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September 16, 2020

Edward Gresser  
Chair, Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20508

**RE: Request for Comments Concerning China's Compliance with World Trade Organization (WTO) Commitments - Docket Number USTR-2020-0033**

Dear Mr. Gresser:

In response to a request from the Office of the United States Trade Representative (USTR),<sup>1</sup> the American Iron and Steel Institute (AISI), on behalf of its U.S. producer 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) in 2001. Of the categories listed in USTR's request, these comments particularly relate to import regulation, export regulation, internal policies affecting trade, intellectual property rights, and other WTO commitments.

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.

### **Executive Summary**

Now more than 18 years after it acceded to the WTO, China continues to fail to comply with its WTO obligations. There is a broad, international consensus, based on an overwhelming amount of evidence, that China has largely abandoned its policy of

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<sup>1</sup> Office of the United States Trade Representative, "Request for Comments Concerning China's Compliance With World Trade Organization (WTO) Commitments," 85 Fed. Reg. No. 160 (Aug. 18, 2020) 50864-65.

liberalizing its economy and instead continues to adhere to a policy of state capitalism that is antithetical to the principles of free and fair trade. This trend continues to be a major problem for steel producers in the United States and has only been exacerbated in recent months as global demand for steel has declined significantly due to the COVID-19 pandemic, yet China continues to produce record amounts of steel. Once again, AISI strongly urges the U.S. government to build upon recent significant action taken to hold China accountable for its trade-distorting policies and practices. The domestic steel industry remains a strong supporter of the Trump Administration's trade policies that aim to counter China's export-driven economic policies that harm U.S. steelmakers.

The key points in support of AISI's argument are summarized as follows:

- The current U.S.-China trade relationship is taking a tremendous toll on U.S. manufacturers. While the U.S. trade deficit in goods with China declined by nearly 18 percent last year from 2018 levels, the annual trade deficit remains 312 percent higher in 2019 than it was in 2000.<sup>2</sup> Meanwhile, manufacturing employment in the U.S. declined from approximately 17.3 million jobs in 2000 to 12.8 million jobs at the beginning of 2020, just before the effects of the pandemic set in, a decline of 4.5 million jobs.<sup>3</sup> The Trump Administration is right to identify this problem and take bold new steps to address this crisis.
- From 2000 through 2019, annual Chinese raw steel production increased by 868 *million* metric tons (MT) – a volume nearly *ten* times greater than the total crude steel production in the United States in 2019. China's increased production has been made possible, in large part, by massive government subsidies. The U.S. Department of Commerce (DOC) has specifically identified numerous subsidies benefiting Chinese steel producers. China not only maintains policies that will lead to further subsidization going forward, but also manipulates its value added tax (VAT) system to manage and promote exports of its steel products.
- Although China pledged as part of its WTO accession that it would not "influence" commercial decisions of its state-owned enterprises (SOEs), the Chinese government continues to exert significant controls over the operations and management of SOEs both in China and as SOEs expand beyond Chinese borders.

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<sup>2</sup> U.S. Census Bureau, "Trade in Goods with China," last accessed Aug. 31, 2020, available at <https://www.census.gov/foreign-trade/balance/c5700.html>.

<sup>3</sup> U.S. Bureau of Labor Statistics, "Employment, Hours, and Earnings from the Current Employment Statistics survey (National)," last accessed Aug. 31, 2020, available at <https://data.bls.gov/timeseries/CES3000000001>.

- China has taken numerous measures to inappropriately aid its producers in securing access to raw materials and to manipulate raw material prices in a manner that gives Chinese producers an unfair advantage over their U.S. competitors. AISI commends USTR for the victories it has won at the WTO challenging certain export restraints as violating China's WTO commitments. However, given China's pervasive use of export restraints and other measures to control raw material prices, winning these challenges will only be the first step to bring China's policies into compliance with its WTO commitments.
- In August 2019, the Treasury Department formally recognized that China's long history of currency manipulation has been detrimental to U.S. manufactured good exports by labeling it a currency manipulator as it supports its export-dependent economy.<sup>4</sup> However, while China is again on the currency monitoring list, it must be recognized that the Chinese government continues to exert significant control over its currency.
- Effective enforcement of intellectual property rights (IPR) has still not been achieved in China, and IPR infringement remains a serious problem. Moreover, China's "indigenous" innovation campaign - which has already caused U.S. firms to lose market share - appears to violate many of China's WTO commitments to protect IPR and not raise technical and other non-tariff barriers to trade. Additionally, there is now evidence that China is using its anti-trust laws to curtail the IPR of foreign firms and protect its domestic firms from foreign competition. Years of China's abuse of IPR led the Trump Administration rightfully to impose tariffs on Chinese imports under Section 301 and we encourage the U.S. government to take swift action if China fails to adhere to its commitments under the phase one trade deal.
- The fact that China has not fully complied with its WTO obligations underscores the importance of effective enforcement of U.S. trade remedy laws. Among other things, the United States is right to treat China as a non-market economy for purposes of U.S. antidumping laws, should ensure that Chinese companies are not circumventing and evading U.S. antidumping and countervailing orders, and should continue to take strong action to address attempts by China to gain an advantage in unfair trade proceedings by hacking the computer systems of domestic producers in the United States.

Each of these points is discussed in more detail below.

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<sup>4</sup> U.S. Department of the Treasury, "Treasury Designates China as a Currency Manipulator," (Aug. 5, 2019), available at <https://home.treasury.gov/news/press-releases/sm751>.

**I. Introduction: China's Non-Compliance with its WTO Obligations Remains a Severe and Growing Problem for U.S. Steelmakers and Other U.S. Manufacturers**

This submission identifies numerous specific examples of China's failure to comply with its WTO obligations. Before turning to those examples, however, AISI emphasizes that China's substantial, long-term breach of its WTO commitments continues to have serious consequences for American steelmakers, other American manufacturers, and the U.S. and world economies, and the COVID-19 pandemic is likely to further the inequity and exacerbate the outcomes of China's failure to adhere to its WTO commitments.

China acceded to the WTO on December 11, 2001 – nearly 19 years ago. Despite almost two decades in which to make reforms, China continues to use massive subsidies and other forms of government support to build and maintain an enormous steel industry in violation of market principles and China's WTO commitments. As USTR acknowledged in its 2018 annual Report to Congress on China's WTO Compliance, "the United States had erred in supporting China's entry into the WTO on terms that have proven to be ineffective in securing China's embrace of an open, market-oriented approach to the economy and trade... Indeed, it seems increasingly clear that China's actions have done severe harm to other WTO members and the multilateral trading system, which was never designed to deal with a non-market economy of China's size."<sup>5</sup>

These facts are particularly significant because China is not just any WTO member. In 2014, China surpassed the United States as the world's *largest* economy.<sup>6</sup> In 2019, for the sixth year in a row, China was the largest economy with purchasing power parity (PPP) estimated at \$23.5 trillion, compared to \$21.4 trillion for the United States.<sup>7</sup> The fact that the world's biggest economic player is defying the rest of the WTO to pursue a market-distorting policy of mercantilism raises profound and troubling consequences for the U.S. and world economies. As Heriberto Araújo and Juan Pablo Cardenal, authors of "China's Silent Army: The Pioneers, Traders, Fixers and Workers Who Are Remaking The World in Beijing's Image," wrote:

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<sup>5</sup> USTR, 2018 Report to Congress on China's WTO Compliance (February 2019) at 5, available at <https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China%27s-WTO-Compliance.pdf>.

<sup>6</sup> Brett Armends, *It's Official: America is Now No. 2*, *Marketwatch* (Dec. 4, 2014).

<sup>7</sup> World Bank, GDP PPP (current international \$) for 2019, available at [https://data.worldbank.org/indicator/ny.gdp.mktpp.cd?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/ny.gdp.mktpp.cd?most_recent_value_desc=true)

Europeans and Americans tend to fret over Beijing's assertiveness in the South China Sea, its territorial disputes with Japan, and cyberattacks on Western firms, but all of this is much less important than a phenomenon that is less visible but more disturbing: *the aggressive worldwide push of Chinese state capitalism*. By buying companies, exploiting natural resources, building infrastructure and giving loans all over the world, *China is pursuing a soft but unstoppable form of economic domination*. Beijing's essentially unlimited financial resources allow the country to be a game-changing force in both the developed and developing world, one that threatens to obliterate the competitive edge of Western firms, kill jobs in Europe and America and blunt criticism of human rights abuses in China.<sup>8</sup>

Past U.S. policies were clearly not sufficient to persuade China to comply with its WTO obligations, and as a result, the Trump Administration took strong actions to address China's recalcitrance.

#### **A. China's Unfair Trade Practices Are Hurting the U.S. and World Economies**

In 2000, supporters of normalizing trade relations with China argued that China's accession would lower the U.S. trade deficit, strengthen our manufacturing base, and create jobs.<sup>9</sup> The facts have not borne out these assertions. Instead, as shown below, China's unfair trade practices since its entry into the WTO have contributed to numerous problems in the U.S. and world economies:

- **The U.S. Trade Deficit Has Soared.** The annual U.S. trade deficit in goods with China soared 312 percent, from \$83.8 billion in 2000 to \$345.2 billion in 2019.<sup>10</sup>
- **The U.S. Manufacturing Base Has Been Dramatically Weakened.** In 2000, U.S. exports of manufactured goods were triple the amount of Chinese exports of the same goods.<sup>11</sup> By 2010, however, China's manufacturing exports were 50 percent higher than U.S. manufacturing exports.<sup>12</sup> Furthermore, the U.S. trade deficit in

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<sup>8</sup> Heriberto Araújo and Juan Pablo Cardenal, "China's Economic Empire," *New York Times* (Jun. 1, 2013) (China's Economic Empire).

<sup>9</sup> See, e.g., President Clinton, Press Release, "Permanent normal trade relations for China: An historic moment for U.S.-China relations" (Sep. 19, 2000), available at <http://clinton4.nara.gov> (last visited Sep. 9, 2014) ["Permanent Normal Trade Relations for China"].

<sup>10</sup> U.S. Census Bureau, "Trade in Goods with China," last accessed Aug. 31, 2020, available at <https://www.census.gov/foreign-trade/balance/c5700.html>.

<sup>11</sup> Len Boselovic, "Trade deficit rise kills jobs in factories," *Pittsburgh Post-Gazette* (Aug. 21, 2011).

<sup>12</sup> *Id.*

manufactured goods with China reached \$353 *billion* in 2019, almost four times bigger than the country with the second-largest deficit of manufactured goods.<sup>13</sup>

- **Millions of U.S. Jobs Have Been Lost and Wages Eroded.** A 2018 working paper<sup>14</sup> by Susan N. Houseman at the W.E. Upjohn Institute for Employment Research followed up on research from David Autor at the Massachusetts Institute of Technology concluding that trade – and imports from China, in particular – were behind the collapse of manufacturing employment in the United States in the early 2000s. Autor’s initial research “conservatively estimate[d] that more than a million manufacturing jobs in the U.S. were directly eliminated between 2000 and 2007 as a result of China’s accelerating trade penetration in the United States... [and] that as much as 40 percent of the drop in U.S. manufacturing between 2000 and 2007 is attributable to the trade shock that occurred in that period, which is really following China’s ascension to the WTO in 2001.”<sup>15</sup> Additionally, these job losses were not evenly dispersed across the country, but rather concentrated, having profoundly harmful, cascading effects on targeted communities. Earlier this year, the Economic Policy Institute released a study outlining job losses associated with the growing U.S. trade deficit with China and the impact on every U.S. state and congressional district. The report found that between 2001 and 2018, 3.7 million American jobs were lost, of which 2.8 million of those jobs lost were in the manufacturing sector, which helps to explain why manufacturing has lagged overall economic growth since the rebound from the Great Recession.<sup>16</sup>
- **Chinese Mercantilism Is Preventing a Necessary Rebalancing in Global Trade.** For many years, it has been broadly recognized that our relationship should be “rebalanced” so that the United States manufactures more goods and China consumes them.<sup>17</sup> Yet there is little reason to believe that China will achieve such

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<sup>13</sup> International Trade Administration, “2019 balances for NAICS Manufactures,” last accessed Aug. 31, 2020, available at <http://tse.export.gov>.

