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**Kevin M. Dempsey**  
*Interim President and CEO*

September 14, 2020

The Honorable Jeffrey I. Kessler  
Assistant Secretary for Enforcement and Compliance  
International Trade Administration  
Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

**Re: Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws [Docket No. ITA-2020-0001]**

Dear Assistant Secretary Kessler:

In response to a request<sup>1</sup> from the U.S. Department of Commerce (DOC), the American Iron and Steel Institute (AISI), on behalf of its U.S. producer member companies, is pleased to submit the following comments regarding the proposed regulations to improve the administration and enforcement of the U.S. antidumping (AD) and countervailing duty (CVD) laws. AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of producer member companies, including both integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the domestic steel industry.

AISI supports the overall aim of the proposed regulations, which will allow DOC to use its independent regulatory authority to strengthen the enforcement of the AD and CVD laws to ensure American companies can seek timely relief from unfairly traded imports. We particularly appreciate the updated regulatory framework to address circumvention of AD and CVD orders. Additionally, AISI strongly supports several of the provisions proposed by DOC:

- (1) Industry Support for Initiation – AISI applauds the decision by DOC to set a firm deadline of five business days prior to initiation for industry support comments and a deadline for rebuttal comments of two days later. This will ensure that

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<sup>1</sup> Department of Commerce, “Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,” Aug. 13, 2020, 85 FR 49472-49504.

DOC can appropriately gauge support for requested relief in a timely manner, while also allowing petitioners the opportunity to respond.

- (2) New Shipper Reviews – The domestic steel industry is pleased that DOC will bring its regulations in line with the statutory changes from 2016 to address the misuse of new shipper reviews by foreign exporters. The accelerated timeframe by which a new foreign producer could export to the U.S. had become problematic as many exporters have filed for a new shipper review under a different name and utilize lower volumes to receive a lower AD margin before quickly shifting exports to the new entity. The new DOC proposals will help limit this scheme.
- (3) Scope Authority – We support the efforts of DOC to improve its regulations to address scope inquiries, particularly having DOC as the primary arbiter of interpreting its own AD and CVD orders. This will allow more timely and accurate action to address scope disputes.
- (4) Certification Issues – Misrepresentation of goods is one way that importers evade paying trade remedy duties and DOC's efforts to require importers and other interested parties to certify whether merchandise is subject to an AD or CVD order is critical to addressing this problem.
- (5) Covered Merchandise Referrals – In order to help address efforts to evade trade remedies, Congress provided authority for U.S. Customs and Border Protection (CBP) to refer allegations of failure to pay AD or CVD duties to DOC when CBP is unable to determine whether imports at issue are covered by orders. The guidance provided by DOC on covered merchandise referrals is likely to lead to increased cooperation between DOC and CBP, which should improve efforts to address AD/CVD evasion by foreign importers.

Additionally, AISI also believes that several minor improvements could be made to the proposed regulations that would ensure the AD and CVD laws are administered and enforced in a fair and judicious manner:

- (1) Documentation in Anti-Circumvention Inquiries – The domestic steel industry is concerned that the documentation outlined in the proposed regulations goes well beyond the statutory factors and may not be immediately available to domestic producers when filing anti-circumvention allegations. We are concerned that two of the five factors sought by DOC to describe physical characteristics of the merchandise in question would present a significant burden for domestic

industry to provide. This could ultimately prevent domestic producers from alleging circumvention of AD and CVD orders.

It is unlikely that domestic producers will be able to furnish “[c]lear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product”<sup>2</sup> to DOC when filing circumvention allegations. Additionally, it is unlikely that that domestic producers will be able to provide a detailed description of the materials or processes involved in the production of the product. Domestic steelmakers are not producing the physical product, so they are not necessarily aware of the exact production processes by which foreign exporters are altering the product in order to circumvent the AD or CVD order. In most circumstances, the process by which certain steels are transformed into other steel products are well known, such as transforming hot-rolled sheet into pipe or tube products. However, other times, the specific process is publicly available and the burden should not fall to the domestic industry to describe the transformation process, which can be done during the inquiry itself. Not being able to provide this information should not restrict an inquiry from initiation.

- (2) Need for Automatic Initiation of Anti-Circumvention Inquiries – We agree with the proposed modification laying out specific deadlines for DOC to initiate anti-circumvention inquiries from 45 days to 20 days, with a possible extension for a maximum of 35 days in certain circumstances. Without statutory authority, DOC can currently extend initiation of such inquiries indefinitely, so this regulatory fix will ensure that AD and CVD orders are enforced in a timely manner. For instance, domestic steel producers filed a petition requesting an anti-circumvention inquiry on the AD order on imports of certain cut-to-length carbon steel plate from China in April 2015, but DOC did not initiate this inquiry until February 2016, nearly ten months after the petition was first requested.<sup>3</sup> Specific timelines are extremely crucial when identifying circumvention of AD and CVD orders, given that even under DOC’s newly proposed regulations, the

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<sup>2</sup> Department of Commerce, “Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,” Aug. 13, 2020, 85 FR at 49499.

<sup>3</sup> Department of Commerce, “Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Initiation of Circumvention Inquiry on Antidumping Duty Order,” 81 FR 8173 (Feb. 18, 2016), available at <https://www.federalregister.gov/documents/2016/02/18/2016-03418/certain-cut-to-length-carbon-steel-plate-from-the-peoples-republic-of-china-initiation-of>. (indicating that domestic steel producers originally filed their anti-circumvention petitions on April 30, 2015, but due to a minor service issue (which Commerce’s proposed regulations now address), Commerce required domestic steel producers to re-file this petition, which occurred on June 17, 2015).

duty liability for all products subject to the circumvention proceeding only begins once DOC issues its preliminary determination in the inquiry.

However, we urge DOC to go one step further by adopting an automatic initiation of anti-circumvention inquiries once the maximum number of days have lapsed without an initiation. The five-week period would be sufficient for DOC to evaluate whether the documentation provided in the allegation would warrant initiation. By automatically triggering the initiation of anti-circumvention inquiry, it would parallel the automatic initiation of scope proceedings after 30 days that is also included in the proposed modifications to the regulations. Automatically initiating both sets of proceedings would bring parity for both foreign exporters in scope proceedings and domestic producers in anti-circumvention inquiries.

Thank you for the opportunity to provide feedback to DOC on its proposed regulations to improve the administration and enforcement of the antidumping and countervailing duty laws in the United States. The minor areas of improvements that the domestic steel industry has suggested will help to ensure the proposals will streamline the process for all interested parties involved.

AISI and its member companies appreciate the continued efforts by the Trump Administration to ensure the U.S. trade remedy laws are fully and effectively enforced.

Sincerely,

A handwritten signature in black ink, reading "Kevin M. Dempsey". The signature is written in a cursive, flowing style.

Kevin M. Dempsey  
Interim President and Chief Executive Officer