September 27, 2010

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508
FR0810@ustr.eop.gov

RE: Request for Comments Concerning China’s Compliance with its WTO Commitments

Dear Ms. Blue:

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 internal policies affecting trade (e.g., subsidies and taxes levied on exports), intellectual property rights, and other WTO commitments.

Executive Summary

China’s continued failure to comply with its WTO obligations is a major problem, both for American steel producers and for other U.S. manufacturers. As Deputy U.S. Trade Representative Demetrios Marantis observed this past July, "it has been nearly a decade since China joined the WTO, and it is high time for China to follow through on past commitments, as well as provide new market access in key sectors." AISI agrees with this observation and 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:

-- It is widely recognized that the current U.S.-China trade relationship is unsustainable. Over the last decade, the U.S. trade deficit with China has almost 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 consider taking much bolder and more imaginative action than it has in the past to address this chronic problem.

-- From 2003 to 2009, Chinese crude steel production increased by 346 million metric tons ("MT") – a volume almost four times total crude steel production in the United States. Moreover, by 2008, China’s net exports of steel had reached 56.3 million MT. Although the economic crisis saw China’s exports drop precipitously for most of 2009, by November 2009 China had resumed exporting massive amounts of steel. Unfairly-traded steel from China has caused severe harm to American steel producers.

-- China’s increased production has been made possible, in large part, by massive government subsidies – many of which are prohibited by WTO rules. 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.

-- 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 will give Chinese producers an unfair advantage over their U.S. competitors. Indeed, the U.S. government is currently pursuing a WTO case against China on this issue.

-- As shown by a recent case brought by the Administration at the WTO, China has been increasingly applying its trade remedy proceedings in WTO-inconsistent ways to shield its domestic industries from foreign competition – not as a legitimate tool to defend against unfair trade – while, at the same time, it is using subsidies and industrial policies to build up its protected “strategic” industries. For example, China recently imposed antidumping ("AD") and countervailing duties ("CVDs") on imports of grain oriented electrical steel from the United States. In doing so, according to the Administration, the Chinese authorities denied the U.S. exporters fundamental due process, denied them access to key information needed to defend their interests, and applied WTO-inconsistent methodologies to find dumping, subsidies and injury.

-- 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, in the Chinese market and in third country markets.

-- Effective enforcement of intellectual property rights ("IPR") has still not been achieved in China, and IPR infringement remains a serious problem. Moreover, of growing concern is China’s "indigenous" innovation campaign, which appears to violate many of China’s commitments to protect IPR and not to raise technical and other non-tariff barriers to trade.
-- Given that China has not fully complied with its WTO obligations, the United States must effectively enforce its 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 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.

-- The U.S. government should also 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.

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

Before turning to specific concerns about China’s non-compliance with its WTO commitments, AISI first emphasizes that this non-compliance is having serious, long-term consequences for American steel producers, other American manufacturers, and the American economy as a whole. China acceded to the WTO on December 11, 2001. This submission marks the seventh time that AISI has supplied the TPSC with detailed comments regarding China’s failure to comply with its WTO commitments. Time and time again, AISI has documented how China has used 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, USTR has acknowledged that by 2006 it was "clear that some parts of the Chinese government did not yet fully embrace the key WTO principles of market access, non-discrimination and transparency." Moreover, by 2008 USTR was forced to conclude that, rather than making progress toward further market liberalization in compliance with its WTO obligations, what is now observed is a "trend toward a more restrictive trade regime" in China. USTR made similar observations in 2009. Likewise, the U.S.-China Economic and Security Review Commission ("USCC") found in its November 2009 report that China has shown "a disturbing trend away from the
"evolution toward a full market system" and that it "sees steps backward to greater government control." The USCC concluded that China continues to exercise control over its economy in a manner that "gives Chinese exporters a substantial price advantage in international markets and disadvantages U.S. companies hoping to export to China."8

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

Ten years ago, supporters of normalizing trade relations with China were optimistic that China’s accession to the WTO would be a boon to the U.S. economy. They promised that China’s accession would lower our trade deficit, strengthen our manufacturing base, and create jobs in the process.9 Contrary to the expectations of supporters, however, the U.S. trade deficit with China has risen from $83.1 billion in 2000 to $226.8 billion in 200910 – an increase of 172.9 percent.11 In 2000, China accounted for just over one quarter of our manufacturing trade deficit. By 2009, however, that figure had increased to over 75 percent.12 Furthermore, since 2000 the United States has lost over 5.6 million manufacturing jobs – almost one third of all such jobs in our economy.13 Between 2001 and 2009, the United States shuttered 42,400 factories.14 According to one estimate, between 2001 and 2008 our growing trade deficit with China resulted in 2.4 million jobs being lost or displaced.15 At the beginning of this year, the Nobel Prize-winning economist Paul Krugman wrote that "my back-of-the-envelope calculations suggest that for the next couple of years Chinese mercantilism may end up reducing U.S. employment by around 1.4 million jobs."16

As early as 2006, Professor Krugman was warning that the U.S. trade deficit with China was "unsustainable" and that the economic consequences of this deficit "will be ugly."17 Now this fact is broadly recognized. U.S. Secretary of Commerce Gary Locke has said that our trade deficit with

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8 Id.
11 226.8 – 83.1 = 143.7; 143.7 / 83.1 = 1.729 = 172.9 percent.
China "simply can’t be sustained." Last November, U.S. Secretary of the Treasury Timothy Geithner stated that "previous global economic patterns were unsustainable. To establish a more global foundation for growth and avert future crises of this nature, we must rebalance global demand."19

Indeed, the trade deficit with China seems to have played a role in creating the financial bubble that exploded in 2008. Due in large part to its growing surplus with the United States, China’s reserves of foreign currency soared from $165 billion in 2000 to $2.4 trillion by the end of 2009.20 China’s enormous purchases of U.S. treasuries kept interest rates artificially low – and thereby drove private investors to riskier investments such as collateralized debt obligations.21 The resulting bubble has now collapsed with disastrous consequences for the global economy.

