Chinese official export credit ‘package’ remains particularly difficult to quantify, but too important and large to not try.” According to its best estimates, however, China extended a total of $48.5 billion in export credits in 2011, of which $26.0 billion was extended by the China Export-Import Bank, $12.5 billion was extended by the China Development Bank, and $10 billion was extended by SINOSURE.

Significantly, China’s export financing practices constitute prohibited export subsidies under the WTO rules because much of the financing is contingent on exports and granted at non-commercial terms. The practices are also inconsistent with certain aspects of the Organization for Economic Cooperation and Development (“OECD”) Arrangement on Guidelines for Officially Supported Export Credits. As U.S. Export-Import Bank Chairman Fred Hochberg has stated, the “underlying premise” of international export finance rules is that “we ought to let products compete on their own merits, their own quality, their own value, and not let financing be a distorting factor,” but China “is winning deals in part because they’re not playing by the rules.”

There are also some signs that “China’s practices may be creating incentives for countries to engage in rate cutting and to offer exceptional terms that the {OECD} Arrangement seeks to limit.” For example, "the growth in export credit in a number of OECD nations has significantly outstripped export credit growth in the United States in the past decade." Furthermore, over half of the entities interviewed for a recent study completed by the U.S. Export-Import Bank stated that they had received offers for unregulated financing from an OECD export credit agency. This unregulated financing was “reportedly priced on commercial terms but their flexibility regarding other financing terms . . . made such financing very attractive (e.g., no cash payment was required; tenors were not limited; sourcing was not limited to procurement from the country of the {export credit agency}).”

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110 Id.
112 Id.
113 See “The EU may initiate a WTO dispute settlement over Chinese export credits,” Trade Perspectives (May 6, 2011).
114 Id.
116 Export Assistance and the China Challenge at 5.
117 Id.
119 Id.
state of affairs led Chairman Hochberg to state that “export financing is increasingly like the Wild West, where rules are loosely followed, if at all.”

This year, the Administration has pursued a number of initiatives to address China’s unfair practices with respect to export financing. In February, the United States and China agreed to work on setting joint guidelines for export financing. Specifically, they agreed to make “concrete progress towards a set of international guidelines on the provision of official export financing that, taking into account varying national interests and situations, are consistent with international best practices.” That same month, President Obama directed the U.S. Export-Import Bank to match any unfair financing subsidy that put U.S. firms at a disadvantage compared to foreign competitors.

AISI commends the Administration for these initiatives. However, the Administration should remain vigilant to ensure that China ends its mercantilist export financing practices and complies with the international norms that have already been established to ensure level playing fields for export financing.

6. Conclusion

Given that China has subsidized its steel industry for years and that its government policy plainly provides for further subsidies going forward, this problem cannot be solved by dialogue alone. The United States needs to adopt practical measures that will put much more pressure on China to change its position on subsidies. In the meantime, the United States must aggressively enforce its CVD laws to prevent Chinese subsidies from injuring U.S. workers and businesses.

B. State-Owned Enterprises

During the course of its accession to the WTO, the Government of China committed that it “would not influence, directly or indirectly, commercial decisions on the part of state-owned enterprises” (“SOEs”). This commitment is particularly significant in the steel context. A 2009 report by the European Confederation of Iron and Steel Industries (“EUROFER”) found that the Chinese steel industry is “firmly embedded in a powerful state-business nexus” and maintains “very close relations...
to government agencies on local, provincial as well as central levels.” An analysis of the Chinese industry prepared for AISI in October 2010 demonstrated that 95 percent of the production of the top 20 Chinese steel groups was state-owned or controlled.

There is every indication that the Chinese government will continue to maintain a significant amount of control over its steel industry. A study prepared for the USCC last year showed that after 30 years of opening up its economy to private enterprise, the Chinese government reversed its policy in the mid-2000s and begun reasserting its economic control, particularly in certain “strategic” and “heavyweight” industries that include the iron and steel industry. In fact, Wu Bangguo, Chairman and Secretary of the Standing Committee of the National People’s Congress declared last year that “We have made a solemn declaration that we will not . . . carry out privatization.”

Moreover, China has come nowhere close to fulfilling its commitment to refrain from influencing the decisions of Chinese SOEs. Indeed, the 12th Five-Year Steel Program includes detailed guidance for all Chinese steel producers – including SOEs – with respect to many key decisions. In particular, implementation of the 12th Five-Year Steel Program will involve:

**Consolidating and Reorganizing.** The ten largest Chinese steel producers currently account for 48.6 percent of total Chinese steel production. China plans to consolidate its steel industry through mergers and acquisitions so that by 2015 the ten largest Chinese steel producers will account for more than 60 percent of all Chinese production.

**Relocating.** China plans on relocating urban-based steel producers to locations outside of their current city by 2015. Most of these steel producers will be relocated to “southeast coastal areas” and interior waterways. An official who was involved in drafting the 12th Five-Year Steel Program stated that China’s goal is to have 40 percent of total steel production to come from coastal areas by 2015.

**Controlling Access to Iron Ore.** China plans to “optimize the global configuration of iron ore resources” to ensure that its steel producers have access to iron ore. This would include not

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127 The Reform Myth at 6.


129 Id.

130 12th Five-Year Steel Program at Art. III(III)6.

131 Id. at Art. III(III)3.

132 Id. at Art. III(II) & IV(V).


134 12th Five-Year Steel Program at Art. IV(VI); Accord KPMG China, “China’s 12th Five-Year Plan: Iron and Steel” (May 25, 2011) ("KPMG China") at 5.
only acquiring overseas iron ore mines but also “building transport support systems in an orderly manner in countries and regions, as well as surrounding countries, that have resource advantages.” China also intends to “intensify the effort in exploration of domestic iron ore resources.” A report by KPMG predicts that by 2015 China will: (i) increase the share of imported iron ore from Chinese-owned overseas mines from 15 percent to 50 percent; and (ii) increase the proportion of iron ore that it sources from domestic sources from 38 percent to 45 percent.

Going Global. China’s 12th Five-Year Program states that “overseas investment to build iron and steel plans is a major strategy for our country’s iron and steel industry to carry out ‘going global.’” China’s plan of “going global” will also include providing “support for domestic iron and steel enterprises . . . to build iron and steel plants {and} participate in merging and reorganization of foreign iron and steel enterprises.”

Micromanaging Capacity, Production, and R&D. China has provided detailed guidance to its steel producers regarding issues such as the minimum sizes of blast furnaces, converters, and electric arc furnaces that steel producers may use, the amount of water that may be used in the production of steel, and the amount of business income that must be spent on research and development.

Increasing the Market Share Held by Chinese Producers for Key Products. Another “main goal” of the 12th Five-Year Steel Program is that “large scale production will be realized for products that are imported in large quantities.” By 2015, China plans to increase the market share of its domestic producers to above 90% for high strength and high ductility steel for automobiles and silicon steel sheets, at least 80% for corrosion-resistant steel for ships, low temperature and pressure container plates, wheel and axle steel for high-speed railway, and high pressure boiler pipe, and above 80% for certain high strength threaded steel bars.