<sup>14</sup> Susan N. Houseman, “Understanding the Decline of U.S. Manufacturing Employment,” *W.E. Upjohn Institute for Employment Research* (Jun. 2018), available at [https://research.upjohn.org/cgi/viewcontent.cgi?article=1305&context=up\\_workingpapers](https://research.upjohn.org/cgi/viewcontent.cgi?article=1305&context=up_workingpapers).

<sup>15</sup> David Autor, Did China Eat America’s Jobs?, February 7, 2017, available at <http://ide.mit.edu/news-blog/news/did-china-eat-america%E2%80%99s-jobs>

<sup>16</sup> Robert E. Scott and Zane Mokhiber, “Growing China trade deficit cost 3.7 million American jobs between 2001 and 2018,” Economic Policy Institute (Jan. 30, 2020), available at <https://www.epi.org/publication/growing-china-trade-deficits-costs-us-jobs/>.

<sup>17</sup> Former U.S. Secretary of Commerce Gary Locke – who recently served as the U.S. ambassador to China – has said that our trade deficit with China “simply can’t be sustained.” Doug Palmer, “U.S.-China trade imbalance not sustainable: Locke,” *Reuters* (Jul. 15, 2009). Former U.S. Secretary of the Treasury Timothy Geithner has 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*

a rebalancing in the absence of pressure from its outside trading partners. As the U.S.-China Economic and Security Review Commission (USCC) concluded in 2013, “China has had little success transitioning toward a consumption-led growth model and reducing its reliance on massive infrastructure projects to boost economic growth.”<sup>18</sup> Investment spending continues to account for nearly half of China’s GDP, accounting for approximately 43 percent in 2019, down slightly from 44 percent in 2018, but significantly higher than the United States (20 percent in June 2020) or the European Union (22 percent in March 2020).<sup>19</sup>

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

China’s restrictive trade regime has had a dramatic impact on its steel industry. Due in large part to trade-distorting practices, Chinese steel production has grown dramatically – even as the market plainly signals that Chinese mills are making too much steel:

- Chinese raw steel production soared from 128.5 million MT in 2000 to a new record level of 996.3 million MT in 2019 – an increase of 868 million MT<sup>20</sup> - and it is on track to exceed *one billion metric tons* of steel production in 2020.<sup>21</sup> To put this figure in context, consider that in 2019 the United States produced 87.9 million MT of raw steel. Last year alone, Chinese steelmakers produced more steel than the United States produced in 12 years combined, from 2008 to 2019.
- In 2019, China accounted for 53 percent of global steel production, up from 51 percent of global steel production in 2018<sup>22</sup> -- and it appears that again in 2020,

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*rebalance global demand.*” Secretary of the Treasury Timothy F. Geithner, Written Testimony before the Senate Foreign Relations Committee (Nov. 17, 2009) (emphasis added). C. Fred Bergsten, Director of the Peterson Institute for International Economics, has stated that a “resumption of substantial US growth . . . will require expansion of US exports to the rest of the world and a sizable reduction of our trade deficits.” C. Fred Bergsten, “The United States in the World Economy,” *Peterson Institute for International Economics* (Aug. 12, 2011) at 5.

<sup>18</sup> USCC, 2013 Annual Report to Congress (Nov. 20, 2013), at 78.

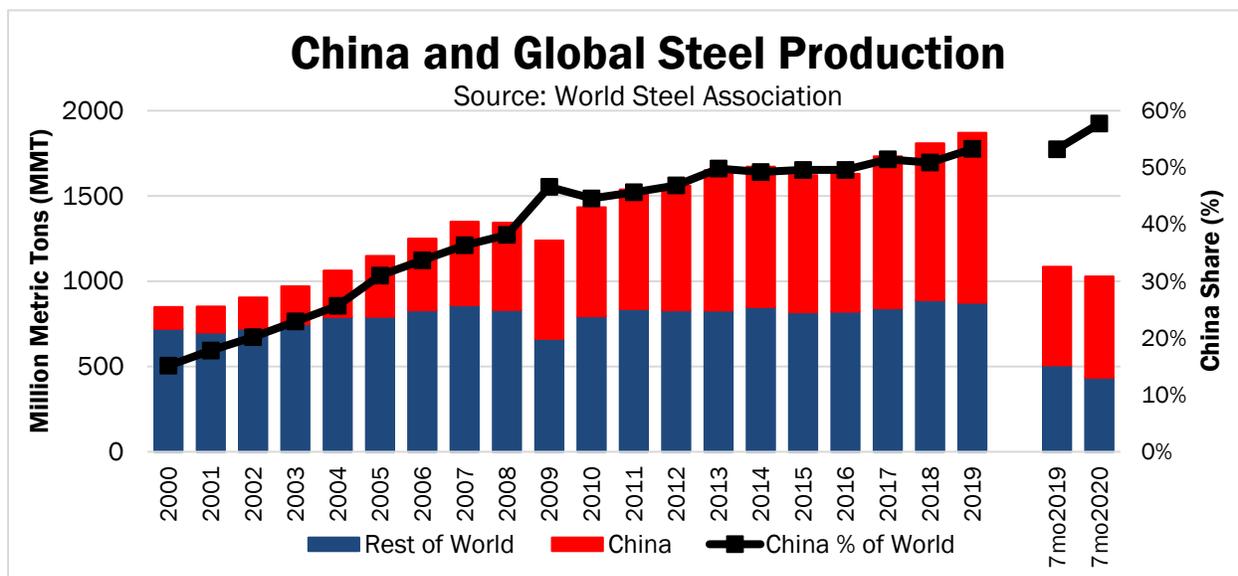
<sup>19</sup> CEIC Data, China Investment % of GDP 1952-2019, available at <https://www.ceicdata.com/en/indicator/china/investment--nominal-gdp>.

<sup>20</sup> World Steel Association, “Global Crude Steel Output Increases by 3.4% in 2019,” (Jan. 27, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/Global-crude-steel-output-increases-by-3.4--in-2019.html>.

<sup>21</sup> World Steel Association, “July 2020 Crude Steel Production,” (Aug. 24, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/July-2020-crude-steel-production.html>.

<sup>22</sup> World Steel Association, “Global Crude Steel Output Increases by 3.4% in 2019,” (Jan. 27, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/Global-crude-steel-output-increases-by-3.4--in-2019.html>.

China will once again produce far more steel than market conditions justify given that even the World Steel Association acknowledges that Chinese steel demand has peaked.<sup>23</sup> Despite significant declines in global steel consumption as a result of the global pandemic, Chinese steel production year-to-date through July 2020 has actually increased by 2.8 percent compared to the same period in 2019, and is on pace to set a new production record exceeding one billion MT this year. Meanwhile, global steel production through July 2020 excluding China has declined by 14.4 percent, with significant double-digit declines in top global steel producers, such as the United States (down 19.5 percent), the European Union (down 19.2 percent), India (down 24.3 percent) and Japan (down 18.8 percent).<sup>24</sup>



- Yet in its most recent outlook, the World Steel Association forecasts that apparent demand in China is projected to grow by just one percent in 2020 and is forecasting no steel consumption growth in 2021.<sup>25</sup> As Chinese production levels soar, steel exports will once again flood the global steel market, putting pressure on other global steel producers that will adversely impact U.S. steelmakers.

<sup>23</sup> Diana Kinch, "Long-term global steel demand growth to be 1%; China has peaked: worldsteel's Basson," *S&P Global Platts* (Apr. 18, 2019), available at <https://www.spglobal.com/platts/en/market-insights/latest-news/metals/041819-long-term-global-steel-demand-growth-to-be-1-china-has-peaked-worldsteels-basson>.

<sup>24</sup> World Steel Association, "July 2020 Crude Steel Production," (Aug. 24, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/July-2020-crude-steel-production.html>.

<sup>25</sup> World Steel Association, "worldsteel Short Range Outlook June 2020," (Jun. 4, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/worldsteel-short-range-outlook-june-2020.html>.

- In 2019, China exported nearly twice as much steel as the second-largest exporter, Japan, and more than the third- and fourth-largest exporters, Russia and Korea, combined.<sup>26</sup> Through the first half of 2020, Chinese steel exports declined by 17 percent compared to the same period in 2019 and China even became a net importer of steel in June and July of this year, primarily because its main export markets suffered significant declines in steel demand as a result of the COVID-19 pandemic.<sup>27</sup> However, it is expected that China will again become a net exporter of steel by the fourth quarter of 2020 and as production increases and rarely falls, Chinese steel exports will remain at levels high enough to adversely impact global steel trade. Prior to the pandemic, experts have long believed that China's economy is much weaker than the official government figures suggest<sup>28</sup> and China experienced economic contraction in the first quarter of 2020 of 6.8 percent compared to the prior period in 2019, with rebound growth of 3.2 percent, primarily a result of government stimulus to boost the sluggish economy.<sup>29</sup> However, Chinese steel production only continues to increase, despite overall downward pressures on steel demand in China.

### **C. American Steel Producers Have Been Shut Out of the Chinese Steel Market**

It should be recalled that China's accession to the WTO was supposed to provide an opportunity for U.S. manufacturers to participate in and profit from China's rapidly growing economy.<sup>30</sup> These predictions have not proven true for U.S. steel producers.

In 2001, the year of China's accession to the WTO, China consumed 168 million MT of finished steel products but produced only 152 million MT of steel.<sup>31</sup> By 2019, China's

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<sup>26</sup> International Trade Administration, Global Steel Trade Monitor, available at <https://beta.trade.gov/gstm>.

<sup>27</sup> "China Becomes a Net Steel Importer in July for 2<sup>nd</sup> Month in a Row," *Hellenic Shipping News* (Aug. 28, 2020), available at <https://www.hellenicshippingnews.com/china-becomes-net-steel-importer-in-july-for-2nd-month-in-a-row/>.

<sup>28</sup> Mike Bird and Lucy Craymer, "China Says Growth is Fine. Private Data Show a Sharper Slowdown," *The Wall Street Journal* (Sep. 8, 2019), available at [https://www.wsj.com/articles/china-says-growth-is-fine-private-data-show-a-sharper-slowdown-11567960192?mod=hp\\_lead\\_pos5](https://www.wsj.com/articles/china-says-growth-is-fine-private-data-show-a-sharper-slowdown-11567960192?mod=hp_lead_pos5).

<sup>29</sup> "China says its economy grew 3.2% in the second quarter this year, rebounding from coronavirus," CNBC (Jul. 15, 2020), available at <https://www.cnbc.com/2020/07/16/china-economy-beijing-reports-q2-2020-gdp.html>.

<sup>30</sup> See, e.g., Permanent Normal Trade Relations for China.

<sup>31</sup> World Steel Dynamics; World Steel Association, "Annual Crude Steel Production, 2000-2009."

demand for finished steel reached 907.5 million MT – an increase of 440 percent.<sup>32</sup> If American steel mills had been able to partake in even just one percent of this increased demand for steel, then in 2019, U.S. exports of steel to China would have been 7.4 million metric tons of steel products annually.<sup>33</sup> But this has not happened – last year, U.S. mills exported just 56,420 MT of steel to China, down substantially from the export volumes seen in the mid-2000s and a decline of 31 percent from 2018 levels.<sup>34</sup> Through June 2020, U.S. exports of steel products to China are down an additional 14 percent from the same period in 2019,<sup>35</sup> despite a commitment in the phase one deal with China to increase purchases of U.S.-produced steel.<sup>36</sup>



It is now clear that China never intended to permit non-Chinese steel producers to benefit from the country’s growing market. In October 2011, China’s Ministry of Industry and Information Technology heralded as a “major achievement” the fact that “the domestic steel market share increased from 92% to 97%” over the five previous years.<sup>37</sup> At the same time, it lamented that “[a] few key steel products are still

<sup>32</sup> World Steel Association, “worldsteel Short Range Outlook June 2020,” (Jun. 4, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/worldsteel-short-range-outlook-june-2020.html>.

<sup>33</sup>  $(907 - 168) \times 1\% = 7.39$  million metric tons (MMT)

<sup>34</sup> International Trade Administration, Global Steel Trade Monitor, available at <https://beta.trade.gov/gstm>.

<sup>35</sup> *Id.*

<sup>36</sup> Reuters, “Factbox: What’s in the U.S.-China Phase 1 trade deal,” (Jan. 15, 2020), available at <https://in.reuters.com/article/usa-trade-china-details-factbox/factbox-whats-in-the-us-china-phase-1-trade-deal-idINKBN1ZE2ID>.