Due in large part to the economic downturn, the U.S. trade deficit narrowed between June 2008 and June 2009.22 From June 2009 to June 2010, however, the U.S. trade deficit has nearly doubled.23 In fact, the monthly U.S. trade deficit with China widened to $26.2 billion in July 2010, up from both $18.4 billion in June 2009 and $22.3 billion in May 2010.24 The July 2010 figure was the highest monthly trade deficit with China since October 2008.25

B. China’s Massive Steel Industry Continues to Grow

Nowhere is the impact of China’s increasingly restrictive trade regime as severe as in the steel industry. Indeed, China’s steel industry continues to grow dramatically due to trade-distorting practices:

-- Chinese crude steel production soared from 222 million MT in 2003 to 568 million MT in 2009 – an increase of 346 million MT.26 To put these figures in context, consider that during this same period, the average annual crude steel production in the United States was 90.6 million

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21 Id.
24 Id.
25 Id.
In other words, over the last five years, China’s steel production has increased by a volume of almost four times the average total production of the U.S. industry.\(^{28}\)

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China’s growth in steel production has far outpaced Chinese consumption. In 2003, China’s net imports of steel were 34.65 million MT.\(^{29}\) By 2008, China’s net exports of steel were 56.3 million MT\(^{30}\) — a shift in China’s steel trade balance of 90.95 million MT\(^{31}\). Although China’s exports of steel dropped precipitously for most of 2009 (due to decreased demand as a result of the economic crisis), by November 2009 China had resumed exporting massive amounts of steel.\(^{32}\)

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It appears that in 2010 China will again produce far more steel than is justified by Chinese demand. Despite planned cuts in steel production due to restrictions on electricity usage, an official with the China Ministry of Industry and Information Technology recently stated that China will produce up to 630 million MT of crude steel in 2010.\(^{33}\) That would represent a 10 percent increase from last year's figure,\(^{34}\) even though China is currently facing a falling domestic demand growth rate for steel and domestic prices have "gone into free fall."\(^{35}\) Luo Bingsheng, Vice Chairman of the China Iron and Steel Association stated this year that "[l]ooking at the market as a whole, Chinese steel mills are still producing too much."\(^{36}\)

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China’s actions are particularly striking when viewed in light of the current global economic crisis. In 2009, the American steel industry was forced to slash crude steel production by 36.4 percent compared to 2008.\(^{37}\) Indeed, crude steel production for all countries other than China decreased by 21 percent.\(^{38}\) In contrast, Chinese crude steel production actually increased by

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\(^{27}\) Id. In each respective year from 2003 to 2009, the United States produced 93.7 million MT, 99.7 million MT, 94.9 million MT, 98.6 million MT, 98.1 million MT, 91.4 million MT, and 58.1 million MT of steel. \((93.7 + 99.7 + 94.9 + 98.6 + 98.1 + 91.4 + 58.1) / 7 = 90.6.\)

\(^{28}\) \(346 / 90.6 = 3.82.\)

\(^{29}\) Peter F. Marcus and Karlis M. Kirsis, "Core Report ZZZZ: Global Steel Export Pricing Forecast to 2015," World Steel Dynamics (July 2007) at 23.


\(^{31}\) \(34.65 + 56.3 = 90.95.\)

\(^{32}\) World Steel Dynamics, Global Steel Finance #14: Steel Financial Kaleidoscope (July 2, 2010) at 32.


\(^{37}\) World Crude Steel Output Decreases at Table 1.

\(^{38}\) Total worldwide crude steel production (excluding China) fell from 826 million MT in 2008 to 651 million MT in 2009. See id. \((826 – 651) / 826 = 0.21 = 21\% .\)
13.5 percent.\textsuperscript{39} As a result, China’s share of global crude steel production grew from 37.7 percent in 2008 to 46.6 percent in 2009.\textsuperscript{40} These facts show that China has taken advantage of the global economic crisis to gain market share.

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

There can be no question that Chinese mercantilism has harmed American steel producers. The United States currently maintains 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 CVD orders on imports of light-walled rectangular pipe, welded standard pipe, welded line pipe, austenitic stainless pressure pipe, oil country tubular goods, prestressed concrete steel wire strand, steel grating, and wire decking from China. Each of these orders rests upon findings by the DOC that Chinese mills engaged in unfair trade and findings by the U.S. International Trade Commission ("ITC") that Chinese imports caused or threatened material injury to the relevant domestic industry.

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

-- In September 2009, U.S. producers of seamless carbon and alloy steel standard, line, and pressure pipe ("seamless pipe") were forced to seek AD/CVD relief after unfairly traded imports of seamless pipe increased from 158,126 net tons ("NT") in 2006 to 366,088 NT in 2008, an increase of 131.5 percent.\textsuperscript{41}

-- In December 2009, U.S. producers of drill pipe were forced to seek AD/CVD relief after unfairly traded imports of drill pipe from China increased by 79.5 percent between 2006 and 2008 and almost doubled their market share over the same period.\textsuperscript{42}

-- In July 2010, AISI released a report analyzing the U.S. indirect steel trade – i.e., the trade of steel-containing goods expressed in tons of steel.\textsuperscript{43} The report shows that in 2009, China accounted for over half – 54 percent – of the total U.S. indirect steel trade deficit.\textsuperscript{44}

These facts show that China’s enormous oversupply of steel is having a disruptive impact on the United States steel industry. It must be emphasized that this oversupply did not result from any comparative advantage for China regarding steel production. Instead, it is a direct consequence of

\textsuperscript{39} World Crude Steel Output Decreases at Table 1.
\textsuperscript{40} \textit{Id.} at Figure 2.
\textsuperscript{44} \textit{Id.}
China’s maintaining specific policies to support an export-driven economy using subsidies and other unfair practices that violate China’s WTO commitments.

D. Decisive Action Should Be Taken

The fact that China has failed to comply and apparently has no intention of complying with its WTO obligations presents a dire situation that cannot be ignored by U.S. policymakers. Over the last decade, the U.S. trade deficit with China has almost tripled, the United States has lost millions of manufacturing jobs, thousands of U.S. factories have been shuttered, and the U.S. steel industry has been severely disrupted. For ten years now, despite the magnitude of the problem, U.S. policymakers have remained relatively passive as China pursued policies that created an enormous trade imbalance. This approach has not worked, and it is past time for a more aggressive approach. At a minimum, the U.S. government should undertake the following steps:

- Ensuring strong and effective enforcement of U.S. trade laws, particularly our AD/CVD laws;
- Pursuing additional dispute settlement proceedings at the WTO as necessary to address China’s compliance failures;
- Immediately taking effective steps to counter China’s manipulation of its currency; and
- Pursuing 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.