As USTR recognized last year, China’s national steel policy is particularly “striking because of the extent to which it attempts to dictate industry outcomes and involve the government in making decisions that should be made by the marketplace.”

China has defended its control over the steel industry on the basis that one of its stated goals is to curb production and reduce overcapacity. The evidence, however, does not support this defense:

135 Id.
136 Id.
137 KPMG China.
138 12th Five-Year Steel Program at Art. IV(IX)
139 Id. at Art. IV (IV)2.
140 Id. at Art. IV(III)1.
141 2011 USTR Report at 72-73 (emphasis added).
-- First, this government interference is a clear violation of China’s commitment that it “would not influence, directly or indirectly, commercial decisions on the part of state-owned enterprises.” As AISI and other steel producers’ associations from around the world emphasized in comments submitted to MIIT back in 2009, these necessary changes to China’s steel industry should be driven by market forces – not the Chinese government.

-- Second, as the EUROFER report concluded, conflicting policies within China are exacerbating its overcapacity problems. For example, Rong-Liang He, an economist who conducts analyses for the Government of China, stated that when producers are ordered to shut down steel mills that do not meet the central government’s minimum capacity requirements, they simply construct larger mills that meet the minimum capacity requirements. In addition, CISA itself has reported that when steel producers are ordered to relocate their mills, they see the relocation process as an opportunity to expand their existing capacity.

-- Third, even if the Chinese central government adopted a consistent policy for eliminating overcapacity, it would still encounter significant opposition to its efforts from provincial and municipal governments, which have strong incentives to prevent factories from being forcibly shut down. As one Chinese economist has explained, “[s]teel companies are the main sources of income for provincial governments” and “[s]teel taxes and bonuses are truly those treasures with which the provincial government cannot part.” This revenue is lost when a steel factory is closed or merged into a company based in another jurisdiction. This past May, Jiang Feitao, a steel policy researcher at the China Academy of Social Sciences, explained why it is unlikely that even the worst performers would ever be shut down: “There is actually no

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142 For example, the 12th Five-Year Program for Steel states that “we will overcome difficulties and eliminate backward processes and products.” 12th Five-Year Steel Program at Art. IV(IV).

143 Working Party Report at ¶ 46.


145 EUROFER Report at 12, 49-51.


148 Dilemma of the Chinese Steel Industry.

149 See “Cutting Back: Beijing needs to enforce existing regulations to prevent steel overcapacity,” China Economic Review (Oct. 1, 2009), available at http://www.chineconomicreview.com (last visited Sept. 16, 2012); see also Understanding China’s Five-Year Plan at 7 (“NDRC’s constant efforts to ‘rationalize’ and consolidate fragmented industries . . . have almost always failed, because no local government finds it in its interest to permit local companies to become victims of consolidation.”).
mechanism to put them out of business, no sense of the survival of the fittest, and that is probably the biggest problem facing the sector."\textsuperscript{150}

Fourth, it appears that any steel producers have avoided closure by simply not reporting their production.\textsuperscript{151} Peter Fish, a steel industry analyst at MEPS Ltd., stated last year that while China’s goal of closing a number of smaller steel mills has been achieved “on paper . . ., in reality many of these mills continue[] producing.”\textsuperscript{152}

Fifth, there is no reason to believe that China actually intends to reduce steel capacity. China has been promising to “curb steel output” since 1999.\textsuperscript{153} Yet China produced more steel in each and every year between 1999 and 2011.\textsuperscript{154} Indeed, as USTR recognized in its most recent report, “despite China’s stated goal of eliminating inefficient steel capacity, and despite slowing growth in domestic steel demand and stagnant demand in export markets, . . . steelmaking capacity in China is still projected to grow significantly through 2012.”\textsuperscript{155} Earlier this year, CISA even stated that it was planning to “raise the output of its major steel makers by 10 percent within the next four years.”\textsuperscript{156}

U.S. policymakers should also be extremely wary of China’s goal to “internationalize” its state-owned steel industry. The OECD has released a series of reports over the last several years detailing the numerous risks associated with the rise of SOEs’ investments and activities abroad.\textsuperscript{157} These risks include the following:

- SOEs often receive subsidies that provide them with a competitive advantage in their world-wide operations by lowering their costs and allowing them to set prices that are lower than their private-sector competitors.\textsuperscript{158}

\textsuperscript{150} China Steel Mills Too Big.
\textsuperscript{152} Id.
\textsuperscript{154} World Steel Dynamics at 47.
\textsuperscript{155} 2011 USTR Report at 74.
\textsuperscript{158} Competitive Neutrality in the Presence of SOEs at 5; SOEs and Competitive Neutrality at 37; SOEs Operating Abroad at 7.
Because SOEs do not have the same pressure to make a consistent profit as their private competitors, they are more likely to engage in anti-competitive behavior such as exclusionary pricing strategies without the fear of their stock prices falling when losses are incurred.\footnote{Competitive Neutrality in the Presence of SOEs at 6-7; SOEs and Competitive Neutrality at 38-40.}

SOEs operating overseas can serve as conduits for illicit technology transfers as well as outright espionage.\footnote{SOEs Operating Abroad at 5.}

When private companies acquire foreign rivals to appropriate their technologies, they put this technology to commercial use within the acquiring company. When SOEs acquire foreign rivals to appropriate their technologies, however, they often do so to make the acquired technologies available throughout the relevant sectors of the domestic economy of which they are a part. This fact leads to distortions in the mergers and acquisitions market.\footnote{Id. at 6.}

To be clear: AISI has raised no objection to market-driven foreign investment in the United States. However, the prospect of investments in U.S. steel mills that are driven by Chinese government policies (including massive subsidization and other trade-distorting measures), rather than by commercial considerations, deserves serious scrutiny by U.S. policymakers.

In any event, there can be no doubt that China’s steel-producing SOEs – which account for most of the production in the world’s largest steel industry – are operating in accord with government policies, not market principles. This outcome represents not only a clear violation of China’s WTO commitments, but a significant distorting force in steel markets around the world. USTR should take all possible steps – including WTO litigation as appropriate – to encourage China to comply with its WTO commitments regarding SOEs.

C. Raw Materials

As part of its efforts to assist its ever-growing steel industry, China has taken numerous improper measures to aid its producers in securing access to raw materials and to manipulate raw material prices in a manner that gives Chinese producers an unfair advantage over their U.S. competitors. As discussed below, these measures implicate WTO concerns.