<sup>37</sup> Ministry of Industry and Information Technology, Guoxingui (2011) No. 480, “Notice on Printing and Distribution of the Development Plan of the 12<sup>th</sup> Five Year Program for the Iron and Steel Industry”

dependent on imports” and found it necessary to “further improve” China’s steel industry so that it can “provide a complete suite of material solutions for downstream industries.”<sup>38</sup>

#### **D. Chinese Steel Has Injured the American Steel Industry**

There can be no question that unfairly-traded imports – another result of Chinese mercantilism – have also harmed American steel producers. The United States currently maintains antidumping (AD) orders on imports of 23 steel products from China, while also maintaining countervailing duty (CVD) orders on imports of 19 steel products from China (see Appendix 1 for list of AD/CVD orders on imports of steel products from China). Each of these 42 orders rests upon findings by the DOC that the Chinese mills engaged in unfair trade practices *and* findings by the U.S. International Trade Commission (USITC) that Chinese imports have caused or threatened material injury to the relevant domestic industry.

Furthermore, while the AD and CVD orders in place have certainly helped U.S. mills, recent administrative reviews and sunset reviews at the DOC show that in numerous instances, Chinese mills continued to trade unfairly despite the existence of such relief, and removal of these orders would likely lead to continued dumping or subsidization by Chinese steelmakers to the detriment of domestic steel producers.<sup>39</sup>

#### **E. China’s Actions Demanded an Aggressive Response**

China now openly says that it never intended to reform its trade practices and open its markets to imports. As recently as July 2018, China’s Ambassador to the WTO said: “we have never changed our position. As for those who speculated that China would change and move onto a different path upon its WTO accession, but that was just their wishful thinking.”<sup>40</sup>

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(Oct. 24, 2011) (Chinese language document), *available at* <http://www.miit.gov.cn/n11293472/n11293832/n11293907/n11368223/14303771.html> (last visited Sep. 8, 2014) [“12<sup>th</sup> Five Year Steel Plan”] at Art. I.I.1.

<sup>38</sup> *Id.* at Art. I.II.1.

<sup>39</sup> See, e.g., *Light Walled Rectangular Pipe and Tube from the People’s Republic of China: Final Results of the Expedited Second Five-Year Sunset Review of the Countervailing Duty Order*, 84 Fed. Reg. 45726-27 (Aug. 30, 2019); *Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 84 Fed. Reg. 38215-16 (Aug. 6, 2019); *Oil Country Tubular Goods from the People’s Republic of China: Final Results of Antidumping Duty Administration Review; 2017-2018*, 84 Fed. Reg. 32125-26 (Jul. 5, 2019).

<sup>40</sup> Statement by H.E. Ambassador Dr. Zhang Xiangchen at the WTO General Council Meeting (Jul. 26, 2018), *available at* <http://wto2.mofcom.gov.cn/article/chinaviewpoin/201807/20180702770676.shtml>.

China has not complied – and apparently has no intention of complying in the future – with its WTO obligations, which created a crisis that the Trump Administration was wise not to ignore. China’s failure to comply with its WTO obligations has had profound consequences for U.S. trade policy, which rests on the assumption that our trading partners will generally abide by internationally-accepted rules. Unfortunately, that assumption is not correct, because the world’s largest economy by purchasing-power-parity (PPP) has effectively exempted itself from numerous WTO obligations. The results of this market-distorting behavior have been disastrous.

Additionally, China has been aggressively initiating WTO cases against other members – especially the United States.<sup>41</sup> Remarkably, 16 of the 23 cases brought by China at the WTO alleged violations by the United States – a country suffering from an enormous trade *deficit* with China – with the remaining seven cases against the European Union or its member states (Greece and Italy).<sup>42</sup> In other words, while China apparently feels free to disregard its own WTO obligations, it sues other countries when it sees an advantage in doing so. These facts led the USCC to conclude several years ago that China was doing serious damage to the WTO system:

The United States and the European Union went to considerable lengths to design and negotiate a system of checks and balances that would permit China to accede to the WTO without jeopardizing the smooth functioning of the organization or endangering the position of existing members in the international trading system. From start to finish, that negotiation process took 15 years. In less than ten years, China has learned the nuances of WTO law and has begun to use it systematically to undo the finely wrought balance that U.S. and E.U. negotiators designed.<sup>43</sup>

In response to China’s mercantilist policies, the Trump Administration has pursued aggressive actions, such as use of Section 301, to push China to reform. AISI supports the administration’s efforts, as past, less aggressive efforts – such as dialogues, consultations and “name-and-shame” policies – have been ineffective. As Robert Atkinson, President of the Information and Technology and Innovation Foundation, stated in 2014 about the traditionally-used, less aggressive actions to push China to reform, “the Washington trade establishment believes we are dealing with a nation that

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<sup>41</sup> Kristie Thomas, “China and the WTO Dispute Settlement System: From Passive Observer to Active Participant?” (2011), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1866259](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1866259) (last visited Sep. 9, 2014).

<sup>42</sup> *See* WTO, “Table of Disputes by Member,” *available at* [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm) (last visited Aug 28, 2020).

<sup>43</sup> USCC Report, 2011 Annual Report to Congress (Aug. 2011) (“2011 USCC Report”) at 38.

generally plays by the rules and where they don't, they can be educated about the right path."<sup>44</sup> However, "[t]he reality is that since the Chinese joined the World Trade Organization in 2001, they have regressed, not progressed, on the path to a rules-based trading system."<sup>45</sup>

## **II. Issues of Particular Importance to American Steel Producers**

This submission does not attempt to identify and discuss every outstanding issue with respect to China's WTO compliance. Instead, it focuses on several issues of core concern that are imperative for the U.S. government to address. 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 or suppliers of AISI members.

### **A. Subsidies**

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).<sup>46</sup> In particular, China committed that by the time of its accession it would eliminate all subsidies prohibited under Article 3 of the SCM Agreement.<sup>47</sup> China also agreed that other WTO members could apply CVD measures against Chinese imports consistent with the SCM Agreement and could address prohibited and actionable subsidies through WTO litigation.<sup>48</sup> Notwithstanding these commitments, Chinese manufacturers – including Chinese steel producers – continue to benefit from massive government subsidies. The evidence on this point is overwhelming. Indeed, in its 2019 Report to Congress on China's WTO Compliance, USTR recognized that "China continues to provide substantial subsidies to its domestic industries, which have caused injury to U.S. industries. Some of these subsidies also appear to be prohibited under WTO rules."<sup>49</sup> It went on to further state that "since joining the WTO 18 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify

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<sup>44</sup> Robert Atkinson, "High-tech harassment," *The Hill* (Aug. 8, 2014).

<sup>45</sup> *Id.*

<sup>46</sup> WTO Working Party on the Accession of China, *Report of the Working Party on the Accession of China*, WT/ACC/CHN/49 (Oct. 1, 2001) ("Working Party Report") at ¶¶ 166-68, 171, and 174; *see also* World Trade Organization, *Protocol on the Accession of the People's Republic of China*, WT/L/432 (Nov. 10, 2001) ("China Protocol of Accession") at ¶ 10.3.

<sup>47</sup> Working Party Report at ¶¶ 166-68, 171, 174; China Protocol of Accession at ¶ 10.3; *see also* Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments – Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

<sup>48</sup> China Protocol of Accession at ¶ 15.

<sup>49</sup> 2019 USTR Report to Congress on China's WTO Compliance at 31 (Mar. 2020).

a single sub-central government subsidy until July 2016, when it provided information only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case.”<sup>50</sup>

In June 2016, five steel trade associations in the U.S., including AISI, released a public report detailing the continued subsidization of the Chinese steel industry by its government and that the rapid growth in recent years of its production has been fueled by government subsidies and other market-distorting practices. Each of the 25 largest Chinese steel companies were analyzed in this report and highlighted the specific types and levels of subsidies that the Chinese steel producers obtained from its government, including at the federal, provincial and local levels, over the past several years. “The Chinese government maintains a majority share in the top-producing Chinese steel producers. Domestic steel producers are not competing with private enterprises but with sovereign governments that do not need to use free-market principles to operate,” the report found.<sup>51</sup>

Two years of discussions between the United States, the European Union and Japan culminated in the release of a joint statement in January 2020 outlining the principles for reforming the rules governing industrial subsidies as the existing WTO rules are insufficient to tackle the market distortions from subsidies. The statement expressly endorses adding several new types of prohibited subsidies to the Agreement on Subsidies and Countervailing Measures (ASCM), including: (1) unlimited guarantees; (2) support to insolvent or ailing enterprises that do not have credible restructuring options; (3) assistance to entities that cannot obtain independent investments or financing; and (4) direct forgiveness of debt.<sup>52</sup> AISI supports the trilateral work conducted by the three governments, particularly as they would help to address the distortions created by China’s continued mass subsidization of its industrial base, including steelmakers.

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

As an initial matter, it should be noted that China’s failure to comply with its WTO obligations makes it impossible to precisely measure the scope of its government

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<sup>50</sup> *Id.*

<sup>51</sup> Prepared by the Steel Industry Coalition, “Report on Market Research into the People’s Republic of China Steel Industry,” (Jun. 30, 2016).

<sup>52</sup> “Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union,” (Jan. 14, 2020), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union>.

subsidies. Pursuant to Article XVI of the General Agreement on Tariffs and Trade (“GATT”) and Article 25 of the SCM Agreement, China is required to notify members of its subsidy programs every year. However, China did not submit any such notification until April 2006, over four years after it acceded to the WTO and nearly five years after it promised to do so.<sup>53</sup> Six years later, China submitted its new subsidies notification, but yet again, it was inadequate, covering only four years from 2005 to 2008 and failing to provide a detailed list of any subsidies given by local or provincial governments.<sup>54</sup>

Following several additional requests by the U.S., in October 2015, China finally submitted a new subsidies notification which covered 2009 to 2014, but like previous reports, it was incomplete.<sup>55</sup> China’s lack of transparency regarding its government subsidies severely constrains the ability of WTO Members to ensure that it is playing by the rules. In its July 2016 submission, the Chinese government for the first time since joining the WTO in 2001, included subsidy programs issued by sub-central governments, but as expected, this information was incomplete and represented a very small portion of non-central government subsidy programs.<sup>56</sup> In December of 2017, Ambassador Lighthizer criticized China’s repeated failings to notify the WTO of subsidies, saying at a WTO ministerial conference “it is impossible to negotiate new rules when many of the current ones are not being followed ... Some members are intentionally circumventing these obligations, and addressing these lapses will remain a top U.S. priority.”<sup>57</sup>

This issue has specifically impacted the steel industry. For example, while China claims that it does not offer any specific subsidies for steel companies, in annual reports Chinese steel companies themselves say they receive “hundreds” of government subsidies – a point that the Trump Administration raised in an April 20, 2018 filing at the WTO.<sup>58</sup> The Chinese government also subsidizes downstream industries to the detriment of U.S. steelmakers and their domestic customer base. Earlier this year, DOC found Chinese steelmakers dumped imports of fabricated structural steel (FSS) to the United States and that the Chinese government was subsidizing its domestic industry.

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<sup>53</sup> 2013 USTR Report to Congress on China’s WTO Compliance at 50.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> 2016 USTR Report to Congress on China’s WTO Compliance at 65.

<sup>57</sup> Tom Miles, “U.S. says China is still failing to notify WTO of state-backed firms,” *Reuters* (Dec 13, 2017) available at <https://www.reuters.com/article/us-usa-china-wto/u-s-says-china-is-still-failing-to-notify-wto-of-state-backed-firms-idUSKBN1E71V7>

<sup>58</sup> Follow-up questions from the United States regarding the sub-central new and full notification of China, April 20, 2018, available at [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=244762,244746,244744,244743,244748,244749,244750,244751,244752,244753&CurrentCatalogueIdIndex=1&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=244762,244746,244744,244743,244748,244749,244750,244751,244752,244753&CurrentCatalogueIdIndex=1&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False)

However, because the U.S. International Trade Commission (USITC) found that FSS imports did not materially injure or threaten to injure the domestic industry,<sup>59</sup> dumping rates as high as 144 percent and anti-subsidy margins as high as 206 percent were not put into effect<sup>60</sup> and China can continue to provide significant support to its producers without facing any punitive remedy.