Given the magnitude of the problem, however, the steps outlined above may not be sufficient to resolve the crisis. Thus, the United States should consider all available options to address this problem, including the right to derogate from its WTO obligations if that is the only realistic way to force Chinese policymakers to take U.S. concerns seriously.

II. Issues of Particular Importance to U.S. 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

<table>
<thead>
<tr>
<th>Commitment</th>
<th>Time Frame</th>
<th>Issue</th>
</tr>
</thead>
<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>
</tr>
<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>
</tr>
<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 growing concern is China’s “indigenous” innovation program.</td>
</tr>
<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>
</tr>
<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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</table>

### 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 by the time of its accession it would eliminate all subsidies prohibited under Article 3 of the SCM Agreement.  

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China also agreed that other WTO members could apply CVD orders against Chinese imports consistent with the SCM Agreement and could address prohibited and actionable subsidies through WTO litigation.\(^47\)

Notwithstanding these commitments, Chinese manufacturers – including Chinese steel producers – continue to benefit from massive government subsidies. The evidence on this point is overwhelming.\(^48\) For example, USTR’s 2009 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."\(^49\) As Deputy USTR Demetrios Marantis recently observed, Chinese subsidies "across a wide range of favored sectors harm U.S. manufacturers and workers, and through their effects impede or displace U.S. exports to China and third country markets."\(^50\) The most recent annual report of the USCC, issued in November 2009, concludes that China’s subsidization is so severe that it may prevent the rebalancing of global supply and demand that must take place to avert further economic crisis:

> The fact that the government in Beijing is still pursuing an export-led strategy based on a wide variety of subsidies to export industries . . . is a cause for concern. If China continues to pursue huge trade and investment surpluses and to accumulate vast financial claims, it will hinder the necessary global economic adjustment, create excess manufacturing capacity, and lay the groundwork for the next crisis.\(^51\)

1. **Over the Last Year, Additional Evidence of Subsidies Has Come to Light**

Since the USTR’s last report on China’s WTO compliance, further evidence of Chinese steel subsidies has come to light. While this submission will not recount all such evidence, the following examples more than demonstrate the point:

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The DOC has issued decisions in five CVD investigations involving oil country tubular goods, wire decking, steel grating, prestressed concrete steel wire strand, and seamless pipe.\(^52\) In those

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\(^{47}\) China Protocol of Accession at ¶ 15.

\(^{48}\) Unfortunately, China’s failure to comply with its WTO obligations makes it impossible to measure precisely the scope of this support. 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. USTR 2009 Report at 42. Furthermore, as USTR has recognized, this notification was woefully incomplete. Id. 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.

\(^{49}\) 2009 USTR Report at 44.

\(^{50}\) Remarks of Deputy USTR Marantis.

\(^{51}\) USCC 2009 Report at 2.

investigations, the DOC specifically identified numerous subsidies benefiting Chinese companies, including the following:

- Provision of upstream inputs (such as steel rounds, hot-rolled steel, and wire rod) for less than adequate remuneration;\(^{53}\)
- Provision of other basic inputs (such as land, electricity, water, and coking coal) for less than adequate remuneration;\(^{54}\)
- Direct transfers of government funds to steel producers in the form of grants – including grants that are contingent on the producer’s export performance;\(^{55}\)
- Loan and interest forgiveness;\(^{56}\)
- Preferential lending through state-owned commercial or policy banks;\(^{57}\)
- Export restraints on coke;\(^{58}\)
- Preferential tax treatment for certain foreign invested enterprises, for enterprises deemed "High or New Technology Enterprises," for companies located in certain economic development zones, for purchases of Chinese-produced equipment by Chinese-owned companies in projects that are compatible with China’s industrial policies, and for investment in Chinese technology;\(^{59}\)

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\(^{58}\) Issues and Decision Memorandum, *Seamless Pipe* at 32-33.

Import tariff and VAT exemptions for using imported equipment in certain encouraged industries;\textsuperscript{60}

-- The DOC also issued a preliminary decision this year in the CVD investigation involving drill pipe from China. As part of this decision the DOC identified a significant number of subsidies provided to Chinese producers of drill pipe, including: the provision of various inputs (including green tubes and electricity) for less than adequate remuneration, grant programs, preferential lending through state-owned commercial or policy banks, subsidies to companies located in certain economic development zones, income tax benefit programs, land grants and discounts, exemptions from and rebates of VAT, and subsidies for certain foreign-invested enterprises.\textsuperscript{61}

-- On September 9, 2010, the United Steelworkers union filed a Section 301 petition seeking to address China’s engaging in illegal practices that have stimulated and protected its domestic producers of certain green technologies.\textsuperscript{62} Among other things, the petition identifies a number of prohibited subsidy programs that China currently uses to benefit its producers and exporters of green technology, including loan interest subsidies, preferential tax treatment, grants contingent on exports, grants contingent on the use of domestically manufactured components, export credits from China’s Export-Import Bank, and discounted export credit insurance.\textsuperscript{63}

2. China’s Steel Policy Ensures Continued Subsidization

It is clear that China will continue subsidizing steel production. China’s steel industry is governed by the Steel and Iron Industry Development Policy ("Steel Policy"), which was issued by China’s National Development and Reform Commission ("NDRC") in July 2005. The Steel Policy specifically provides for government support in the form of "taxation, interest subsidy, and scientific research funds" for major iron and steel projects utilizing newly developed domestic equipment.\textsuperscript{64} The Steel Policy also states that enterprises need only provide "40% or above" of necessary investment capital for new projects of iron making, steel making and steel rolling, suggesting that the remainder of such capital will be supplied by government funds.\textsuperscript{65} As USTR recognized last year:

This high degree of government direction regarding the allocation of resources into and out of China’s steel industry raises concerns not only because of the commitment that China made in its WTO accession agreement that the government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, but also more

\textsuperscript{60} Issues and Decision Memorandum, \textit{OCTG} at 25-27; Issues and Decision Memorandum, \textit{PCS Wire Strand} at 26-28; ; Issues and Decision Memorandum, \textit{Seamless Pipe} at 23-25.

\textsuperscript{61} See \textit{Drill Pipe From the People’s Republic of China}: Preliminary Affirmative Countervailing Duty Determination, 75 Fed. Reg. 33245 (June 11, 2010);


\textsuperscript{63} \textit{Id.}

\textsuperscript{64} NDRC, "Steel Industry Development Policy" (July 20, 2005) at Article 16 (English translation).