1. Restraining Exports of Key Raw Materials

Article XI of the GATT 1994 generally prohibits WTO members from maintaining export restrictions (other than duties, taxes, or other charges), although certain limited exceptions are allowed.\footnote{Working Party Report at ¶¶ 166-68, 171, 174.} China also
agreed as part of its WTO accession to eliminate all taxes and charges on exports other than those included in Annex 6 to its Protocol of Accession or those applied in conformity with Article VIII of the GATT 1994.163

The evidence is overwhelming that China has not complied with these commitments. In June 2009, the United States filed a request for consultations at the WTO regarding China’s export restraints on numerous raw materials.164 These raw materials – which are important to the production of steel, aluminum, and various chemicals – include bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc.165 USTR alleged that China imposes several different export restraints on these materials, including export quotas (caps on the volume of the material that may be exported), which are generally prohibited by applicable WTO rules; export duties which China expressly agreed to eliminate when it joined the WTO; and other export-related administrative measures and costs, all of which are inconsistent with WTO rules.166 As USTR has recognized, these export restraints can seriously disadvantage downstream producers in the United States and other countries:

First, these restraints limit exporters’ access to these raw materials. Second, the restraints can significantly raise the world market prices for the materials, while lowering the prices that domestic Chinese producers have to pay. Lower-priced downstream Chinese products derived from the materials can then enjoy an anticompetitive price advantage vis-à-vis the same products produced outside China.167

In its Trade Policy Review of China for 2010, the WTO also recognized with respect to China’s export restraints that “{t}he resulting gap between domestic prices and world prices constitutes implicit assistance to domestic downstream processors of the targeted products and thus provides them a competitive advantage.”168 Finally, the DOC has recognized that China’s export restraints constitute countervailable subsidies. Specifically, in the CVD investigation of seamless pipe from China, the DOC found that China’s export restraints on coke provide a financial benefit to Chinese steel producers that use coke in the production of seamless pipe.169

163 Id. Article VIII only permits fees and charges limited to the approximate cost of services rendered and makes clear that any such fees and charges shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes. Id. This article is not relevant for the present discussion.

164 USTR Press Release, “United States Files WTO Case Against China Over Export Restraints on Raw Materials” (June 23, 2009); see also Request for Consultations by the United States, China – Measures Related to the Exportation of Various Raw Materials, WT/DS394/1 (June 23, 2009) at 1.

165 Id.

166 Id.

167 Id.


On January 30, 2012, the WTO Appellate Body upheld a finding by a dispute settlement panel that China’s restraints on the export of these raw materials were not consistent with its WTO obligations. China has agreed that it will bring its practices into conformity with its WTO obligations by December 31, 2012. This represents a tremendous victory for the United States. However, much work remains to be done to ensure that China follows through on its agreements. By June of this year, there was no sign that China was lifting its export controls on coke. Not surprisingly, the Chinese domestic price for Grade II coke ranged between $233-$320 per MT, which was significantly less than both the world-market price of $368 per MT and the Chinese export price of $480 per MT. In July, China announced new quotas for exports of coke. International coke traders are skeptical that China would remove all restraints on coke exports. Even if it removed the 40% export tax on coke, for example, China “could control exports by other means,” such as by restricting export licenses. Indeed, Chinese government officials have stated on several occasions with respect to the raw materials at issue in the WTO case that China has “no intention to change its basic policy to protect environments and to save energy” – i.e., that it will find “other types of restrictions” on exports of these raw materials.

Consider also China’s export restraints on certain rare earths. In recent years, China has imposed quotas to limit exports of rare earths to about 30,000 MT per year and has raised export taxes on rare earths to as much as 25 percent. Rare earth prices have soared outside of China as a result. Many corporate executives have reported that China is using its near-monopoly on rare earths not only to subsidize existing Chinese manufacturers but also to encourage other manufacturers to relocate or expand capacity in China. Indeed, China itself had repeatedly stated that the purpose of the export restraints on rare earths was to encourage companies to move production to China. It was only

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173 China Evaluating How to Implement WTO Raw Materials Agreement.
175 China Evaluating How to Implement WTO Raw Materials Agreement.
176 Id.
179 Id.
180 Id.
when governments and business groups pointed out that the export restraints violated China’s WTO obligations that China began claiming that the export restraints were in place for environmental protection. In June 2012, the United States requested the establishment of a WTO dispute settlement panel to decide claims regarding China’s unfair export restraints on rare earths, tungsten and molybdenum. In bringing this request, Ambassador Kirk recognized that “it is vital that U.S. workers and manufacturers obtain the fair and equal access to raw materials like rare earths that China specifically agreed to when it joined the WTO.”

It should also be noted that China maintains a 40 percent export tax on steel scrap that creates additional distortion in the marketplace. In other words, China enjoys the benefit of open trade in steel scrap, and in fact is the largest importer of steel scrap from the United States, yet imposes a 40 percent tax on its own exports. While China reserved the right to impose such a tax in its WTO accession agreements, there is no reasonable justification for such disparate treatment of scrap imports and exports – and China's actions on this point show its unwillingness to adopt policies based on the principles of free and fair trade.

Given its pervasive use of export restraints as part of its trade and industrial policy, and given the clear signs that China has no intention of ending its use of such export restraints, more needs to be done to bring China’s policies into compliance with its WTO commitments and eliminate their damaging effects. Specifically, the Administration should continue to vigorously pursue its WTO case regarding China’s export restraints on rare earths – and consider more cases as necessary. In addition, the Administration should continue to find that these export restraints constitute countervailable subsidies that confer a financial benefit to Chinese producers by allowing them to purchase inputs at less than adequate remuneration.

2. Promoting Low-Priced Imports of Iron Ore for Chinese Mills

As USTR recognized last year, China controls imports of certain raw materials as “part of a program to control raw material prices to provide an unfair advantage to Chinese steel producers.” For example, China intervenes in negotiations between foreign exporters of iron ore and hundreds of smaller Chinese steel producers by limiting licenses for iron ore imports and limiting shipments of iron ore to those that meet a minimum-size threshold.
Consistent with these policies, China has continued to take measures to suppress the prices of imported iron ore for its steel producers. For example, in May 2012, CISA and the China Beijing International Mining Exchange opened an iron ore spot trading platform to break the “monopoly practices” of foreign miners.\(^{187}\) The platform is also intended to rival the GlobalOre trading exchange that is backed by BHP Billiton.\(^{188}\) Many traders and miners stated that unless China offers incentives such as tax rebates then they are unlikely to migrate to China’s platform.\(^{189}\) Others indicated, however, that it is only a matter of time before they are forced to use the exchange: “This platform is supported by the Chinese government. The miners have to show their support to the platform, otherwise they may feel some pressure from the Chinese government.”\(^{190}\) Indeed, the Vice Chairman of CISA, Wang Xiaoqi, has already warned Chinese steel mills not to join the rival BHP Billiton-backed GlobalOre.\(^{191}\)

Last year, USTR stated that it had raised its concerns about China’s restrictive iron ore import licensing and other measures bilaterally through the steel dialogue meetings and to the WTO’s Committee on Import Licensing and Council for Trade in Goods.\(^{192}\) USTR also stated that it would “continue to monitor closely China’s iron ore import licensing system as well as other Chinese government actions seeking to influence iron ore prices.”\(^{193}\) Given the reports discussed above, continued vigilance on this issue is warranted.