## 2. China Continues to Provide Massive Subsidies

As discussed above, domestic steel producers have brought and won CVD cases against 19 different categories of Chinese steel imports, on a variety of flat, wire, long, pipe/tube and stainless products.<sup>61</sup> The decisions in those cases show that China has engaged in sustained, massive, across-the-board efforts to subsidize steel production – efforts that affect the entire American steel industry, as well as other steel producers globally.

Several recent sunset reviews conducted by DOC have shown lack of interest by Chinese respondents to participate, thus allowing for the continuation of CVD orders. For instance, DOC conducted expedited sunset reviews on the CVD order on OCTG from China in 2015 and 2020 since DOC did not receive a substantive response from either the Chinese government or respondents that either export or produce OCTG in China.<sup>62</sup> Had China stopped providing significant subsidies to its domestic steelmakers, there would be an incentive to participate in these sunset reviews to lower substantial CVD rates on Chinese exporters.

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<sup>59</sup> U.S. International Trade Commission, “Fabricated Structural Steel from Canada, China and Mexico,” 85 Fed Reg. No. 55 (Mar. 20, 2020) at 16129-16130.

<sup>60</sup> International Trade Administration, “Fact Sheet: Commerce Finds Dumping of Imports of Fabricated Structural Steel from Canada, China and Mexico, and Countervailable Subsidization of Imports of Fabricated Structural Steel from China and Mexico,” (Jan. 24, 2020), available at <https://enforcement.trade.gov/download/factsheets/factsheet-multiple-fabricated-structural-steel-ad-cvd-final-012420.pdf>.

<sup>61</sup> See Appendix 1.

<sup>62</sup> International Trade Administration, “Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Expedited First Sunset Review of Countervailing Duty Order,” *Federal Register* 80 FR 19282 (Apr. 10, 2015), available at <https://www.federalregister.gov/documents/2015/04/10/2015-07979/certain-oil-country-tubular-goods-from-the-peoples-republic-of-china-final-results-of-expedited> and International Trade Administration, “Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of the Expedited Second Sunset Review of Countervailing Duty Order,” *Federal Register* 85 FR 38849 (Jun. 29, 2020), available at <https://www.federalregister.gov/documents/2020/06/29/2020-13947/certain-oil-country-tubular-goods-from-the-peoples-republic-of-china-final-results-of-the-expedited>.

In a book published in 2013, *Subsidies to Chinese Industry: State Capitalism, Business Strategy, and Trade Policy*, Usha C.V. Haley and George T. Haley summarize the role of subsidies in building and maintaining Chinese steel producers:

[U]nder true market conditions, China would probably have had a large and diverse steel industry, but not one that grew to account for about half of total world steel production within a decade of joining the WTO. *The Chinese steel industry in its current form is the creation of the Chinese government.* It has benefited from massive direct and indirect subsidies, many of which violate the WTO's Subsidies Agreement, China's obligations under its WTO accession agreement, or both. (Moreover,) the Chinese government has also adopted an official policy that requires it to continue to provide the steel industry with massive subsidies.<sup>63</sup>

### 3. *China's Industrial Policies Encourage Continued Subsidization*

In recent years, while China has committed to move towards more market-driven policies, it has continued to issue policies that provide for steel subsidies. China's latest 13<sup>th</sup> Five-Year Plan, released in 2016, continues to tout the importance of moving in the direction of market-driven policies, even though overwhelming evidence suggests that China will continue to provide significant subsidies to the steel industry. The Chinese Ministry of Industry and Information Technology (MIIT) issued the Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020), which aims to raise capacity utilization from 70 percent to 80 percent by 2020. The plan also calls for increased supporting measures, particularly from local governments, in order to support the Chinese steel industry's development.<sup>64</sup> China's subsidy practices continue to evolve in ways that make them more opaque and challenging to address under existing subsidy disciplines. For example, while the government has historically relied heavily on subsidized bank loans from government-owned or controlled banks, it has more recently shifted its emphasis to equity investments through "government guidance funds" that have been established at all levels of government. As of 2019, there were more than 2,000 of these funds with nearly \$600 billion in capital making investments throughout the economy.<sup>65</sup> While many of them are focused on emerging high-tech

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<sup>63</sup> Usha C.V. Haley and George T. Haley, "Subsidies to Chinese Industry: State Capitalism, Business Strategy, and Trade Policy" (2013) (emphasis added).

<sup>64</sup> King & Spalding News & Insights, "China Issues 13<sup>th</sup> Five Year Plan for the Steel Industry," (Nov. 22, 2016), available at <https://www.kslaw.com/blog-posts/china-issues-13th-five-year-plan-steel-industry>.

<sup>65</sup> Tianlei Huang, *Government-Guided Funds in China: Financing Vehicles for State Industrial Policy*, PIIE (June 17, 2019).

sectors, they are also being used to support technological upgrades in traditional industries such as steel pursuant to industrial policies like Made in China 2025.<sup>66</sup>

Continued subsidization has propped up excessive industrial capacity and prevented cuts that have repeatedly been pledged to by the Chinese government. Data released by the Chinese National Bureau of Statistics (NBS) in January 2020 show that China's capacity utilization reached 80 percent last year – its intended goal – but with nearly 1 billion metric tons of steel produced in 2019, that indicates steelmaking capacity of approximately 1.25 billion metric tons,<sup>67</sup> well above the OECD estimation of 1.15 billion metric tons of capacity.<sup>68</sup> Meanwhile, China is currently in the process of drafting its 14<sup>th</sup> Five-Year Plan, which will set the economic goals for 2021-2025. This plan is expected to be released in March 2021.<sup>69</sup>

#### 4. VAT Export Rebates to Manage and Promote Exports

China also manipulates its VAT system in order to manage and promote the export of its steel products. As USTR recognized in its 2017 National Trade Estimate Report, China continues to manipulate its VAT rebate system in order to effectively manage exports primary, intermediate and downstream products which “have caused tremendous disruption, uncertainty and unfairness in the global markets for the affected products – particularly when these practices operate to incentivize the export of downstream products for which China is a leading producer or exporter such as steel, aluminum and soda ash.”<sup>70</sup> The 2019 NTE report also highlights that China focuses its manipulation on “value-added steel products, particularly wire products and steel pipe and tube products, causing a surge in exports of these products, many of which ended up in the U.S. market.”<sup>71</sup>

Last year, Chinese Premier Li Keqiang announced the reduction of the VAT rates, which took effect April 1, 2019. According to the Work Report, the 16 percent VAT rates for manufacturing were reduced to 13 percent, while the 10 percent VAT rate

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<sup>66</sup> Emily Feng, *China's State-Owned Venture Capital Funds Battle to Make an Impact*, Financial Times (Dec. 23, 2018).

<sup>67</sup> Hongmei Li, “China '19 steel output shy of 1 billion t milestone,” *Mysteel* (Jan. 20, 2020), available at <https://www.mysteel.net/article/5013155-0503/BLOG--China-19-steel-output-shy-of-1-billion-t-milestone.html>.

<sup>68</sup> OECD Steelmaking Capacity Database (2000-2019), last accessed Sep. 2, 2020, available at [https://stats.oecd.org/Index.aspx?datasetcode=STI\\_STEEL\\_MAKINGCAPACITY](https://stats.oecd.org/Index.aspx?datasetcode=STI_STEEL_MAKINGCAPACITY).

<sup>69</sup> Frank Tang, “China's five-year plan to focus on independence as US decoupling threat grows,” *South China Morning Post* (May 24 2020), available at <https://www.scmp.com/economy/china-economy/article/3085683/coronavirus-china-five-year-plan-focus-independence-us>.

<sup>70</sup> USTR, 2018 National Trade Estimate Report at 69.

<sup>71</sup> USTR, 2019 National Trade Estimate Report at 79.

applied to construction and transport was lowered to nine percent.<sup>72</sup> However, there appears to be no effort to reform the rebate system that favors certain industrial sectors and product areas over others.

#### 5. Export Finance Support

China has made export financing a “focal point” of its export promotion strategy, launching what one expert has called “the most aggressive export credit financing campaign in history.”<sup>73</sup> As part of this campaign, China has provided an enormous amount of export financing support to its companies.<sup>74</sup> In its 2019 annual report to Congress on competition in the global export credit market, the Export-Import Bank of the United States (ExIm) stated that “China is very aggressive, strategically focused, and, unlike the United States and many other countries, not subject to the same international rules and agreements.”<sup>75</sup> The ExIm report also highlighted that export credit activity by China accounted for at least 90 percent of the sum provided by all G7 countries combined and given the opacity of Chinese data, the Chinese government provided at least \$76 billion last year in medium-and-long term export financing.<sup>76</sup>

China’s official government system of export financing is supplemented by lending from commercial banks that are owned or otherwise controlled by the government.<sup>77</sup> The China Development Bank is directed to extend loans that are consistent with the goals of China’s economic plans, which include producing “national champions” that are able to compete on a global scale.<sup>78</sup> In addition, the China Export and Credit Insurance Corporation (“SINOSURE”) was created in 2001 to “fulfill the Chinese government’s diplomatic, international trade, industrial, fiscal and financial policies.”<sup>79</sup>

Significantly, China’s export financing practices appear to constitute prohibited export subsidies under the WTO rules because much of the financing is contingent on exports

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<sup>72</sup> Amber Liu, “5 Big Changes to China’s VAT in 2019,” *China Briefing* (Apr. 18, 2019), available at <https://www.china-briefing.com/news/5-big-changes-chinas-vat-2019/>.

<sup>73</sup> See Stephen J. Ezell, “Understanding the Importance of Export Credit Financing to U.S. Competitiveness,” *Information Technology and Innovation Foundation* (Jun. 2011) at 7.

<sup>74</sup> *Id.* at 7-8.

<sup>75</sup> Export-Import Bank of the United States, “Report to the U.S. Congress on Global Export Credit Competition,” (Jun. 2020), available at [https://www.exim.gov/sites/default/files/reports/competitiveness\\_reports/2019/EXIM\\_2019\\_Co\\_mpetitivenessReport\\_FINAL.pdf](https://www.exim.gov/sites/default/files/reports/competitiveness_reports/2019/EXIM_2019_Co_mpetitivenessReport_FINAL.pdf).

<sup>76</sup> *Id.*

<sup>77</sup> Anna Tucker, “Export Assistance and the China Challenge,” *USCC Staff Research Backgrounder* (Apr. 27, 2012) (“Export Assistance and the China Challenge”) at 4.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

and granted at non-commercial terms.<sup>80</sup> The practices are also inconsistent with certain aspects of the Organization for Economic Cooperation and Development (OECD) Arrangement on Guidelines for Officially Supported Export Credits.<sup>81</sup> As former U.S. Export-Import Bank Chairman Fred Hochberg stated in 2011, the “underlying premise” of international export finance rules is that “we ought to let products compete on their own merits, their own quality, their own value, and not let financing be a distorting factor,” but China “is winning deals in part because they’re not playing by the rules.”<sup>82</sup>

In 2013, as part of the U.S.-China Strategic and Economic Dialogue (S&ED) held in Washington, D.C., China affirmed its support for concluding negotiations by 2014 for a new comprehensive international agreement setting guidelines on export financing by the major providers of export credits that would be consistent with international best practices.<sup>83</sup> Following the 2015 and 2016 S&ED meetings, the U.S. Treasury Department announced that it had received assurances from China that it would adhere to the international export financing norms that are consistent with global best practices.<sup>84</sup>

But it does not appear that this has happened. As David Malpass, U.S. Treasury undersecretary for international affairs, said on Nov. 30, 2017: “China’s industrial policy has become more and more problematic for foreign firms. Huge exports credits are flowing in non-economic ways that distort markets.”<sup>85</sup> In 2018, the Export-Import Bank of China announced its decision to work with other Chinese government agencies to support Chinese businesses that have been impacted by the prolonged trade dispute between the United States and China. The Chinese government also “announced a series of measures to support exporters, including cutting customs clearance red tape, reducing the cost of customs procedures, expanding export credit insurance and increasing export tax rebates.”<sup>86</sup> The Trump Administration must remain vigilant to ensure that China fulfills its commitment to end its mercantilist export financing practices to ensure a level playing field for U.S. manufacturers.

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<sup>80</sup> See “The EU may initiate a WTO dispute settlement over Chinese export credits,” *Trade Perspectives* (May 6, 2011).