\textsuperscript{65} \textit{Id.} at Article 23.
generally because it represents another significant example of China reverting to a reliance on
government management of market outcomes instead of moving toward a reliance on market
mechanisms. Indeed, it is precisely that type of regressive approach that is at the root of many
of the WTO compliance concerns raised by U.S. industry.66

Nevertheless, there is no reason to believe that China intends to stop this type of government
intervention in the marketplace. Indeed, China has already begun discussing the next phase of its Steel
Policy, which will be implemented over the next five years.67 Reports indicate that this phase will
include restructuring the steel industry by 2015 to establish one or two "mega steel groups" with at
least 100 million MT of steelmaking capacity as well as several groups with 50 million MT of
steelmaking capacity.68 To accomplish this goal, China will reportedly provide subsidies such as
preferential lending and tax treatment for mergers between steel companies that are located in different
provinces.69 While China has yet to finalize all the details of its revised steel policy, the fact that it
intends to manage its steel industry for at least another five years shows that China’s steel industry will
continue to benefit from government subsidies and other preferential treatment.

3. 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 has recognized, China eliminated VAT export rebates on some, but not all, steel products over
the course of 2007 and 2008.70 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."71 For example, one
of the products for which VAT export rebates were still available was OCTG.72 Significantly, imports
of OCTG from China tripled from 725,027 NT in 2006 to 2,197,556 NT in 2008.73 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."74

In 2010, China continued using VAT export rebates to encourage exports of certain steel products.
Specifically, in June 2010, China announced that it was cutting the VAT export rebate for a number of

66 2009 USTR Report at 69 (emphasis added).
68 Id.
69 Id.
70 2008 USTR Report at 37.
71 Id.
72 Id.
73 OCTG Staff Report at IV-5.
commodity-grade steel products. As in prior years, however, the result of these cuts 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." In fact, after China announced the cuts in question, the number of import licenses for value-added steel jumped dramatically from the prior month: value-added sheet grades increased 23%; mechanical tube increased 23.5%; stainless steel increased 36% to its highest level in nearly two years; and line pipe increased more than ten-fold.

4. Conclusion

Given that China has subsidized its steel industry for years, and that its government policy plainly provides for further subsidies going forward, it is clear that dialogue alone will not be sufficient to solve this problem. The United States will have to adopt a much more aggressive approach if it ever expects address this problem.

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." Indeed, an analysis of the Chinese industry prepared for AISI in 2007 estimated that 91 percent of Chinese steel production is state-owned or controlled.

Unfortunately, China has not fulfilled its commitment to refrain from influencing decisions of Chinese SOEs. Rather, there can be no doubt that China continues to maintain a significant degree of "influence" over its steel-producing SOEs. China’s 2005 Steel Policy provides detailed guidance for all Chinese steel producers – including SOEs – with respect to many key decisions. In particular, the Steel Policy:

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76 Michelle Applebaum, "June Steel Report: Import Licenses Drop, China Surges" Seeking Alpha (July 8, 2010).
77 Id.
78 Id.
81 Money for Metal: A Detailed Examination of Chinese Government Subsidies to its Steel Industry (July 2007) at 10.
Calls for the reorganization of China’s steel industry so that the ten largest Chinese steel producers will account for more than 50 percent of all Chinese production by 2010, and more than 70 percent of all Chinese production by 2020; 82

Mandates that "steel investment projects shall be reported to the National Development and Reform Commission according to application regulations for review and approval;" 83

Directs that "large-scale steel enterprises shall be mainly arranged in coastal areas;" 84

Provides detailed guidance regarding the size of new steel plants, 85 the minimum size of blast furnaces to be installed in such plants, 86 and the amount of water and energy to be consumed in such plants; 87

Stipulates that as a matter of principle, non-Chinese companies are prohibited from controlling Chinese steel producers. 88

Indeed, as USTR recognized last year, China’s national steel policy is "striking because of the extent to which it attempts to dictate industry outcomes and involves the government in making decisions that should be made by the marketplace." 89

China’s interventions in its state-owned steel industry have only increased during the recent economic crisis. Indeed, in its recent *Trade Policy Review of China*, the WTO found that China took significant measures to assist the steel industry and other sectors affected by "reduced external demand due to the global crisis." 90 The WTO also found that "SOEs have been benefiting disproportionately from the Government’s recent measures to boost the economy, particularly the economic stimulus." 91 At the same time, "domestic private enterprises are finding it more difficult to access credits from banks." 92 These findings indicate that SOEs will continue to dominate China’s steel industry and that China will continue to influence their commercial decisions.

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82 Steel Policy at Article 3.
83 Id. at Article 22.
84 Id. at Article 11.
85 Id. at Article 12 (providing that new steel projects in coastal deepwater port areas shall have a capacity of more than 8 million MT).
86 Id. (providing that the blast furnaces for new steel projects in coastal deepwater port areas shall be over 3,000 cubic meters).
87 Id. (setting strict targets for water and energy consumption).
88 Id. at Article 23.
89 2008 USTR Report at 61.
91 Id. at Section III, p. 54.
92 Id.
China often defends its control over the steel industry on the basis that it will use this control to curb production and reduce overcapacity.93 But this defense of China’s control over its steel industry is not persuasive:

-- 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."94 As AISI and other steel producers’ associations from around the world emphasized in comments submitted to MIIT last year, these necessary changes to China’s steel industry should be driven by market forces – not the Chinese government.95

-- Second, as the EUROFER report concluded last year, conflicting policies within China are exacerbating its overcapacity problems.96 This trend has continued in 2010. For example, in August 2010 China ordered a number of smaller, older steel mills to close within a month.97 In response, Chinese producers are replacing these mills with larger mills that are "in line with state policy."98 For example, Dragon Steel Group is replacing three blacklisted blast furnaces with four larger blast furnaces.99 Likewise, Changjian Steel states that it will continue to operate its two blacklisted furnaces, "regardless of Beijing’s orders," until it completes three larger replacement furnaces.100 Chinese steel producers thus confirm that "production capacity remain{s} increasing rather than decreasing" because the "{s}mall-for-big, equivalent replacement is a very good countermeasure" to the central government’s attempts to eliminate overcapacity.101