3. **Helping Chinese Mills with Raw Materials Purchases**

In addition to imposing export and import restraints, China has an established policy of assisting its steel producers in making major acquisitions of raw materials across the world. Indeed, a study conducted by the American Scrap Coalition (“ASC”) in 2008 documents such assistance being provided in the form of “direct subsidies to Chinese enterprises investing overseas, funding of SOEs to obtain raw materials, backing from China’s sovereign wealth fund, support from state-owned policy banks, and intervening in negotiations relating to long-term contracts for iron ore and other raw materials.”\(^{194}\)

China continues to maintain such policies. As discussed above, China plans to increase the share of imported iron ore from Chinese-owned overseas mines from 15 percent to 50 percent. As part of


\(^{188}\) China Eyes Upper Hand in Pricing.

\(^{189}\) Id.

\(^{190}\) Id.


\(^{192}\) 2011 USTR Report at 31.

\(^{193}\) Id.

\(^{194}\) "Raw Deal: How Governmental Trade Barriers and Subsidies are Distorting Global Trade in Raw Material," American Scrap Coalition (Nov. 2008) at 15.
China’s plan to expand its overseas mines, the 12th Five-Year Steel Program states that by 2015 “more than 100 million tons of new overseas production capacity of iron ore will be added.”195 Consistent with this goal, China has continued to provide assistance in the acquisition of iron ore deposits overseas.

This year, for example, Chinese activity in emerging deposits overseas included: (1) an agreement to invest $1.7 billion in the Mbalam iron ore project in Cameroon and the Republic of Congo,196 (2) negotiations for the China Development Bank of a $5.77 billion project to build a mine-rail-port facility in Australia’s West Pilbara region,197 (3) the injection of $2 billion into the China-Africa Development Fund, which has mining as one of its “key targets,”198 and (4) plans to begin producing iron ore in November at a $6.2 billion iron ore project in Western Australia.199 As Graeme Hosie, chief executive of London Mining, has explained, Chinese investment in such emerging deposits is only possible because of China’s policy of assisting its steel producers in the acquisition of raw materials: “You have Chinese banks that can fund these projects at a low cost of capital, because they are helping state-owned enterprises strategically ensure supply.”200 This is echoed by the explanation of an Australian mining chief executive as to why Chinese firms are acquiring new mines across the globe: “The difference is that the Chinese operators can get the funding from Chinese banks where the Western banks won't lend - so the Western company might make their assessment and go, 'yeah, I want to buy,' but can't get funding for it and that's the difference.”201

China is also helping Chinese steel firms develop domestic iron ore mines. One of the goals of the 12th Five-Year Steel Program is to “intensify the effort in exploration of domestic iron ore resources.”202 China’s Ministry of Land and Resources announced this past February that 18 new iron ore reserves had been discovered in China last year with proven iron ore reserves totaling 2.38 billion MT.203 In July, CISA President Zhu Jimin stated that steel producers should “speed up the

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195 12th Five-Year Program for Steel at Art. III(III)4.
202 12th Five Year Program for Steel at Art. IV(VI).
development of domestic iron ore resources” and that he remained hopeful that “the state will support iron and steel enterprises to develop domestic iron ore mines.”

Like the export and import restraints it has imposed on raw materials, China’s unfair assistance in the acquisition of raw materials distorts markets worldwide. The Administration should aggressively press China to cease this practice. It should also find that where China provides assistance to certain enterprises or industries to acquire raw materials overseas, any benefit received by the enterprises or industries is a countervailable subsidy.

D. Currency Manipulation

AISI members, along with other U.S. manufacturers, have long expressed concern over China’s policy of controlling the exchange rate between its currency (known as the renminbi ("RMB") or the yuan) and the U.S. dollar. Paul Krugman has explained how China boosts exports and blocks imports by keeping the value of its currency artificially low:

Under normal circumstances, the inflow of dollars from {China's trade} surpluses would push up the value of China’s currency, unless it was offset by private investors heading the other way. And private investors are trying to get into China, not out of it. But China’s government restricts capital inflows, even as it buys up dollars and parks them abroad.

Last year, Robert E. Scott, Director of Trade and Manufacturing Policy Research at the Economic Policy Institute, performed an analysis of what would happen if China allowed the yuan to appreciate to its market value. His analysis showed that if China allowed the renminbi to appreciate by 28.5 percent, then the U.S. GDP would increase by $207 billion dollars, the growth in GDP would support 1,631,000 U.S. jobs, and the growth in GDP and rise in employment would reduce the federal budget deficit by $51.7 billion. Furthermore, Taiwan, Singapore, Hong Kong, and Malaysia have also devalued their currencies to remain competitive with China. If China allowed its currency to appreciate, these


205 In 2004, for example, AISI joined a coalition of U.S. industrial, service, agricultural, and labor associations seeking relief under Section 301(a) of the Trade Act of 1974, as amended, from China’s manipulation of the renminbi. Petition for Relief under Section 301(a) of the Trade Act of 1974 on behalf of the China Currency Coalition (Sept. 9, 2004), available at http://www.aflcio.org. This petition demonstrated that China’s exchange-rate policy constitutes a prohibited export subsidy within the meaning of Articles 1, 2, and 3 of the SCM Agreement, and Articles VI and XVI of the GATT 1994. Id. at 50.


208 Id. at 2.

209 Id. at 4; see also C. Fred Bergsten, “Correcting the Chinese Exchange Rate: An Action Plan,” Testimony before the Ways and Means Committee of the U.S. House of Representatives (March 24, 2010), available at http://www.iie.com
countries would be free to revalue their currencies as well. If they allowed their currencies to revalue, this would translate to an additional $78.7 billion increase in GDP, an additional 620,000 jobs, and an additional decrease in the federal budget deficit of $19.7 billion.

The U.S. government and other countries have long sought to address concerns about currency manipulation through dialogue with the Chinese government. Unfortunately, these efforts have not succeeded. In 2005, in response to international pressure, China announced that it would allow more flexibility in its exchange rate. At the time, estimates placed the value of the yuan at up to 40 percent below what its value would have been absent government intervention. After China’s announcement, the yuan appreciated from 8.28 yuan per dollar to 6.81 yuan per dollar in July 2008, an adjustment of only 17.8 percent. Starting in July 2008, China all but halted the appreciation of the yuan “due to the Chinese government’s fear that a strong {yuan} will damage China’s exports.” In other words, China’s government allowed the yuan to rise in value only so long as this rise did not significantly limit Chinese exports.