<sup>81</sup> *Id.*

<sup>82</sup> Sudeep Reddy, “U.S. Export Financing Challenges China,” *Wall Street Journal* (Jan. 12, 2011).

<sup>83</sup> CRS China-U.S. Trade Issues at 49.

<sup>84</sup> U.S. Treasury Department, “2015 U.S.-China Strategic and Economic Dialogue U.S. Fact Sheet – Economic Track,” (Jun. 25, 2015) and “2016 U.S.China Strategic and Economic Dialogue U.S. Fact Sheet – Economic Track,” (Jun. 7, 2016).

<sup>85</sup> Tom Miles, “U.S. says China is still failing to notify WTO of state-backed firms,” *Reuters* (Dec 13, 2017) available at <https://www.reuters.com/article/us-usa-china-wto/u-s-says-china-is-still-failing-to-notify-wto-of-state-backed-firms-idUSKBN1E71V7>.

<sup>86</sup> Frank Tang, “China’s Exim Bank to boost lending in an effort to support exporters hit hard by trade war,” *South China Morning Post* (Sep. 21, 2019), available at <https://www.scmp.com/news/article/2165169/chinas-exim-bank-boost-lending-effort-support-exporters-hit-hard-trade-war>.

## 6. Conclusion

Given that China has subsidized its steel industry for years and that its government policy plainly provides for further subsidies going forward, this problem cannot be solved by dialogue alone. AISI commends the Trump Administration for taking a new, stronger approach to push China to reform its trade practices. AISI also strongly supports the trilateral efforts of the governments of the United States, the European Union and Japan to modernize and strengthen the rules governing industrial subsidies at the WTO, which would ultimately put significant pressure on China to reform.

### **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.”<sup>87</sup> This commitment is particularly significant in the steel context. A report published 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.”<sup>88</sup> In 2013, *World Steel Dynamics* reported that all but four of China’s large steel producers are at least partly owned by Chinese municipalities, three large steel producers are owned by the Chinese central government, and only one large steel producer is a private enterprise.<sup>89</sup>

There is every indication that the Chinese government will continue to maintain a significant amount of control over its steel industry. As the U.S.-China Economic and Security Review Commission stated in its 2017 annual report, “[t]o date, the (Chinese Communist Party) CCP has not demonstrated a commitment to a free market economy as a matter of principle, and powerful practical considerations mitigate against reform efforts. SOEs in strategic sectors are the primary entities through which the CCP directs the economy towards the regime’s strategic ends; real reform in these sectors would mean giving up control and dramatically reducing the government’s ability to achieve the goals identified in the 13<sup>th</sup> Five-Year Plan (FYP). Reforms would also reduce the size of the state sector, creating significant job losses at a time when economic growth is already slowing. Finally, huge political obstacles in the form of entrenched interests resist any substantial changes in SOEs’ structure that might reduce the CCP’s control.

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<sup>87</sup> Working Party Report at ¶ 46.

<sup>88</sup> Markus Taube and Christian Schmidkonz, *The State-Business Nexus in China’s Steel Industry – Chinese Market Distortion in Domestic and International Perspective*, THINK!Desk China Research & Consulting (Jan. 2009), prepared for EUROFER (“EUROFER Report”) at 10.

<sup>89</sup> *World Steel Dynamics*, Truth & Consequences #70 (Aug. 6, 2013) at 18.

For all of these reasons, what passes for reform of SOEs has taken the form of consolidating state control and pressuring firms to act in line with government interests.

During the 13<sup>th</sup> Five Year Plan period, the Chinese government has relied heavily on the concept of “mixed ownership reform” in its attempts to reform the state sector.<sup>90</sup> Mixed ownership reform seeks to draw additional non-state investment into Chinese SOEs, purportedly to promote market-orientation by giving private investors a greater say in SOE operations.<sup>91</sup> The policy has not, however, been coupled with necessary corporate governance reforms, so that it has become “little more than an attempt to receive private sector payments without offering anything in return – an empty box with nice wrapping paper.”<sup>92</sup> The CCP has in fact moved to expand and formalize its influence over the operations of firms of all ownership structures,<sup>93</sup> while also promoting investment by the state sector in non-state firms in key emerging industries.<sup>94</sup> As a result, in response to CCP policies, the Chinese government continues to promote, subsidize and expand the state sector despite warnings from the International Monetary Fund (IMF) that effects from a large wave of SOE defaults could ripple through the global economy.

“The need for reform is particularly pressing in China’s heavy industries, where years of government subsidies have created overcapacity and market distortions. China’s industrial capacity, for instance, has suppressed global commodity prices and hindered global industrial activity. Rampant overcapacity also poses a national security risk to the United States, as cheap Chinese steel and finished aluminum product imports threaten to hollow out the domestic industries and weaken the national defense industrial base.”<sup>95</sup>

In 2016, the Chinese State Council set target guidance for reduction in steelmaking capacity for 2016-2020 of 100 to 150 million MT, approximately 20 to 30 million MT of

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<sup>90</sup> See, e.g., Ann Listerud, *MOR Money MOR Problems: China’s Mixed-Ownership Reforms in Practice*, CSIS (Oct. 1, 2019).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See, e.g., Federica Russo, *Politics in the Boardroom: The Role of Chinese Communist Party Committees*, *The Diplomat* (Dec. 24, 2019).

<sup>94</sup> See, e.g., Iris Leung, *China Rolls Out “Government Guidance Funds to Boost Tech Startups*, *Techwire Asia* (May 23, 2017).

<sup>95</sup> U.S.-China Economic and Security Review Commission Annual Report, Chapter 1, Section 2, page 91, (Nov 2017) available at

[https://www.uscc.gov/sites/default/files/Annual\\_Report/Chapters/Chapter%201%2C%20Section%202%20-%20State-Owned%20Enterprises%2C%20Overcapacity%2C%20and%20China%27s%20Market%20Economy%20Status.pdf](https://www.uscc.gov/sites/default/files/Annual_Report/Chapters/Chapter%201%2C%20Section%202%20-%20State-Owned%20Enterprises%2C%20Overcapacity%2C%20and%20China%27s%20Market%20Economy%20Status.pdf)

cuts annually.<sup>96</sup> According to the Chinese government, capacity from unlicensed, small scrap-fed rebar-producing induction furnaces of approximately 140 million MT was shut down in 2017. Additionally, China removed 150 million MT of certified crude steelmaking capacity in the 2016-2018 period, but China's official capacity remains at 1.15 billion MT annually as it continues to build more steel mills despite commitments to reduce capacity.<sup>97</sup> In 2017, S&P Global Platts quoted market participants who questioned whether the illicit production really would be removed from the market: "[t]he more underground, home-brew operations play a cat-and-mouse game with the authorities. They simply dismantle facilities quickly before inspections, and assemble them again after."<sup>98</sup>

In the past, China has announced reductions in capacity at the same time as new capacity and then not followed through on the reductions. As Kevin Bai, an analyst with CRU in Beijing, said: "[t]he surplus to be shut this year isn't hard, but the main task is consolidating the results and prevent closed mills from resuming production. Also there is concern that the tough capacity swap rules may not be implemented strictly."<sup>99</sup> Historically, figures released by the Chinese government do not distinguish between *net* and *gross* capacity reductions. The Petersen Institute for International Economics (PIIE) notes that "only the MIIT plan emphasizes net figures, while all other official (Chinese government) documents only discuss gross numbers. Obviously, when some capacity is eliminated, total capacity will decrease. On the other hand, if new capacity is added at the same time, total capacity might increase."<sup>100</sup> The Chinese government has for many years claimed to reduce steelmaking capacity, only to revise capacity figures upwards in subsequent years.

In July 2019, it was reported that China was set to commission 93 million MT of steelmaking capacity in 2020 as part of a replacement campaign, which will add more capacity at five mills than the entire U.S. crude steel production in 2019. This replacement campaign is "predicated on closures of... 104.38 million MT/year of crude steel capacity," according to S&P Global Platts, which calculated its figures from recent

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<sup>96</sup> China Ministry of Industry and Information Technology, "Notice of the MIIT Regarding Capacity Replacement of Some Industries with Serious Excess Capacity" (Feb. 1, 2016)

<sup>97</sup> S&P Global Platts Insight Report, "Chinese steel output touches new heights," (May 2019), available at <https://www.spglobal.com/media/documents/chinese-steel-output-touches-new-heights.pdf>.

<sup>98</sup> Will China's induction furnace steel whac-a-mole finally come to an end?, S&P Global Platts (July 3, 2017)

<sup>99</sup> Ruby Lian, Josephine Mason, China aims to meet 2020 target for steel capacity cuts this year, warns on resumption, Reuters (February 7, 2018) available at <https://www.reuters.com/article/us-china-steel/china-aims-to-meet-2020-target-for-steel-capacity-cuts-this-year-warns-on-resumption-idUSKBN1FR10M>

<sup>100</sup> Lucy Lu, "China's Excess Capacity in Steel: A Fresh Look," Petersen Center for International Economics (Jun. 29, 2017).

Chinese government approval announcements.<sup>101</sup> However, while these replacements should in theory reduce overall Chinese steelmaking capacity, “China’s capacity has been creeping up again in 2019.”<sup>102</sup>

While the OECD records China’s steelmaking capacity as 1.15 billion metric tons in 2019,<sup>103</sup> China’s National Bureau of Statistics (NBS) reported 80 percent capacity utilization last year, which would indicate steelmaking capacity of approximately 1.25 billion metric tons.<sup>104</sup> In recent years, China has worked to consolidate its SOEs in the steel sector in order to reduce capacity and control 60 percent of steel production. But, MIIT has recently indicated that new steel mills not approved by the government continue to be built, despite planned capacity swaps. The president of the Chinese Society for Metals (CSM), Gan Yong, pointed out in October 2019 that “[t]here are signs of overcapacity in stainless steel, electrical steel and auto sheet steel.”<sup>105</sup>

As China continues to publicize its official policy of reducing excess steel capacity at home, U.S. policymakers should also be extremely wary of China’s goal to “internationalize” its state-owned steel industry. The OECD has released a series of reports over the last several years detailing the numerous risks associated with the rise of SOEs’ investments and activities abroad.<sup>106</sup> These risks include the following:

- SOEs often receive subsidies that provide them with a competitive advantage in their world-wide operations by lowering their costs and allowing them to set prices that are lower than their private-sector competitors.<sup>107</sup>

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<sup>101</sup> Zhang Jing, “China to commission 93 million mt/year of new steel capacity in 2020,” *S&P Global Platts* (Jul. 24, 2019), available at <https://www.spglobal.com/platts/en/market-insights/latest-news/metals/072419-china-to-commission-93-million-mt-year-of-new-steel-capacity-in-2020>.

<sup>102</sup> *Id.*

<sup>103</sup> OECD Steelmaking Capacity Database (2000-2019), last accessed Sep. 2, 2020, available at [https://stats.oecd.org/Index.aspx?datasetcode=STI\\_STEEL\\_MAKINGCAPACITY](https://stats.oecd.org/Index.aspx?datasetcode=STI_STEEL_MAKINGCAPACITY).

<sup>104</sup> Hongmei Li, “China ’19 steel output shy of 1 billion t milestone,” *Mysteel* (Jan. 20, 2020), available at <https://www.mysteel.net/article/5013155-0503/BLOG--China-19-steel-output-shy-of-1-billion-t-milestone.html>.

<sup>105</sup> Min Zhang and Dominique Patton, “China’s steel industry fragmentation worsening: official,” *Reuters* (Oct. 15, 2019), available at <https://www.reuters.com/article/us-china-steel/chinas-steel-industry-fragmentation-worsening-official-idUSKBN1WU1MC>.

<sup>106</sup> See, e.g., Antonio Capobianco and Hans Christiansen, “Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options,” *OECD Corporate Governance Working Papers* (2011), available at <http://dx.doi.org>. (“Competitive Neutrality in the Presence of SOEs”); OECD, *State-Owned Enterprises and the Principle of Competitive Neutrality*, DAF/COMP[2009]37 (Sep. 20, 2010) (“SOEs and Competitive Neutrality”); OECD, “SOEs Operating Abroad: An application of the OECD Guidelines on Corporate Governance of State-Owned Enterprises to the cross-border operations of SOEs,” available at <http://www.OECD.org> (“SOEs Operating Abroad”).