-- Third, even if the Chinese central government adopted a consistent policy for eliminating overcapacity, it would still continue to encounter significant opposition to its efforts from provincial and municipal governments, both of which have strong incentives to prevent factories from being forcibly shut down. First, municipal and provincial governments are

93 For example, China’s Ministry of Industry and Information Technology ("MIIT") declared in August 2009 that "{n}o new steel expansion should be encouraged for the next three years" in order to "curb excessive capacity." See CISA, "No new expansion approvals in three years" (Aug. 17, 2009), available at http://www.chinaisa.org (last visited Aug. 26, 2010)
96 EUROFER Report at 12, 49-51.
99 Id.
100 Id.
entitled to a share of the 17 percent VAT that is collected on products manufactured and sold within their jurisdiction. This revenue is lost when a steel factory is closed or merged into a company based in another jurisdiction. Second, municipal and provincial governments must contend with significant social unrest when a steel company closes and jobs are lost. Last year, for example, the Jilin provincial government prevented a proposed merger between Tonghua Steel and Beijing-based Jianlong Group after Tonghua Steel workers killed their general manager during protests at the factory.

Significantly, it should also be noted that China intends to revise its existing Steel Policy to promote the "internationalization of the steel industry." To accomplish this goal, "competitive Chinese steel companies will be encouraged to buy companies and build factories of sole ownership or joint ventures in overseas countries . . ." In fact, Chinese steel companies are already aggressively seeking to establish production facilities in the United States. For example, in July 2010 China’s state-owned Anshan Iron and Steel Group ("Anshan") disclosed that it was going to buy up to a 20% stake in Steel Development Company ("SDCO") to fund the building of a new steel rebar mill in Amory, Mississippi. Analysts questioned the economic logic of Anshan’s investment. For example, Joseph Sterberg of the Wall Street Journal concluded that "Chinese state-owned industrial money, operating largely for strategic and political aims, has just made possible a project that aroused skepticism in market-oriented investors." He also found that, rather than meeting market needs within the United States, Anshan’s strategic goal appears to have been to "pave the way" for building additional steel mills in the United States. Anshan itself has also stated that it hopes to learn advanced steelmaking techniques through its investment.


106 Id.


108 Lisa Reisman, "Should the US Government Allow a Chinese Steel Mill to Invest in Steel Technology They Don’t Have?" Metal Miner (July 8, 2010), available at http://agmetalminer.com (last visited Sept. 2, 2010) ("We can’t see the business case to add rebar capacity in the US.").

109 The Mixed Blessing of Chinese Cash.

110 Id.

Given that China’s revised Steel Policy is to "internationalize" its steel industry, it appears likely that Chinese steel companies will attempt to build more mills in the United States in the future – notwithstanding the fact that U.S. lawmakers have expressed significant concerns over such mills.\footnote{112} 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 short, 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 bureaucratic 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 inappropriate measures to aid its producers in securing access to raw materials and to manipulate raw material prices in a manner that will give Chinese producers an unfair advantage over their U.S. competitors.

1. Export Restraints

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{113} 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 the Protocol of Accession or applied in conformity with Article VIII of GATT 1994.\footnote{114}

The evidence is overwhelming that China has not complied with these commitments. In fact, in June 2009, the United States filed a request for consultations at the WTO regarding China’s export restraints on numerous raw materials.\footnote{115} These raw materials – important to the production of steel, aluminum, and other chemicals – include bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon

\footnote{112} Indeed, in August 2010, Anshan announced that it was backing out of its investment in SDCO in response to significant concerns raised by U.S. lawmakers. Just several days later, however, it did an about face and stated that "Anshan’s goal to invest in the U.S. market remains unchanged." \textit{See “China Anshan says still committed to U.S. investment,” Reuters (Aug. 20, 2010), available at http://www.reuters.com (last visited Aug. 24, 2010).}

\footnote{113} Working Party Report at ¶¶ 166-68, 171, 174

\footnote{114} \textit{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. \textit{Id.} This article is not relevant for the present discussion.

According to USTR, 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. 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.

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." Consider, for example, export restraints with regard to coke, a key input for steel producers. China’s Steel Policy specifically states that exports of coke must be restricted. Consistent with this policy, China limited coke exports in 2007 to 14 million MT per year and imposed a 15 percent duty on coke exports. The 14 million MT quota represented a tiny fraction of China’s total coke output of 328 million MT that year. In 2009, China raised the export tax on coke to 40 percent and reduced the export quota even further to 11.91 million MT. By 2010, China had further reduced the export quota to 9.0 million MT and was continuing to impose a 40 percent export tax on coke. These actions have pushed up export prices for Chinese coke (and the world market price for coke) while keeping down the domestic price of coke paid by Chinese producers. For example, in July 2010, the

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119 *Trade Policy Review of China* for 2010 at Section III p. 44.
120 Steel Policy at Article 30.
121 EUROFER Report at 32.
122 *Id.*
123 SBB Analytics China, "China raises coke export tax to 40%" (Aug. 19, 2008).
124 *Id.*
126 See *Id.*
Chinese domestic price for Grade II coke (up to 10.5% ash content) was approximately $246-$251 per MT,\textsuperscript{128} about half the Chinese export price for Grade II coke of $490-$500 per MT,\textsuperscript{129} which is considered the "world benchmark."\textsuperscript{130}

In September 2010, the DOC also 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.\textsuperscript{131}

China also maintains a 40 percent export tax on steel scrap that creates additional distortion in the marketplace.\textsuperscript{132} Today, China enjoys the benefit of free 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.