On June 19, 2010, in response to mounting international pressure for China to stop manipulating its currency, China announced that it would allow the yuan to fluctuate against the currency of other countries. By August of last year, however, it was clear that China was only allowing minimal movements against the dollar. Moreover, between April and September 2012 the yuan has fallen close to 1% against the U.S. dollar. Analysts expect for it to stay flat or depreciate even further over the next couple of months.

(“Several neighboring Asian countries of considerable economic significance – Hong Kong, Malaysia, Singapore, and Taiwan – maintain currency undervaluations of roughly the same magnitude in order to avoid losing competitive position to China.”).

210 The Benefits of Revaluation at 4.
211 Id. at 5.
214 8.28 – 6.81 = 1.47; 1.47 / 8.28 = 0.178 = 17.8 percent.
217 Id.
help its domestic exporters.\textsuperscript{220} Eswar S. Prasad, a former China division chief at the International Monetary Fund, agrees: “During a difficult period of slowing growth and weak export demand, the Chinese government is . . . guiding the value of the renminbi lower against the dollar to help support exports.”\textsuperscript{221}

Despite these facts, the U.S. Treasury Department has refused to cite China as a currency manipulator in semi-annual reports to Congress on the currency practices of key trading partners required by law. In its most recent report, Treasury refused to cite China as a currency manipulator even though the report recognized both that China’s currency is “undervalued” and that its appreciation is essential for global rebalancing to take place:

\begin{quote}
China’s exceedingly high foreign exchange reserves relative to those of other economies, the persistence of its current account surplus and the incomplete appreciation of the RMB, especially given rapid productivity growth in the traded goods sector, suggest that the real exchange rate of the RMB remains significantly undervalued and further appreciation of the RMB against the dollar and other major currencies is warranted. China’s large and continued foreign reserve accumulation has prolonged the misalignment in its real effective exchange rate and hampered progress toward global rebalancing, including among economies that compete with China for exports.\textsuperscript{222}
\end{quote}

Given these facts and their significance to the U.S. and global economy, the U.S. government should take far more aggressive and creative action on this issue. At a minimum, the Administration should immediately begin to treat currency manipulation of the type practiced by China as actionable under U.S. trade remedy laws.

The Administration should also explore all other options that have been proposed to discourage China from undervaluing its currency. For example, last year Joseph Gagnon and Gary Hufbauer of the Peterson Institute proposed that the U.S. government could tax the income on Chinese holdings of U.S. Treasury bonds to discourage further manipulation.\textsuperscript{223} Professor Peter Morici at the University of Maryland has proposed imposing a tax on the conversion of dollars into yuan – either for the purpose of importing Chinese goods or investing in China – equal to the degree of China’s currency manipulation.\textsuperscript{224} USTR should consider and analyze these and other such proposals – including commencing WTO litigation if necessary – to address China’s currency manipulation.

\section{E. Intellectual Property Rights}

\textsuperscript{220} \textit{Id.}


\textsuperscript{222} U.S. Department of Treasury, Semi-Annual Report to Congress on International Economic and Exchange Rate Policies (May 2012) (emphasis added).


USTR has properly recognized that when China accepted the WTO Trade Related Aspects of Intellectual Property Rights ("TRIPS") Agreement, it “took on obligations to adhere to generally accepted international norms to protect and enforce the intellectual property rights held by U.S. and other foreign companies and individuals.”\textsuperscript{225} Despite this agreement, however, USTR reports that “[e]ffective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China.”\textsuperscript{226}

IPR represents another area in which dialogue between the United States and China has failed to bring China into compliance with its WTO obligations. The Administration recognized this fact in August 2007 when it requested a WTO dispute settlement panel to address deficiencies in China’s legal regime for protecting and enforcing copyrights and trademarks.\textsuperscript{227} In June 2009, the WTO adopted a panel report ruling that Chinese law does not adequately provide for the protection and enforcement of IPR on a wide range of products.\textsuperscript{228} Although the WTO’s findings represent a positive step forward, as U.S. Trade Representative Ron Kirk recognized at the time, “[a] great deal of work remains for China to improve its IPR protection and enforcement regime.”\textsuperscript{229}

Last year, the USITC issued a report analyzing the effects of IPR infringement on U.S. businesses and the U.S. economy.\textsuperscript{230} The findings of the report are alarming:

- Although U.S. receipts from payments related to intellectual property ("IP") yielded a $64.6 billion trade surplus in 2009, receipts from China represented only a small share of this surplus due in large part due to weak IPR enforcement and market access problems in China.\textsuperscript{231}

- Firms in the IP-intensive sector of the economy that conducted business in China in 2009 incurred losses estimated at $48.2 billion in sales, royalties, or license fees due to IPR infringement in China. In fact, the USITC acknowledged that because many firms were unable to calculate their losses with precision, those losses may have actually been as high as $90.5 billion.\textsuperscript{232}

\textsuperscript{225} 2011 USTR Report at 83.
\textsuperscript{226} \textit{Id.} at 92.
\textsuperscript{229} \textit{Id.}
\textsuperscript{231} \textit{Id.} at xiii.
\textsuperscript{232} \textit{Id.} at xiv.
An improvement in IPR protection and enforcement in China to levels comparable to the United States would likely increase employment in U.S. firms that operate in China by 2 to 5 percent. Such an increase would translate into approximately 923,000 new U.S. jobs within the IP-intensive industry.\(^{233}\) This, in turn, would lead to an increase of 2.1 million full-time U.S. jobs in the U.S. economy as a whole.\(^{234}\)

An improvement in IPR protection and enforcement in China to levels comparable to those in the United States would also lead to an estimated $107 billion gain in U.S. exports and sales to majority-owned affiliates in China.\(^{235}\)

There is now also growing concern that China’s compliance with respect to its IPR obligations will worsen as it pursues its so-called “indigenous” innovation campaign. The significance of this campaign to the U.S.-China trade relationship could be profound. According to the U.S. Chamber of Commerce (the "Chamber"), the Chinese Communist Party ("CCP") Central Committee itself has “elevated indigenous innovation to a strategic level equal to Deng Xiaoping’s ‘reform and opening’ policy” of 1978.”\(^{236}\) A report released by the Chamber in 2010 documents how the campaign is “an elaborate and extensive ecosystem of industrial policies” of “breathless ambition” that has been crafted “to turn the Chinese economy into a technology powerhouse by 2020 and a global leader by 2050.”\(^{237}\)

The USITC report issued last year concludes that China’s indigenous innovation policies have already eroded the competitive positions of U.S. firms and reduced their market share.\(^{238}\) The USCC has similarly found that U.S. businesses “are being squeezed out of the Chinese market by government policies that first demand technology transfer in exchange for market access and then favor domestic companies.”\(^{239}\) At least one steelmaker has simply decided to share its patented technology in exchange for greater access to China’s markets. Specifically, in October 2010, South Korea’s POSCO agreed to share its patented Finex iron-making process with two Chinese steelmakers to gain a presence in China.\(^{240}\)

China promised last year to sever the link between its “indigenous innovation” policy and government procurement.\(^{241}\) It also promised that it would not require foreign automakers to transfer technology to

\(^{233}\) Id. at xvii.