<sup>107</sup> Competitive Neutrality in the Presence of SOEs at 5; SOEs and Competitive Neutrality at 37; SOEs Operating Abroad at 7.

- Because SOEs do not have the same pressure to make a consistent profit as their private competitors, they are more likely to engage in anti-competitive behavior such as exclusionary pricing strategies without the fear of their stock prices falling when losses are incurred.<sup>108</sup>
- SOEs operating overseas can serve as conduits for illicit technology transfers as well as outright espionage.<sup>109</sup>
- When private companies acquire foreign rivals to appropriate their technologies, they put this technology to commercial use within the acquiring company. When SOEs acquire foreign rivals to appropriate their technologies, however, they often do so to make the acquired technologies available throughout the relevant sectors of the domestic economy of which they are a part. This fact leads to distortions in the mergers and acquisitions market.<sup>110</sup>

China has made significant moves towards achieving its goal to “internationalize” its steel industry. Many of these moves are consistent with the concerns raised by the OECD. In April 2016, a joint statement was issued by the Chinese central bank and other government agencies noting that China planned to “strengthen financing support for enterprises ‘going out’” which would encourage the use of loans, export credits and other financing options in an effort to encourage steel and other business to build capacity in foreign countries.<sup>111</sup> Steel firms in China continue to push for building new operations abroad, including in South Africa and Eastern Europe, including a deal in 2016 by Hebei Iron & Steel Group to purchase a loss-making Serbian steel plant.<sup>112</sup>

In 2016, it was reported that the Chinese Development Bank would support the move of operations of a Chinese steel mill to Brazil, including the relocation of 10 million MT of capacity, while there have also been reports from a major Indian steel producer that the same could occur by moving Chinese steelmaking capacity to India.<sup>113</sup> China will invest \$8 billion in the Brazil relocation, in the process expanding Brazilian potential steel output during a time when it operates at less than 70 percent of capacity. “This is

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<sup>108</sup> Competitive Neutrality in the Presence of SOEs at 6-7; SOEs and Competitive Neutrality at 38-40.

<sup>109</sup> SOEs Operating Abroad at 5.

<sup>110</sup> *Id.* at 6.

<sup>111</sup> David Stanway and Ruby Lian, “China looks overseas in bid to slim down bloated steel sector,” *Reuters* (Apr. 20, 2016).

<sup>112</sup> *Id.*

<sup>113</sup> Stratfor Enterprises, “Pushing Chinese Steel Abroad,” (May 18, 2016).

total nonsense, with all the idle capacity that we have,” says Alexandre Lyra, chairman of the Brazilian Steel Institute, which represents Brazilian producers.<sup>114</sup>

Chinese manufacturers receive hundreds of billions of dollars of state support to build and purchase plants on foreign soil, through money provided by institutions such as China Development Bank, Bank of China and funds like China Investment Corp. The USCC remains concerned about the impact of China’s outreach to the globe. The Chinese government’s Belt and Road Initiative (BRI), inaugurated in 2013, is an outward facing economic development plan aimed at boosting China’s slowing economy through increased economic integration with its neighbors. However, despite China’s continued rhetoric about the open and inclusive process, “Chinese state-owned enterprises are winning the lion’s share of contracts for BRI projects.”<sup>115</sup>

The BRI encourages Chinese manufacturers – both SOEs and non-SOEs – to invest in operations abroad, particularly as many Chinese steelmakers are unable to export to the U.S. market because of trade remedy orders. The Chinese government continues to encourage strategic partnerships and investments between its steelmakers and overseas interests to increase exports of steel. For instance, Indonesia has repeatedly manipulated its nickel ore export market in recent years, including a complete ban on exports at the beginning of 2020, so the largest Chinese producer of stainless steel, Tsingshan, built a 3.0 to 3.5 million metric ton production stainless steel facility in Indonesia, almost exclusively for export markets to the United States and Europe, as Indonesian consumption of stainless steel products is well below the annual production capabilities at this facility.<sup>116</sup> In November 2017, a 50-50 joint venture was announced between U.S.-based Allegheny Technologies (ATI) and an affiliate of the Tsingshan Group to produce stainless steel sheet in North America using Indonesian redi-to-roll slabs, which are then hot rolled into coils in the United States.<sup>117</sup> Meanwhile, just last month, the second largest Chinese stainless steel producer, Taiyuan Iron and Steel (TISCO) announced that it plans to develop an integrated stainless steel operation in

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<sup>114</sup> Matthew Dalton and Lingling Wei, How China Skirts America’s Antidumping Tariffs on Steel, *Wall Street Journal* (June 4, 2018), available at <https://www.wsj.com/articles/how-china-skirts-americas-antidumping-tariffs-on-steel-1528124339>

<sup>115</sup> U.S.-China Economic and Security Review Commission Annual Report, Chapter 1, Section 2, page 91, (Nov 2017) available at [https://www.uscc.gov/sites/default/files/annual\\_reports/2018%20Annual%20Report%20to%20Congress.pdf](https://www.uscc.gov/sites/default/files/annual_reports/2018%20Annual%20Report%20to%20Congress.pdf)

<sup>116</sup> Maytaal Angel, “Stainless steel glut builds in China as Indonesia ups output,” *Reuters* (May 3, 2018), available at <https://www.reuters.com/article/us-stainless-glut-nickel/stainless-steel-glut-builds-in-china-as-indonesia-ups-output-idUSKBN1I412C>.

<sup>117</sup> Grace Lavigne Asenov, “ATI, Tsingshan form stainless sheet venture (update)”, *Fastmarkets AMM* (Nov. 2, 2017), available at <https://www.amm.com/Article/3763984/ATI-Tsingshan-form-stainless-sheet-venture-update.html>.

Indonesia.<sup>118</sup> This follows the announcement in August 2020 that China Baowu Steel Group, an SOE that is the largest Chinese steelmaker by output, has taken a controlling 51 percent stake in TISCO through a state-sponsored restructuring.<sup>119</sup>

As we have emphasized in the past, AISI has no objection to market-driven foreign investment in the United States or other countries. However, the prospect of investments in 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. As Robert Atkinson has explained:

[T]here's a fundamental difference between dislocation produced by economic restructuring by nations pursuing comparative/competitive advantage and dislocation produced by absolute loss of competitive advantage via foreign mercantilism. The former hurts some workers, companies and communities but generates economic growth. The latter hurts many more individuals, companies and communities and generates economy-wide loss.<sup>120</sup>

There can be no doubt that China's steel-producing SOEs - which account for most of the production in the world's largest steel industry - are operating in accord with government policies, *not* market principles. This outcome represents not only a clear violation of China's WTO commitments, but a significant distorting force in steel markets around the world.

### C. Raw Materials

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

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<sup>118</sup> Jack Anderson, "Nickel: TISCO signs contract for integrated Indonesian stainless steel project," *Roskill* (Aug. 20, 2020), available at <https://roskill.com/news/nickel-tisco-signs-contract-for-integrated-indonesian-stainless-steel-project/>.

<sup>119</sup> Min Zhang and Tom Daly, "China Baowu Steel to take control of stainless steelmaker TISCO," *Reuters* (Aug. 20, 2020), available at <https://www.reuters.com/article/us-china-steel-baowu/china-baowu-steel-to-take-control-of-stainless-steelmaker-tisco-idUSKBN25H0JM>.

<sup>120</sup> The Explosive Rise of Subsidies to Chinese Industry.

1. *Restraining Exports of Key Raw Materials*

Article XI of the GATT 1994 generally prohibits WTO members from maintaining export restrictions (other than duties, taxes, or other charges), although certain limited exceptions are allowed.<sup>121</sup> China also agreed as part of its WTO accession to eliminate all taxes and charges on exports other than those included in Annex 6 to its Protocol of Accession or those applied in conformity with Article VIII of the GATT 1994.<sup>122</sup>

The evidence is overwhelming that China has not complied with these commitments. In June 2009, the United States, along with the European Union and Mexico, challenged China's export restraints on numerous raw materials at the WTO.<sup>123</sup> These raw materials – which are important to the production of steel, aluminum, and various chemicals – include bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc.<sup>124</sup> USTR alleged that China imposes several different export restraints on these materials, including the following: 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.<sup>125</sup> 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.<sup>126</sup>

In 2012, the WTO sided with the U.S., the European Union and Mexico against China.

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<sup>121</sup> Working Party Report at ¶¶ 155-65.

<sup>122</sup> *Id.* Article VIII only permits fees and charges limited to the approximate cost of services rendered and makes clear that any such fees and charges shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes. *Id.* This article is not relevant for the present discussion.

<sup>123</sup> USTR Press Release, "United States Files WTO Case Against China Over Export Restraints on Raw Materials" (June 23, 2009); see also Request for Consultations by the United States, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/1 (Jun. 23, 2009) at 1.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

Importantly, the DOC has recognized that China's export restraints constitute countervailable subsidies -- specifically, in the CVD investigation of seamless pipe from China, the DOC found that China's export restraints on coke provide a financial benefit to Chinese steel producers that use coke in the production of seamless pipe.<sup>127</sup>

Additionally, consider China's export restraints on certain rare earths. In recent years, China has imposed quotas to limit exports of rare earths to about 30,000 MT per year and has raised export taxes on rare earths to as much as 25 percent.<sup>128</sup> According to the U.S. Geological Survey, China accounts for approximately 80 percent of U.S. rare earth supplies, far more than domestic supply or any of our trading partners.<sup>129</sup> Many corporate executives have reported that China is using its near-monopoly on rare earths not only to subsidize existing Chinese manufacturers, but also to encourage other manufacturers to relocate or expand capacity in China.<sup>130</sup> Indeed, China itself had repeatedly stated that the purpose of the export restraints on rare earths was to encourage companies to move production to China.<sup>131</sup> It was only when governments and business groups pointed out that the export restraints violated China's WTO obligations that China began claiming that the export restraints were in place for environmental protection.<sup>132</sup>

In June 2012, the United States requested the establishment of a WTO dispute settlement panel to decide claims regarding China's unfair export restraints on rare earths, tungsten, and molybdenum.<sup>133</sup> In bringing this request, the U.S. government recognized that "[i]t is vital that U.S. workers and manufacturers obtain the fair and equal access to raw materials like rare earths that China specifically agreed to when it joined the WTO."<sup>134</sup> Significantly, China imposed essentially the same export quota on

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<sup>127</sup> Issue and Decision Memorandum in *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China*, 75 Fed. Reg. 57444 (Dept. Commerce Sep. 21, 2010) (final determ.) at 32-33.

<sup>128</sup> Keith Bradsher, "Chasing Rare Earths, Foreign Companies Expand in China," *New York Times* (Aug. 24, 2011).

<sup>129</sup> Bloomberg News, "China Stokes Rare Earths Concerns with Possible Export Restrictions," (Jun. 4, 2019) available at <https://www.bloomberg.com/news/articles/2019-06-04/china-reviews-rare-earth-export-controls-proposal-amid-trade-war>.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> USTR Press Release, "United States Seeks to Eliminate China's Unfair Export Restraints on Rare Earths," (Jun. 27, 2012).

<sup>134</sup> *Id.*

rare earths for 2013 that it imposed in 2012 before the United States requested the establishment of a WTO dispute settlement panel on this issue.<sup>135</sup>

On March 26, 2014, a WTO panel issued a decision finding that China's export duties, export quotas, and other restrictions on the export of rare earths, tungsten, and molybdenum were in violation of its WTO obligations.<sup>136</sup> China appealed certain aspects of the panel's decision, but on August 7, 2014, the WTO Appellate Body upheld the panel's decision.<sup>137</sup> China removed the quotas on January 1, 2015, and eliminated the export duties in May 2015, which in turn has caused significant increases in demand and dramatic reduction in prices.<sup>138</sup> However, notwithstanding this victory at the WTO, some analysts believe that "the rare-earth battle between China and the West will carry on" because "China will not cede its position in the market."<sup>139</sup>

In July 2016, the U.S. challenged China over its export duties on nine key raw materials at the WTO, highlighting that "[w]hen China joined the WTO, [i]t agreed to eliminate its export duties on these products, but it has failed to follow through on this commitment."<sup>140</sup> The raw materials, which include copper, magnesia, tin, among others, are critical to the competitiveness of American manufacturing and China's export duties on these products range from five to 20 percent, which artificially raise the prices of these materials by American and other global manufacturers.<sup>141</sup> In November 2016, the WTO Dispute Settlement Body (DSB) established a panel to examine these export restrictions, with several key U.S. allies, including Canada, the European Union, Korea and Mexico, reserving their third party rights in the dispute,<sup>142</sup> but it appears there has been very little movement in this case in recent years.