In light of China’s continued imposition of restraints on the exports of raw materials, the Administration should continue to vigorously pursue its WTO case regarding China’s export restraints on raw materials. 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. **Raw Materials Purchases**

In addition to imposing export 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."\textsuperscript{133}

\begin{itemize}
  \item \textsuperscript{128} Ginger Ding, "Chinese coke prices expected to rise on restocking" American Metal Market (Aug. 10, 2010) (stating that Chinese domestic prices for Grade II coke gained an average of $7 in the first week of August to reach $253-$258 per MT).
  \item \textsuperscript{129} Coke Market Report (July 26, 2010) at 4.
  \item \textsuperscript{130} Resource Net, "Updated View on the Global Coke & Anthracite Markets" (Mar. 2009), available at http://www.resource-net.com (last visited Sept. 3, 2009); see also Andre Jones, "China may hike export tax on coke," Coal Insights (Feb. 2, 2008), available at http://www.mjunction.in (last visited Sept. 2, 2010) (stating that "China is the main world exporter of coke, {and} its pricing is used as a standard for transactions around the world").
  \item \textsuperscript{131} Issues and Decision Memorandum, Seamless Pipe at 32-33.
  \item \textsuperscript{133} Id. at 21-22.
\end{itemize}
In March 2010, after prices doubled for the iron ore contracts that China negotiated with BHP Billiton and Vale, China reportedly accelerated its assistance in the acquisition of iron ore deposits. As Graeme Hosie, chief executive of London Mining, has explained, Chinese investment in these emerging deposits was 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." Between March and April 2010, as a result of China’s assistance, Chinese companies announced iron ore investments of $258 million in Sierra Leone, $1.35 billion in Guinea, and $1.2 billion in Brazil. Indeed, the China Iron & Steel Association reported that "{t}he value of investment by Chinese firms in the overseas mining and metal sectors increased 200 percent" in the first quarter of 2010, which was "far in excess" of the global average increase of 25 percent.

In May 2010, China’s State-Owned Assets Supervision and Administration Commission ("SASAC") stated that "the policy of encouraging further mining investments by SOEs will remain in place." In fact, SASAC made clear that it was taking more control over the acquisition process because "a few affluent central government-controlled firms are in rush to paw at mining assets . . . because of coveted benefits" and this was "causing undue competition among SOEs when they bid for the same overseas tender."

Like the export restraints it has imposed on raw materials, China’s assistance in the acquisition of raw materials adversely impacts the availability and price of critical raw materials globally, artificially increasing input costs for manufacturers in other markets, including the United States. Accordingly, 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 countervailable as a subsidy under U.S. law.

**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 or the yuan) and the U.S. dollar. Paul Krugman recently explained how China boosts exports and blocks imports by keeping the value of its currency artificially low:

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134 William MacNamara, "Chinese money to open new iron ore projects," Financial Times (Apr. 13, 2010).
135 Id.
136 Id.
138 Id.
139 Id.
140 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.chinacurrencycoalition.org (last visited Sept. 6, 2008). This petition demonstrated that China's
Here’s how it works: Unlike the dollar, the euro or the yen, whose values fluctuate freely, China’s currency is pegged by official policy at about 6.8 yuan to the dollar. At this exchange rate, Chinese manufacturing has a large cost advantage over its rivals, leading to huge trade surpluses.

Under normal circumstances, the inflow of dollars from those 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, adding to a $2 trillion-plus hoard of foreign exchange reserves.141

Earlier this year, C. Fred Bergsten, Director of the Peterson Institute for International Economics, testified before the House Ways and Means Committee that the yuan is undervalued by about 25 percent on a trade-weighted basis and by about 40 percent against the dollar.142 Mr. Bergsten made clear that "{the} competitive undervaluation of the {renminbi} is a blatant form of protectionism. It subsidizes all Chinese exports by the amount of the misalignment, about 25-40 percent. It equates to a tariff of like magnitude of all Chinese imports, sharply discouraging purchases from other countries."143

In September 2010, the House Ways and Means Committee held hearings on bipartisan legislation that has been introduced to address China’s currency manipulation.144 According to testimony provided at the hearings, China’s currency policy has a substantial negative impact on the U.S. trade deficit, economy, and employment.145 Indeed, the testimony showed that:

--- The number-one factor affecting the exports of U.S. manufacturers is the value of the dollar;146

--- China’s exchange rate policy reduces U.S. GDP by 1.4 to 1.5 percentage points annually and reduces U.S. employment by 1.4 or 1.5 million jobs;147 and

--- A currency undervaluation constitutes a prohibited export subsidy within the meaning of Articles 1, 2, and 3 of the WTO Subsidies Agreement, and Articles VI and XVI of the GATT. Id. at 50.

141 Chinese New Year at 1.
143 Id. (emphasis in original). Mr. Bergsten also pointed out that "{s}everal 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." Id.
145 See Memorandum from Ways and Means Committee Chairman re: “Background on China’s undervalued currency and its economic impact” (Sept. 22, 2010).
146 Id. (citations omitted).
147 Id. (citations omitted).
A 20-40% appreciation of the RMB would result in $100-$150 billion improvement in the U.S. trade deficit and would generate up to 1 million jobs in the United States.148

The U.S. government has long sought to address concerns about currency manipulation through dialogue with the Chinese government. Unfortunately, these efforts have not been successful.

In 2005, China announced that it would allow more flexibility in its exchange rate. At the time, estimates placed the value of the renminbi at up to 40 percent below what its value would have been absent government intervention.149 After China’s announcement, the RMB appreciated from 8.28 RMB per dollar to 6.81 RMB per dollar in July 2008,150 an adjustment of only 17.8 percent.151 Starting in July 2008, however, China halted the appreciation of the RMB "due to the Chinese government’s fear that a strong RMB will damage China’s exports."152 In other words, China's government allowed the RMB to rise in value only so long as this rise did not significantly limit Chinese exports.

In January 2009, in written testimony provided to the Senate Finance Committee as part of his confirmation hearings, Treasury Secretary Timothy Geithner stated that "President Obama – backed by the conclusions of a broad range of economists – believes that China is manipulating its currency."153 He added that President Obama pledged "to use aggressively all the diplomatic avenues open to him to seek change in China’s currency practices."154 However, despite this testimony, Treasury Secretary Geithner refused to cite China as a currency manipulator in each of his April 2009 and October 2009 semiannual reports to Congress on the currency practices of key trading partners.155

In April 2010, after mounting international pressure for China to stop manipulating its currency, the Administration announced that it was delaying its semiannual report to Congress on the currency practices of key trading partners to provide more time for China to address its alleged currency manipulation.156 On June 19, 2010, China announced that it would allow the RMB to fluctuate against

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148 Id. (citations omitted).
151 8.28 – 6.81 = 1.47; 1.47 / 8.28 = 0.178 = 17.8 percent.
152 USCC 2008 Report at 42.
153 Answers to Finance Committee Questions for the Record, Hearing on Confirmation of Mr. Timothy F. Geithner to be Secretary of the U.S. Department of Treasury January 21, 2009 at 81.
154 Id.
the currency of other countries. In July, Treasury again declined to cite China as a currency manipulator in its delayed semi-annual report to Congress. By August, however, it was clear that China would only allow minimal movements against the dollar. Indeed, two months after China announced that it would allow the RMB to fluctuate, the renminbi had risen only 0.8 percent against the dollar.