\(^{234}\) Id. at xx.

\(^{235}\) Id. at xviii.


\(^{237}\) See id at 4, 22.

\(^{238}\) USITC Pub. No. 4226 at xiii, 1-1.

\(^{239}\) 2010 USCC Report at 20.


\(^{241}\) 2011 USTR Report at 3.
Chinese enterprises or establish Chinese brands in order to invest and sell electric vehicles in China. As the USCC has found, however, “China has a history of making promises and delivering little, particularly when doing as little as possible benefits the Chinese economy, as has been the case with China’s promises to bring its intellectual property protections up to international standards and to cease requiring technology transfers from foreign firms.” Indeed, only last month the European Chamber of Commerce in China published a study finding that “the essence of the {indigenous innovation} system . . . appears very much still in force.” The study found that:

- Many sub-central measures related to government procurement continue to contain preferences for products with indigenous innovation without providing any notice that such preferences have been invalidated.

- There are still a number of measures that require the use of products containing Chinese indigenous innovation to qualify for government subsidies, including subsidies from a fund that is worth several billion Euros.

- China continues to use discriminatory standard-making procedures, withhold information on its standards, and discriminate in the application of its standards to promote Chinese indigenous innovation.

- Although there is no formal requirement for foreign companies doing business in China to transfer technology to their Chinese partners, the Chinese partner often forces such a transfer by: (i) demanding royalties for use of Chinese patents of “dubious quality;” (ii) requiring transfer as a precondition to entering into a joint venture; or (iii) requiring foreign partners to open research and development centers in China as a precondition for entering into a joint venture.

- There are instances where Chinese SOEs have acquired technology from their foreign partners and then used preferential government support to displace the foreign partners from the Chinese and world markets.

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242 Id.
245 Id. at 9-10.
246 Id.
247 Id. at 11.
248 Id. at 11-12.
249 Id. at 104.
In fact, although China promised that it would not require foreign automakers to transfer technology to Chinese enterprises, this past April Honda announced that it had decided to transfer its proprietary hybrid vehicle technology to a Chinese joint-venture partner to gain access to China’s expanding market for automobiles. The move was seen as “unprecedented” as Japanese automakers have been highly wary of investing in China, promoting Chinese to senior management positions, or even hiring or training Chinese staff in Japan due to fears of theft and copying of its technology secrets. The assessment of many analysts is that transferring its proprietary technology was simply the price that Honda had to pay to access the Chinese market. It should also be noted that the United States recently asked China to explain why it wants non-Chinese investors in the Chinese steel industry to enter into technology transfer agreements despite WTO commitments to the contrary.

Given the breadth of China’s indigenous innovation policy and its enormous potential to harm U.S. companies, USTR must take a very aggressive approach to ensure that the policy does not seriously distort world markets.

F. Effective Enforcement of U.S. Trade Laws

As demonstrated throughout this submission, China has not fully complied with its WTO obligations. Under these circumstances, the United States must effectively enforce its trade remedy laws. While this is not strictly a WTO “compliance” issue, trade law enforcement is essential for the United States to protect its rights and receive the benefits due under the WTO agreements.

1. Treatment of China as a Non-Market Economy in AD Investigations

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 in each of the last three meetings of the U.S.-China Strategic and Economic Dialogue to treat China as a “market economy” for purposes of U.S. AD laws. As explained below, such treatment would be improper and contrary to U.S. law.

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251 Id.

252 Id.


254 See China Protocol of Accession at pp. 8-10. When the United States treats a country as an NME in AD proceedings it disregards the prices and costs of merchandise sold in the NME’s market and instead uses an alternative methodology to calculate normal value. See 19 C.F.R. § 351.408 (2012).

Congress has provided that in determining whether a country is an NME, the DOC must take six factors into account: (1) whether the country’s currency is convertible; (2) whether wage rates are determined by free bargaining between labor and management; (3) whether foreign investment is permitted in the foreign country; (4) whether the government owns or controls the means of production; (5) whether the government controls the allocation of resources and the price and output decisions of enterprises; and (6) such other factors as the DOC considers appropriate.\(^{256}\) In August 2006, the DOC conducted a detailed analysis of this issue and found that all six of these factors showed that China should continue to be treated as an NME.\(^{257}\) Nothing has changed since that time that would warrant a different conclusion. In fact, as USTR has recognized, since 2006 there has been a “trend toward a more restrictive trade regime.”\(^{258}\)

Another issue of critical importance is China’s status as an NME after December 11, 2016. During China’s accession to the WTO, there was concern that “China was continuing the process of transition towards a full market economy” and that “under those circumstances, in the case of imports of Chinese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations.”\(^{259}\) In response to this concern, China specifically agreed in its Protocol of Accession to a provision that, among other things, states that WTO members could treat China as an NME “if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.”\(^{260}\) While a portion of this Protocol expires on December 11, 2016,\(^{261}\) there is nothing in the Protocol or elsewhere to suggest that China should or must be treated as a market economy at that time – particularly where its economic development would not justify such treatment.

Legal scholars that have thoroughly analyzed this issue have concluded that “the idea that there is a deadline {at which point China must be treated as a market economy} is an urban myth that seems to have gone global.”\(^{262}\) In this regard, it should be noted that:


\(^{258}\) 2008 USTR Report at 4 (emphasis added).


\(^{261}\) China’s Protocol of Accession at ¶ 15(d).

The portion of China’s Protocol of Accession that does not expire after 2016 states that Chinese prices or costs must be used in AD proceedings only “if the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product.”

Article 2.2 of the AD Agreement specifically allows WTO members to use alternative methodologies in calculating normal value in AD proceedings whenever it is warranted by “the particular market situation” of the exporting country.

Article 2.7 of the AD Agreement states that “this Article is without prejudice to the [Second Ad Note to Article VI] to GATT 1994.” The Second Ad Note, in turn, states that for AD proceedings involving NMEs, “difficulties may exist in determining price comparability . . ., and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

As legal scholars have concluded, these and other bases provide authority for the United States to continue treating China as an NME after December 11, 2016. In fact, USTR recognized as early as 2005 that there is no obligation to treat China as a market economy and begin using Chinese prices and costs in AD proceedings after 2016. Rather, at that time “the ability of WTO members to continue using third-country information in AD calculations involving China would be governed by generally applicable WTO rules.”

USTR should be prepared to defend rigorously the United States’ authority to continue to treat China as an NME. As part of such an effort, USTR should coordinate with the relevant authorities from other WTO members that have an interest in this issue – e.g., the European Union, Canada, and Australia. In addition, USTR should engage with the DOC, domestic producers, and any other stakeholders with an interest in this issue to ensure that all relevant legal authorities and issues are adequately evaluated before the arrival of December 11, 2016.