It should also be noted that China maintains a 40 percent export tax on steel scrap that creates additional distortion in the marketplace.<sup>143</sup> While the tax does not explicitly

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<sup>135</sup> "China's Commerce Department Issues Second Rare Earth Quota of 15,5000 tons in 2013," *Reuters* (Jul. 1, 2013) (Chinese language document), available at <http://cn.reuters.com/article/chinaNews/idCNCNE96009S20130701> (last visited Sep. 9, 2014).

<sup>136</sup> USTR Press Release, "United States Wins Victory in Rare Earths Dispute with China: WTO Report Finds China's Export Restraints Breach WTO Rules" (Mar. 26, 2014).

<sup>137</sup> USTR Press Release, "U.S. Trade Representative Michael Froman Announces U.S. Victory in Challenge to China's Rare Earth Export Restraints" (Aug. 7, 2014).

<sup>138</sup> "Turnover of China's Rare Earth Exchange Surges in July," *Want China Times* (Aug. 11, 2015).

<sup>139</sup> "China won't bow in rare-earth battle," *Global Times* (Jun. 18, 2014).

<sup>140</sup> "United States Challenges China's Export Duties on Nine Key Raw Materials to Level Playing Field For American Manufacturers" *Office of the U.S. Trade Representative* (Jul. 13, 2016).

<sup>141</sup> "U.S. Challenges China Over Raw Materials Duties at the WTO" *Yahoo News* (Jul. 13, 2016).

<sup>142</sup> World Trade Organization, "DS508: China - Export Duties on Certain Raw Materials" (last updated Nov. 8, 2016).

<sup>143</sup> See China State Administration Customs Committee, Shuiweihui (2011) No. 27, 2012 Custom Tax Implementation Program (Dec. 9, 2011) (Chinese language document), available at

prohibit scrap exports, it makes such shipments extremely unprofitable in most cases. China continues to be the world's largest consumer of steel scrap, with demand of 216 million MT in 2019, an increase of 15 percent from 2018 levels.<sup>144</sup> As the world's largest scrap consumer, any action taken by the Chinese government to limit the trade of steel scrap internationally has significant implications on the global marketplace for scrap.

Given its pervasive use of export restraints as part of its trade and industrial policy and given the evidence that China has no intention of voluntarily ending its use of such restraints, AISI supports the Trump Administration's efforts to counter China's practices.

## 2. Helping Chinese Mills in the Acquisition of Raw Materials

In addition to imposing export restraints, China has an established policy of assisting its steel producers in their efforts to obtain 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."<sup>145</sup>

China has continued to provide assistance in the acquisition of iron ore deposits overseas. In recent years, several potential investment projects, particularly in Africa, have been announced where China plans to invest in the procurement of steelmaking raw materials, which would enable their steel producers to benefit from cheap iron ore at the expense of U.S. steelmakers. In January 2017, it was announced that the Chinese state-owned Shandong Iron and Steel had invested \$700 million in the Tonkolili mine in Sierra Leone. This mine currently has an annual capacity of 20 million MT of iron ore mining, but is expected to increase to 35 million MT following the investment, and according to Shandong Iron and Steel, "[a]ll of the iron-ore mined at Tonkolili will be shipped to China."<sup>146</sup> Later in 2017, it was announced that the China Investment Fund

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[http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201112/t20111215\\_615749.html](http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201112/t20111215_615749.html) (last visited Sep. 9, 2014).

<sup>144</sup> Ronan Murphy, "China ferrous scrap usage soared in 2019," Argus Media (May 29, 2020), available at <https://www.argusmedia.com/en/news/2109844-china-ferrous-scrap-usage-surged-in-2019#:~:text=China's%20consumption%20of%20ferrous%20scrap,production%20to%20996.3mn%20t.>

<sup>145</sup> "Raw Deal: How Governmental Trade Barriers and Subsidies are Distorting Global Trade in Raw Material," *American Scrap Coalition* (Nov. 2008) at 15-16.

<sup>146</sup> Natasha Odendaal, "Shining iron-ore future for Sierra Leone possible as Chinese investors commit," (Jan. 13, 2017).

and the government of Angola are working to sign a deal to mine for investment to mine deposits of iron ore in the Kwanza Norte province.<sup>147</sup>

Over the last year, Chinese SOEs have announced investments in the Simandou region of northern Guinea, one of the largest untapped iron ore deposits in the world.<sup>148</sup> China has long been the world's largest consumer of iron ore, while Australia provides nearly 60 percent of global seaborne iron ore supply.<sup>149</sup> An executive at the China Iron and Steel Association (CISA) recently stated "that while China could swap Australian for African iron ore, there would be a lag of four to five years before deposits in Africa could be tapped."<sup>150</sup> But developing these iron ore deposits in Guinea could save China billions of dollars each year as a low-cost alternative to Australia.<sup>151</sup>

As Graeme Hosie, chief executive of London Mining, has explained, Chinese investment in such emerging deposits is only possible because of China's policy of assisting its steel producers in the acquisition of raw materials: "You have Chinese banks that can fund these projects at a low cost of capital, because they are helping state-owned enterprises strategically ensure supply."<sup>152</sup> It should also be noted that, unlike their Chinese counterparts, American companies must comply with laws that require them to disclose their payments to governments as part of efforts to improve transparency and accountability for revenues derived from natural resources.<sup>153</sup> Indeed, many multi-national companies complain that their competitive position in bidding for natural resource contracts is undermined by their having to adhere to laws that do not apply to state-owned companies in China.<sup>154</sup>

The Chinese government also helps Chinese steel firms develop iron ore mines. An analysis of China's domestic iron ore industry by Bank of America in November 2012

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<sup>147</sup> Macau Hub, "China Investment Fund negotiates exploration of iron ore deposits in Angola," (Aug. 1, 2017).

<sup>148</sup> Cecilia Jamasmie, "China-backed JV set to start work on Simandou," Mining.com (Mar. 5, 2020), available at <https://www.mining.com/china-backed-jv-about-to-start-work-at-guineas-simandou/>.

<sup>149</sup> Baris Bekir Çiftçi, "Blog: COVID-19 and steelmaking raw materials," World Steel Association (Apr. 30, 2020), available at <https://www.worldsteel.org/media-centre/blog/2020/COVID-19-and-steelmaking-raw-materials.html>.

<sup>150</sup> Huileng Tan, "China may punish Australia with trade curbs - but it can't stop buying iron ore from Down Under," CNBC (Jun. 11, 2020), available at <https://www.cnbc.com/2020/06/12/china-may-impose-trade-curbs-on-australia-but-cant-stop-buying-iron-ore.html>.

<sup>151</sup> Luo Guoping and Han Wei, "China's opportunities and risks in Africa's giant iron ore field," Nikkei Asian Review (Aug. 26, 2020), available at <https://asia.nikkei.com/Spotlight/Caixin/China-s-opportunities-and-risks-in-Africa-s-giant-iron-ore-field>.

<sup>152</sup> William MacNamara, "Chinese money to open new iron ore projects," *Financial Times* (Apr. 13, 2010).

<sup>153</sup> Stella Dawson, "China urged to reveal payments on natural resources," *Reuters* (Aug. 4, 2014).

<sup>154</sup> *Id.*

found that Chinese iron ore producers received a number of “hidden subsidies.”<sup>155</sup> In 2014, it was reported that China is drafting a plan to restructure China’s iron ore sector between 2016 and 2025 so that “it can play a bigger role in negotiating iron ore prices with more established rivals in the world.”<sup>156</sup> As part of these plans, China intends to establish a large mining conglomerate focusing on iron ore extraction and smelting operations led by the state-owned Ansteel Group which will have an annual iron ore production capacity of 200 million MT.<sup>157</sup>

China’s unfair assistance in the acquisition of raw materials distorts markets worldwide. The Trump Administration should continue to aggressively press China to cease this practice. It should also find that where China provides assistance to certain enterprises or industries in acquiring raw materials overseas, any benefit received by the enterprises or industries is a countervailable subsidy.

#### **D. Currency Manipulation**

AISI members, along with other U.S. manufacturers, have long expressed concern over China’s policy of controlling the exchange rate between its currency (known as the renminbi (RMB) or the yuan) and the U.S. dollar, and traditionally, China has intervened in the foreign exchange markets to weaken the yuan, to give its exporters a boost and make it more expensive for its trading partners to export.<sup>158</sup> The effects of China’s currency manipulation have been profound. In 2017, C. Fred Bergsten and Joe Gagnon of the Peterson Institute for International Economics published a study that estimates that currency manipulation by U.S. trading partners caused the United States to run about \$200 billion in higher trade deficits annually, cost more than 1 million jobs during and after the Great Recession, and was a factor in causing the recession and in slowing the recovery from it. China was by far the world’s largest currency manipulator and its currency manipulation encouraged other export-dependent economies to manipulate their currencies to keep up. Bergsten and Gagnon write that China’s currency manipulation accounted for one-third of the U.S. job displacement

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<sup>155</sup> Bank of America, “China’s iron ore industry, and why it matters globally,” (Nov. 23, 2012) at 1.

<sup>156</sup> “China seeks more influence in setting iron ore prices,” *China Daily* (Mar. 22, 2014).

<sup>157</sup> *Id.*

<sup>158</sup> In 2004, for example, AISI joined a coalition of U.S. industrial, service, agricultural, and labor associations seeking relief under Section 301[a] of the Trade Act of 1974, as amended, from China’s manipulation of the renminbi. Petition for Relief under Section 301[a] of the Trade Act of 1974 on behalf of the China Currency Coalition (Sept. 9, 2004), *available at* <http://www.aflcio.org>. This petition demonstrated that China’s exchange-rate policy constitutes a prohibited export subsidy within the meaning of Articles 1, 2, and 3 of the SCM Agreement and Articles VI and XVI of the GATT 1994. *Id.* at 50.

from the rapid growth in Chinese imports that began when China joined the WTO.<sup>159</sup> Other economists have made similar conclusions about the devastating economic effects of China's currency manipulation.

The U.S. government and other countries have long sought to address concerns about currency manipulation through dialogue with the Chinese government. Unfortunately, those efforts have had only limited success. In recent years, China has allowed the value of the yuan to once again drop significantly against the dollar. As a result, the Trump Administration officially designated China as a currency manipulator on August 5, 2019,<sup>160</sup> just one day after China's central bank, the People's Bank of China (PBOC), allowed the yuan to fall to a new low yuan-to-dollar ratio of 7-to-1. The Treasury Department noted in its press release that the PBOC openly acknowledges "that it has extensive experience manipulating its currency and remains prepared to do so on an ongoing basis."<sup>161</sup>

The Trump Administration and Chinese government began discussions and negotiations during the fall of 2019 on currency, which led in January 2020 – just two days prior to the announcement of the phase one trade deal – to the Treasury Department removing China from its list of currency manipulators. China joined several countries, such as Germany and Japan, on a monitoring list of currency practices.<sup>162</sup> In a statement, Treasury Secretary Steven Mnuchin said that "China has made enforceable commitments to refrain from competitive devaluation, while promoting transparency and accountability."<sup>163</sup> The domestic steel industry encourages the Trump Administration to continue to take a hard line with the Chinese government on currency manipulation, particularly as steel production soars in China as its economy recovers from the pandemic.

We also applaud the Trump Administration for finalizing this past spring the rulemaking process for amending the application of countervailing duty practices to include countries that undervalue their currencies as a subsidy since "U.S. law defines a

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<sup>159</sup> C. Fred Bergsten and Joe Gagnon, *Currency Conflict and Trade Policy*, Peterson Institute (June 2017), available at <https://piie.com/newsroom/press-releases/peterson-institutes-study-bergsten-and-gagnon-proposes-new-strategy-counter>

<sup>160</sup> U.S. Department of the Treasury, "Treasury Designates China as a Currency Manipulator," (Aug. 5, 2019), available at <https://home.treasury.gov/news/press-releases/sm751>.