Despite this dire situation, the DOC has also failed to take any action to address China’s currency manipulation. Indeed, on August 31, 2010, the DOC issued a preliminary decision in the CVD investigation of aluminum extrusions from China in which it determined that it would not investigate the petitioners’ allegation that the undervaluation of China’s currency was a countervailable subsidy.

The Administration should take far more aggressive action on this issue. In particular, the Administration should reverse its decision in the CVD investigation of aluminum extrusions and immediately begin to treat currency manipulation of the type practiced by China as actionable under U.S. trade remedy laws. In addition, the Administration should work with the current Congress to craft legislative remedies to address the problem of China’s currency manipulation. Finally, the Administration should consider other measures – including WTO litigation if necessary – to persuade China to change its currency policies.

E. Intellectual Property Rights

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.” Despite this agreement, however, USTR reports that “effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China.” This fact certainly concerns AISI’s members. Indeed, in its 2005 report, the USCC stated that China’s intellectual property violations "go well beyond the software and entertainment industries, with many U.S. industrial firms now being heavily affected."

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

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159 China’s Trade Surplus Climbs.
160 Id.
161 Id. at 81.
163 Id. at 87.
164 USCC, "2005 Report to Congress" (Nov. 2005) at 41 (emphasis added).
2007 when it requested a WTO dispute settlement panel to address IPR issues. 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. 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."

Indeed, there is now growing concern that China’s compliance with respect to its IPR obligations will worsen as it begins to pursue its so-called "indigenous" innovation campaign. The significance of this campaign to the U.S.-China trade relationship cannot be overemphasized. Indeed, the Chinese Communist Party ("CPC") Central Committee itself has "elevated indigenous innovation to a strategic level equal to Deng Xiaoping’s ‘reform and opening’ policy" of 1978. The importance of the campaign is also evident in the unprecedented micromanagement being provided by high-level Chinese leadership. A report released by the U.S. Chamber of Commerce (the "Chamber") in July 2010 entitled China’s Drive for ‘Indigenous Innovation’ 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."

Alarmingly, the indigenous innovation campaign appears to violate many of China’s commitments to protect IPR and not to raise technical and other non-tariff barriers to trade. For example, the Chamber’s report raises the following specific concerns with the indigenous innovation campaign:

-- Definitions of "indigenous innovation" which imply that indigenous innovation simply means foreign technology that has been absorbed and "re-innovated" as Chinese technology;

-- Certification and standards requirements that force foreign companies to disclose technology secrets and other proprietary information in order to enter the Chinese market;

167 Id.
169 Id. at 16.
170 See id at 4, 22.
171 Id. at 4.
172 Id. at 22. For example, in August 2007 China issued regulations as part of its indigenous innovation program for smart cards – the cards used for mobile phones, public transportation, identification cards, and other functions – that required compulsory testing and certification before foreign smart cards could be produced and marketed in China. Id. at 30. However, going through the process for obtaining certification would require the disclosure of source code and other trade secrets. Id.
-- Anti-monopoly law regulations that allow China to force a foreign company to license its intellectual property ("IP") to other companies if access to such IP is "essential" for the other companies to compete and innovate;\textsuperscript{173}

-- A domestic patent regime that allows Chinese companies to retaliate against foreign companies which have filed IPR lawsuits against them outside of China;\textsuperscript{174}

-- Judiciary guidelines that call for the judiciary to do its part in promoting indigenous innovation when implementing China’s IPR laws;\textsuperscript{175} and

-- A government procurement regime which would have required companies seeking to sell high-tech goods to China’s government to have IP originally registered in China and owned by a Chinese company.\textsuperscript{176}

In April 2010, in response to growing criticism of its policy to promote indigenous innovation, China made certain revisions to its government procurement regime.\textsuperscript{177} However, these renovations failed to address a vast number of significant concerns regarding China’s indigenous innovation campaign. Indeed, Deputy USTR Demetrios Marantis recognized in July 2010 that "{a}s drafted, China’s indigenous innovation policies threaten global intellectual property protections, fair government procurement policies, market competition, and innovators’ freedom to decide how and when they transfer technology" and that "{g}etting these and other individual policy issues right are also key to the broader goal of rebalancing global economic growth."\textsuperscript{178} Accordingly, USTR must maintain stalwart vigilance on the issue of China’s indigenous innovation campaign.

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.

Under the terms of its WTO accession, China agreed that other Members could treat it as a non-market economy ("NME") except for limited circumstances in which it is clearly shown that market economy

\textsuperscript{173} \textit{Id.} at 23-24 (citing Guidelines for Anti-Monopoly Law Enforcement in the Area of Intellectual Property Rights (Fourth Draft Revision) at Article 18).

\textsuperscript{174} \textit{Id.} at 22, 27-28. For example, in September 2007, Chint Group of Wenzhou obtained a $50 million judgment against French electronics producer Schneider Electric using a junk patent after Schneider Electric had filed successful patent actions against Chint Group in Europe and China for infringements on various electronics products. Upon receiving the favorable judgment in China, Chint’s board chairman boasted that patent infringement suits are a good way "to elbow out competitors and dominate the market." \textit{Id.}

\textsuperscript{175} \textit{Id.} at 25.

\textsuperscript{176} \textit{Id.} at 19-20.

\textsuperscript{177} \textit{See} Doug Palmer and Lucy Hornby, "U.S. still concerned on China innovation rules," \textit{Reuters} (May 25, 2010)

\textsuperscript{178} Remarks of Deputy USTR Marantis.
conditions prevail in the relevant industry under investigation. Nevertheless, China has urged the United States during recent meetings of the U.S.-China Strategic and Economic Dialogue to treat China as a "market economy" for purposes of U.S. AD laws. This would be improper and contrary to U.S. law. 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. 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. Nothing has changed since that time that would warrant a different conclusion.