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263 China’s Protocol of Accession at ¶ 15(a)(i).
265 Id. at Art. 2.7.
266 WTO, General Agreement on Tariffs and Trade (GATT 1947), at Second Interpretative Note to Article VI, ¶ 1 (emphasis added).
269 Id.
Normally, in determining the benefit bestowed on the recipient of a non-recurring subsidy, the DOC will allocate the subsidy over the average useful life of the productive assets benefited by the subsidy.\(^{270}\) In October 2007, the DOC decided for the first time to apply the CVD law to China.\(^{271}\) Unfortunately, it determined that the “uniform date” from which it will identify and measure Chinese subsidies is December 11, 2001, the date on which China became a WTO member.\(^{272}\) In other words, non-recurring subsidies provided prior to this date are treated as though they were not subject to U.S. CVD laws.

AISI strongly disagrees with the DOC’s decision on this issue. First, there is no basis in U.S. law or the WTO agreements to use an arbitrary cut-off date from which to identify and measure Chinese subsidies. Second, the decision to use such a date provides China a benefit that is not provided to any other country. Third, the decision fails to capture subsidies bestowed prior to China’s WTO accession that have an average useful life that extends beyond December 11, 2001. Fourth, many of the subsidies provided prior to December 11, 2001 are extremely large and continue to provide countervailable benefits to this day. Finally, a condition of China’s WTO accession was that it would become subject to subsidies disciplines, and Congressional approval of China’s WTO accession was conditioned upon China’s commitments in this regard. To decline to countervail subsidies bestowed prior to China’s WTO accession is thus inconsistent with both China’s WTO commitments and Congressional intent.\(^{273}\)

3. **Applying Both AD and CVD Laws to Chinese Imports**

In March of this year, Congress passed legislation specifically directing the DOC to “apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries,” such as China.\(^{274}\) Thus, it is clear under U.S. law that DOC can apply both the AD and the CVD laws to unfairly-traded imports from China. Unfortunately, this vital principle has been challenged both at the WTO\(^{275}\) and in U.S. litigation.\(^{276}\) To ensure that U.S. law is effective with respect to all of the

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273 In GPX, the court found that was not lawful for the DOC to apply a “uniform” cut-off date. See GPX Int’l Tire Corp v. United States, 645 F. Supp. 2d at 1231 (Ct. Int’l Trade 2009) (“GPX”) The CIT found that the application of such a cut-off date was contrary to the DOC’s duty “to determine the existence of countervailable subsidies based on the specific facts for each subsidy, rather than by examining those subsidies found after an arbitrary cut-off date.” Id. at 1250. Moreover, in its remand determination pursuant to GPX, the DOC was able to apply a methodology that did not use a uniform cut-off date but instead identified and measured subsidies prior to December 11, 2001. GPX Remand at 25-26.
275 See Report of the WTO Appellate Body, United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (Mar. 11, 2011) at 223 (holding that under certain circumstances, the application of both AD and CVD duties to the same imports could result in an improper double remedy).
unfairly-traded imports from China currently under order, the Administration should make all possible efforts to preserve the United States' ability to apply both AD and CVD laws to Chinese imports.

4. **Chinese Circumvention of AD and CVD Orders**

AISI and its members are very concerned about widespread evidence of Chinese circumvention of AD and CVD orders. For example, Chinese companies provide services to evade AD and CVD duties on steel and other products exported to the United States.\(^{277}\) One such company, Globe Success International Transportation (“Globe Success”), advertises that it assists in evading the payment of such duties by sending containers of subject merchandise to third countries and then re-exporting the containers to the United States using documents that originate from the third country.\(^{278}\) Another company, Pulink International, boasts that its “years of experience in antidumping duty evasion” will allow it to assist in evading AD duties on U.S. imports of Chinese oil well pipes.\(^{279}\) Significantly, these companies involve large operations doing business in a public manner without any apparent fear of reprisal. Indeed, Globe Success reports that it employs a staff of 450 and maintains offices in multiple cities throughout China and other countries.\(^{280}\)

Steel producers as well as companies in other industries have repeatedly brought evidence of China’s circumvention of U.S. trade laws to the attention of U.S. Customs and Border Protection (“CBP”).\(^{281}\) This evidence of circumvention includes illegal transshipment of goods through third countries, falsified country of origin markings, undervalued invoices that offset the payment of AD/CVD duties, and the misclassification of goods.\(^{282}\) Unfortunately, as shown above, this problem continues. AISI urges the Administration to take an aggressive approach and use all the tools at its disposal to prevent Chinese producers from circumventing U.S. trade laws. In addition, the Administration should work with Congress to develop additional tools, where necessary, to address this problem.

5. **China's Application of Its Own AD/CVD Laws**

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\(^{277}\) See, e.g., Staff Report Regarding Duty Evasion: Harming U.S. Industry and American Workers, Prepared for Senator Ron Wyden (Nov. 8, 2010) (“Staff Report Regarding Duty Evasion”) at 5 (describing how staff received written confirmation from numerous Chinese companies that were willing to evade AD/CVD duties).


\(^{280}\) Globe Success Profile.

\(^{281}\) See, e.g., Statement of Karl G. Glassman, Chief Operating Officer of Leggett & Platt, Before the U.S. Senate Subcommittee on International Trade, Customs, and Global Competitiveness (May 5, 2011) (stating that since 2008 Leggett & Platt had met with or sent CBP information regarding specific evidence of duty evasion on 21 separate occasions).

\(^{282}\) Staff Report Regarding Duty Evasion at 5.
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 – foreign producers targeted in Chinese trade remedy proceedings are denied any semblance of due process, denied access to key information needed to defend their interests, and subjected to WTO-inconsistent methodologies.

For example, USTR reports that China has engaged in “manipulating trade remedy investigations to unfairly restrict exports of American steel” and, in so doing, violated the WTO requirements that govern the legitimate use of AD/CVD laws.\footnote{See USTR Press Release, “United States Files Two WTO Cases Against China,” (Sept. 15, 2010).} In September 2010, following the Chinese government’s AD/CVD investigations of U.S. producers of grain oriented electrical steel (“GOES”), the U.S. government filed a WTO case against China. As identified by USTR, China’s Ministry of Commerce (“MOFCOM”) initiated the investigations without sufficient evidence, failed to objectively examine the evidence, failed to disclose “essential facts” underlying its conclusions, failed to provide an adequate explanation of its calculations and legal conclusions, improperly used investigative procedures, failed to provide confidential summaries of Chinese submissions, and included U.S. federal and state programs that were not identified in the notice of initiation of the CVD petition.\footnote{Id.} This past June, a WTO dispute panel agreed with the United States, finding that China had conducted an investigation and applied duties in a manner inconsistent with numerous obligations under the SCM Agreement and the AD Agreement.\footnote{USTR Press Release, “United States Wins WTO Steel Dispute with China,” (June 15, 2012).}

In addition, USTR was forced in December 2011 to bring another WTO case against China after it imposed AD and CVD duties on imports of chicken “broiler products” from the United States.\footnote{USTR Press Release, “To Protect American Jobs, United States Announces Next Step in Dispute Against China,” (Dec. 8, 2011).} According to USTR, in imposing these duties Chinese authorities failed to abide by applicable procedures and legal standards, including by finding injury to China’s domestic industry without objectively examining the evidence, by improperly calculating dumping margins and subsidization rates, and by failing to adhere to various transparency and due process requirements.\footnote{Id.}

Finally, this past July USTR challenged at the WTO China’s imposition of AD and CVD duties on more than $3 billion in U.S. exports of automobiles.\footnote{USTR Press Release, “Obama Administration Challenges China’s Unfair Imposition of Duties on American-Made Automobiles,” (July 5, 2012).} USTR reports that the basis for its challenge is that China initiated the AD/CVD investigations in question without sufficient evidence, failed to objectively examine the evidence, and made unsupported findings of injury to China’s domestic industry.\footnote{Id.} In addition, China failed to disclose “essential facts” underlying its conclusions, failed to...
provide an adequate explanation of its conclusions, improperly used investigative procedures, and failed to require non-confidential summaries of Chinese company submissions.\textsuperscript{290}

These cases show a growing pattern of China misusing its trade laws and violating its WTO commitments to block exports of U.S.-manufactured products. AISI commends USTR for bringing these cases and urges it to continue to challenge China whenever it misuses its trade laws in this manner.


As part of its WTO accession, China agreed that for 12 years other members could impose product-specific safeguards against Chinese imports.\textsuperscript{291} This provision (implemented in U.S. law under Section 421 of the Trade Act of 1974, as amended)\textsuperscript{292} is critical to ensuring that U.S. industries and workers do not suffer market disruption as a result of surges in Chinese imports. The provision was also critical in gaining support in the United States for China’s WTO accession and remains especially important given China’s poor record of compliance with its WTO obligations.

In 2009, the Administration granted safeguard relief pursuant to Section 421 with respect to tire imports.\textsuperscript{293} Significantly, although China subsequently challenged the United States’ decision to provide safeguard relief with respect to tire imports, in December 2010, a WTO dispute settlement panel found in favor of the United States and upheld its right to impose additional duties on imports of Chinese tires under the transitional safeguard mechanism included in China’s Protocol of Accession to the WTO.\textsuperscript{294} On September 5, 2011, the WTO Appellate Body circulated a report that upheld the panel’s findings.\textsuperscript{295} Section 421 remains an important tool for limiting the harmful effects of Chinese imports and should be enforced aggressively.

H. International Tax Rules – Border Adjustability

As discussed above and as USTR has recognized, China manipulates its VAT system to help Chinese steel producers and other manufacturers.\textsuperscript{296} At a larger level, there is an even more fundamental issue relating to VAT and border adjustability – an issue that significantly affects trade with China and other major trading partners. In particular, there is a fundamental disparity caused by international rules that unfairly reward countries like China (which rely on VAT systems) and penalize the United States

\textsuperscript{290} \textit{Id.}
\textsuperscript{291} \textit{See} China’s Protocol on Accession at ¶ 16.
\textsuperscript{294} \textit{See} USTR Press Release, “United States Prevails in WTO Section 421 Safeguard Dispute with China,” (Dec. 13, 2010).
\textsuperscript{295} WTO, \textit{Current Status of United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tires from China}.
\textsuperscript{296} \textit{See} USTR 2010 NTE Report at 9.
(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.

Existing international rules allow countries relying on VAT systems to rebate indirect taxes on exports and apply them on imports while the United States is denied similar treatment for its “direct” (i.e., income) tax system. 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 of more than $100 billion per year. There is no legitimate economic justification for such a practice.

In 2002, when Congress approved trade promotion authority in the context of the Doha Round of WTO negotiations, it specifically provided that “[t]he principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.” USTR should pursue this issue and do so aggressively.

I. Product Safety Issues

In recent years, safety concerns with Chinese imports have received a great deal of publicity in the United States. In 2010, for example, there were 220 U.S. safety recalls of Chinese-made products. There can be little doubt that these concerns extend to steel products. As Representatives Pete Visclosky (D-Ind.) and Tim Murphy (R-Pa.) stated in 2009, “China has a proven track record of making dangerous, substandard products, including steel.” In fact, that same year the DOC discovered in the AD/CVD investigation of steel grating from China that Ningbo Jiulong Machinery Manufacturing Co. Ltd. (“Ningbo Jiulong”) – China’s largest producer of steel grating products – had falsified certain mill test certificates and that, as a result, the mill test certificates which it supplied to its U.S. customers were completely unreliable. Given the widespread use of steel grating in everything from factory flooring to pedestrian walkways, these findings are troubling. In August


298 Id.


303 Issues and Decision Memorandum in *Steel Grating from China*, 75 Fed. Reg. 32366 (Dep’t Commerce June 8, 2010) (final determ.) at Comment 3.

2011, “inferior quality steel” that was manufactured in China was discovered at a construction site for a housing project in Hainan Province. Inspectors at the site concluded that had the steel been used in construction “it undoubtedly would pose a serious safety risk to the housing.” It was later discovered that the steel products in question had not undergone mandatory testing under the relevant standards that would have detected the defects in the steel.

Last year, the U.S. Consumer Product Safety Commission established an overseas office for consumer product safety in China in a bid to reduce the number of dangerous products reaching the U.S. market. While AISI applauds this step to protect U.S. consumers, it emphasizes that the issue of product safety also implicates WTO concerns. Pursuant to China’s WTO accession, Chinese imports are subject to the WTO Sanitary and Phytosanitary Agreement, as well as the Agreement on Technical Barriers to Trade. Those agreements 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

This is AISI’s ninth submission detailing China’s non-compliance with its obligations under the WTO. When AISI made its first submission to USTR in 2004, China produced 280 million MT of crude steel and held a global market share of 26.2 percent. Today, China is on pace to produce 700 million MT of crude steel and has captured 45.1 percent of the global market.

As detailed throughout this submission, China has used massive subsidies and other trade distorting measures that are in violation of its WTO obligations to provide an unfair advantage to its steel industry. Ongoing dialogues between the United States and China regarding these problems have not been successful in bringing China into compliance. 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 expected.”

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306 *Id.*

307 *Id.*


310 World Steel Dynamics at 28.

311 World Steel Association “World Steel in Figures 2012” (2012).

312 USCC, 2009 Report to Congress (Nov. 2009) at 78.
thought.\textsuperscript{313} 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 with all of its WTO obligations.

Sincerely,

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and General Counsel