Another issue presented by China’s NME status concerns the application of U.S. CVD law. 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. In October 2007, the DOC decided for the first time to apply the CVD law to China. Unfortunately, it determined that the "uniform date" from which it will identify and measure Chinese subsidies is December 11, 2001, the

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183 It should be noted that the DOC’s ability to apply simultaneously both the AD and CVD laws to imports from China without "double counting" remedies has recently been at issue before both the WTO and the U.S. Court of International Trade ("CIT"). See Request for Consultations, United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/1 (Sept. 19, 2008); GPX Int’l Tire Corp. v. United States, 645 F. Supp. 2d 1231 (Ct. Int’l Trade 2009) ("GPX") ("GPX"). Press reports indicate that the WTO is soon to rule that the simultaneous application of CVD and AD laws to imports from China does not result in double counting and is consistent with the United States’ WTO obligations. See Doug Palmer, "U.S. considers next step in China duties case" Reuters (Aug. 11, 2010), available at http://www.reuters.com (last visited Sept. 2, 2010). While there is one CIT decision that calls into question the DOC’s ability to apply simultaneously both AD and CVD laws to imports from China without double counting (i.e., GPX), AISI strongly disagrees with this decision and urges the Administration to continue to advocate before both the WTO and the CIT for the United States’ ability to apply both AD and CVD laws to imports from China.


date on which China became a WTO member. 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, 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. Second, 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.

A third issue regarding trade law enforcement involves China’s 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. One such company, Globe Success International Transportation (“Globe Success”), advertises that it assists in the 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. 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. Significantly, these companies involve large operations doing business in a public manner without any apparent fear of reprisal from the Chinese authorities. Indeed, Globe Success reports that it employs a staff of 450, maintains offices in multiple cities throughout China and other countries, and earns an annual revenue of up to five million U.S. dollars. AISI strongly urges USTR to use all possible means to persuade China to end this open and blatant circumvention of U.S. trade laws. USTR should also take steps to ensure that such circumvention is detected when subject merchandise enters the United States.

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-

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187 The recent decision of the CIT in GPX should also cause the DOC to reconsider its position on this issue. In GPX, the court found that that it was not lawful for the Department to apply a "uniform" cut-off date – i.e., a cut-off date that applies to all subsidies. See GPX, 645 F. Supp. 2d at 1231 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.
189 Id.
191 Globe Success Profile
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, “United States Files Two WTO Cases Against China,” (Sept. 15, 2010), available at http://www.ustr.gov (last visited Sept. 22, 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 new WTO case against China, which AISI supports. As identified by USTR, China’s Ministry of Commerce (“MOFCOM”) initiated the two 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. and federal state programs that were not identified in the notice of initiation of the CVD petition.\footnote{Id.}

**G. Enforcement of China-Specific Safeguard Provisions**

As part of its WTO accession, China agreed that for 12 years other members could impose product-specific safeguards against Chinese imports.\footnote{See China’s Protocol on Accession at ¶ 16.} This provision (implemented into U.S. law under Section 421 of the Trade Act of 1974, as amended)\footnote{19 U.S.C. § 2451 (2006).} 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.

Between 2002 and 2005, U.S. industries and workers brought six cases seeking relief under Section 421.\footnote{See USITC, Completed Trade Remedy Investigations, available at http://www.usitc.gov (last visited Aug. 26, 2009).} The ITC reached affirmative determinations under Section 421 in four of these cases.\footnote{See Pedestal Actuators from China, Inv. No. TA-421-1 (Determination), USITC Pub. 3557 (Nov. 2002); Certain Steel Wire Garment Hangers from China, Inv. No. TA-421-2 (Determination), USITC Pub. 3575 (Feb. 2003); Certain Ductile Iron Waterworks Fittings from China, Inv. No. TA-421-4 (Determination), USITC Pub. 3657 (Dec. 2003); Circular Welded Non-alloy Steel Pipe from China, Inv. No. TA-421-6 (Determination), USITC Pub. 3807 (Oct. 2005).} However, in each of these cases, the Administration exercised its discretion to deny relief and effectively rendered Section 421 a dead letter. Indeed, after 2005, U.S. companies stopped applying for safeguard measures from the Bush Administration. In 2009, however, the Obama Administration breathed new life into Section 421 by granting safeguard relief with respect to tire imports.\footnote{Bloomberg Business Week, "Obama’s Tire Tariff Draws Beijing’s Ire" (Sept. 13, 2009), available at http://www.businessweek.com (last visited Sept. 2, 2010).}

As discussed above, strong enforcement of U.S. trade laws is essential to obtaining the full benefits of China’s WTO membership. Accordingly, the Administration should continue to ensure that Section 421 serves as a viable remedy for U.S. companies and workers facing market disruption due to Chinese imports.
H. International Tax Rules – Border Adjustability

USTR has previously recognized that China manipulates its VAT system to help Chinese steel producers and other manufacturers. At a larger level, there 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 (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 "the 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." Despite this clear instruction, very little has been done. In the Doha rules negotiations, while other countries have submitted literally dozens of papers attacking almost every aspect of U.S. trade remedy laws, the United States has not even submitted a single paper devoted to the issue of border adjustments. 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. There can be little doubt that these concerns extend to steel products. As Representatives Pete Visclosky (D-Ind.) and Tim Murphy (R-Pa.) stated last year, "China has a proven track record of making dangerous, substandard products, including steel."
This track record lengthened during 2010. For example, 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. Ningbo Jiulong also admitted that it did not know the chemical composition and properties of the steel used in its grating. Given that steel grating is used in everything from factory flooring and walkways, catwalks, subway and pedestrian walkways, and fire escape platforms, the fact that Chinese steel grating does not meet these basic standards clearly renders it a substantial product hazard. Indeed, on June 14, 2010, the National Association of Architectural Metal Manufactures specifically warned that there is reason to believe that Chinese steel grating does not meet industry standards.

The issue of product safety 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 seventh 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 26.2 percent of global market share. Today, China is on pace to produce over 600 million MT of crude steel and has captured 46.6 percent of global market share.

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. The United States’ approach to address this problem has not been effective 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 thought." The U.S.

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205 Issues and Decision Memorandum in Steel Grating from China, Final Determination of Sales at Less Than Fair Value, 75 Fed. Reg. 32366 (Dep’t Commerce June 8, 2010) at Comment 3.
206 Id.
207 Inside U.S. Trade, "Safety Probe Sought After DOC Finds Falsified Quality Certificates" (July 30, 2010).
208 World Steel Association, "Steel Statistical Yearbook 2008" (2009), available at http://worldsteel.org (last visited Aug. 13, 2009) at 5. 280,486 / 1,069,082 = 0.262 = 26.2 %.
210 See World Crude Steel Output Decreases at Figure 2.
211 USCC Report at 78.
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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