<sup>161</sup> *Id.*

<sup>162</sup> U.S. Department of the Treasury, "Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," (Jan. 13, 2020), available at <https://home.treasury.gov/system/files/136/20200113-Jan-2020-FX-Report-FINAL.pdf>.

<sup>163</sup> U.S. Department of the Treasury, "Treasury Releases Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," (Jan. 13, 2020), available at <https://home.treasury.gov/news/press-releases/sm873>.

countervailable subsidy as a financial contribution from a government or public entity that is specific and that provides a benefit to a foreign producer or exporter.”<sup>164</sup> AISI has for many years advocated for treating currency manipulation as a countervailable subsidy and applauds the administration for codifying this important action,<sup>165</sup> which could, particularly on imports of Chinese steel products, allow for U.S. steelmakers to petition for relief.

### **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.”<sup>166</sup> Despite this agreement, however, USTR reports that “[e]ffective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China.”<sup>167</sup>

In June 2017, the OECD and EU Intellectual Property Office (EUIPO) published a joint study titled “Mapping the Real Routes of Trade in Fake Goods” that determined that “China is the top producer of counterfeit goods in nine out of ten analyzed product categories.” This is not a unique conclusion.

This culminated in August 2017 when USTR initiated a Section 301 investigation into China’s abuse of intellectual property rights. In March 2018, following its investigation, USTR determined that “numerous acts, policies, and practices of the government of China related to technology transfer, intellectual property and innovation are unreasonable or discriminatory, and burden or restrict U.S. commerce.”<sup>168</sup> USTR also stated in its determination that “[a]fter years of unsuccessful U.S.-China dialogues, the United States is taking action to confront China over its state-led, market-distorting policies and practices, forced technology transfers, intellectual property practices, and cyber intrusions of U.S. commercial networks.”<sup>169</sup> President Trump approved the

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<sup>164</sup> U.S. Department of Commerce Press Release, “The Department of Commerce Amends Countervailing Duty Process,” (May 23, 2019), available at <https://www.commerce.gov/news/press-releases/2019/05/department-commerce-amends-countervailing-duty-process>.

<sup>165</sup> International Trade Administration, “Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings,” 85 Fed Reg. No. 23 (Feb. 4, 2020) at 6031-6044.

<sup>166</sup> 2013 USTR Report at 98.

<sup>167</sup> *Id.* at 109.

<sup>168</sup> USTR, “Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation,” 83 FR 14906-54 (Apr. 6, 2018).

<sup>169</sup> *Id.*

implementation of three separate response actions to China's injurious trade practices: (1) the implementation of tariffs on certain imports of Chinese goods; (2) pursuit of a diplomatic settlement at the WTO; and (3) new investment restrictions on sensitive industries or technologies.<sup>170</sup>

The Trump Administration then issued four trade actions covering nearly all imports from China, which led to negotiations between the U.S. and China and both parties eventually signed a phase one agreement in January 2020 that reduced some tariffs from Section 301 action taken by the Administration.<sup>171</sup> This deal includes strong IPR legal protections in China and contains commitments on previous pledges by the Chinese government to eliminate technology transfers as a condition of market access.<sup>172</sup> Also part of the deal, China agreed to increase purchases of U.S. goods by \$200 billion over 2017 levels, which includes a commitment to purchase at least \$78 billion worth of manufactured goods (including iron and steel products) in 2020 and 2021.<sup>173</sup> Given the current market conditions, however, it is unlikely that China will meet its obligations for 2020 for the purchase of manufactured goods,<sup>174</sup> so we encourage the Trump Administration to pursue all available remedial actions, including re-imposing higher tariffs on Chinese imports.

In sum, China is not just failing to adhere to generally accepted international norms to protect and enforce IPR held by foreign companies. It is affirmatively using its indigenous innovation policy to acquire the intellectual property of foreign firms and implementing its anti-trust laws in a way that curtails the IPR of foreign firms and protects its domestic firms from foreign competition. While the phase one agreement deal with China does contain commitments for stronger IPR protections, it is imperative that the Trump Administration effectively enforce the provisions agreed to by the Chinese government.

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<sup>170</sup> USTR, "President Trump Announces Strong Actions to Address China's Unfair Trade," (Mar. 22, 2018), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/president-trump-announces-strong>.

<sup>171</sup> USTR, "Economic and Trade Agreement Between the United States of America and the People's Republic of China," (Jan. 15, 2020), available at [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/US\\_China\\_Agreement\\_Fact\\_Sheet.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/US_China_Agreement_Fact_Sheet.pdf).

<sup>172</sup> *Reuters*, "What's in the U.S.-China Phase 1 trade deal," (Jan. 15, 2020), available at <https://www.reuters.com/article/us-usa-trade-china-details-factbox/whats-in-the-us-china-phase-1-trade-deal-idUSKBN1ZE2IF>.

<sup>173</sup> USTR, "Economic and Trade Agreement Between the United States of America and the People's Republic of China," (Jan. 15, 2020) at Annex 6.1.

<sup>174</sup> Chad Bown, "US-China phase one tracker: China's purchases of US goods," Peterson Institute for International Economics (Aug. 25, 2020), available at <https://www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods>.

## F. Effective Enforcement of U.S. Trade Laws

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

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

Under the terms of its WTO accession, China agreed that other Members could treat it as an NME for purposes of the trade remedy laws.<sup>175</sup> Nevertheless, China urged the United States in several meetings of the former U.S.-China Strategic and Economic Dialogue to treat China as a “market economy” for purposes of U.S. AD laws.<sup>176</sup> As explained below, such treatment is improper and contrary to U.S. law, and AISI is relieved that the Trump Administration reached the same conclusion.

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.<sup>177</sup>

On December 12, 2016 – the day after the 15<sup>th</sup> anniversary of China’s accession to the WTO – the government of China filed request for consultations with the United States government on its continued treatment of China as an NME. During China’s accession to the WTO, there was concern that “in the case of imports of Chinese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty

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<sup>175</sup> See China Protocol of Accession at pp. 8-10. When the United States treats a country as an NME in AD proceedings, it disregards the prices and costs of merchandise sold in the NME country and instead uses an alternative methodology to calculate normal value. See 19 C.F.R. § 351.408 (2012).

<sup>176</sup> U.S. Department of Treasury, *The Third U.S.-China Strategic and Economic Dialogue, Joint U.S.-China Economic Track Fact Sheet* (May 10, 2011), available at <http://www.treasury.gov> (last visited Sep. 9, 2014); U.S. Department of Treasury, *The Second U.S.-China Strategic and Economic Dialogue, Joint U.S.-China Economic Track Fact Sheet* (May 27, 2010), available at <http://www.treasury.gov> (last visited Sep. 9, 2014); U.S. Department of Treasury, *The First U.S.-China Strategic and Economic Dialogue Economic Track Joint Fact Sheet* (Jul. 28, 2009), available at <http://www.treasury.gov> (last visited Sep. 9, 2014).

<sup>177</sup> See 19 U.S.C. § 1677[18] [B] (2006).

investigations.”<sup>178</sup> In response to this concern, China specifically agreed in its Protocol of Accession to a provision that, among other things, states that WTO members could treat China as an NME “if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.”<sup>179</sup> While a portion of this Protocol expired on December 11, 2016,<sup>180</sup> there is nothing in the Protocol or elsewhere to suggest that China should or must be treated as a market economy – particularly where its economic development would not justify such treatment.

Legal scholars that have analyzed this issue have concluded that “[t]he idea that there is a deadline (at which point China must be treated as a market economy) is an urban myth that seems to have gone global.”<sup>181</sup> Indeed, the notion that China must be treated as a market economy after a certain deadline would make no sense under the WTO regime (or under China’s accession protocol) and would give China preferential treatment (*i.e.*, an entitlement to automatic market-economy treatment) *vis-à-vis* all other WTO members. In this regard, it should be noted that:

- The portion of China’s Protocol of Accession that did *not* expire after 2016 states that Chinese prices or costs are to be used in AD proceedings only “[i]f the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product.”<sup>182</sup>
- Article 2.2 of the AD Agreement specifically allows WTO members to use alternative methodologies in calculating normal value in AD proceedings whenever it is warranted by “the particular market situation” of the exporting country.<sup>183</sup>

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<sup>178</sup> Ministerial Conference Report, *Report of the Working Party on the Accession of China*, WT/MIN[01]/3 (Nov. 10, 2001) at ¶ 150.

<sup>179</sup> China’s Protocol of Accession at ¶ 15[a][ii]. China first agreed, in a bilateral trade agreement with the United States in November 1999, that it would include this language in its Protocol of Accession to the WTO. *See* Agreement on Market Access Between the People’s Republic of China and the United States of America. (Nov. 15, 1999), *available at* <http://www.archive.org/details/AgreementOnMarketAccess> (last visited Sept. 2014).

<sup>180</sup> China’s Protocol of Accession at ¶ 15[d].

<sup>181</sup> Bernard O’Connor, “Market Economy Status for China is Not Automatic,” *Vox* (Nov. 27, 2011) (“Market Economy Status for China is not Automatic”), *available at* <http://www.voxeu.org> (last visited Sep. 9, 2014).

<sup>182</sup> China’s Protocol of Accession at ¶ 15[a][i].

<sup>183</sup> *See* WTO, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 at Article 2.2.

- Article 2.7 of the AD Agreement states that “this Article is without prejudice to the (Second Ad Note to Article VI) to GATT 1994.”<sup>184</sup> The Second Ad Note, in turn, states that for AD proceedings involving NMEs, “difficulties may exist in determining price comparability..., and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.”<sup>185</sup>

On October 26, 2017, the DOC correctly affirmed that China is a non-market economy (NME) for purposes of calculating antidumping margins in trade cases, stating “China is a non-market economy (NME) country because it does not operate sufficiently on market principles ... The basis for the Department’s conclusion is that the state’s role in the economy and its relationship with markets and the private sector results in fundamental distortions in China’s economy. At its core, the framework of China’s economy is set by the Chinese government and the Chinese Communist Party (CCP), which exercise control directly and indirectly over the allocation of resources through instruments such as government ownership and control of key economic actors and government directives. The stated fundamental objective of the government and the CCP is to uphold the “socialist market economy” in which the Chinese government and the CCP direct and channel economic actors to meet the targets of state planning. The Chinese government does not seek economic outcomes that reflect predominantly market forces outside of a larger institutional framework of government and CCP control. In China’s economic framework, state planning through industrial policies conveys instructions regarding sector specific economic objectives, particularly for those sectors deemed strategic and fundamental.”<sup>186</sup>

A few weeks later, in a November 21, 2017 third-party submission at the WTO in opposition to China being treated as a market economy, the Trump Administration stated that “China’s economy today continues to operate as one in which market economy conditions do not prevail.” The submission went on to say that “[t]he evidence is overwhelming that WTO members have not surrendered their longstanding rights...to reject prices or costs that are not determined under market economy conditions.”<sup>187</sup> While there has been little movement at the WTO on this challenge in

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<sup>184</sup> *Id.* at Art. 2.7.

<sup>185</sup> WTO, General Agreement on Tariffs and Trade (GATT 1947), at Second Interpretative Note to Article VI, ¶ 1 (emphasis added).

<sup>186</sup> Department of Commerce Memorandum, Subject: “China’s Status as a Non-Market Economy”, (Oct. 27, 2017).

<sup>187</sup> Third Party Submission of the United States, European Union-Measures Related to Price Comparison Methodologies (November 2017), available at <https://ustr.gov/sites/default/files/enforcement/DS/US.3d.Pty.Su.pdf>

recent years, AISI strongly supports the administration's conclusion and continues to support the administration as it defends the interests of the United States at the WTO.

## 2. Chinese Circumvention and Evasion of AD and CVD Orders

AISI and its members remain highly concerned about widespread evidence of Chinese circumvention and evasion 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.<sup>188</sup> Additional evidence has become available over the past several years that shows that circumvention and evasion of AD and CVD orders by Chinese companies continues to be a growing problem. Steel producers as well as companies in other industries have repeatedly brought evidence of China's circumvention and evasion of U.S. trade laws to the attention of U.S. Customs and Border Protection (CBP).<sup>189</sup> This evidence of circumvention and evasion includes illegal transshipment of goods through third countries, falsified country of origin markings, undervalued invoices that result in the underpayment of AD/CVD duties, and the misclassification of goods.<sup>190</sup>

Unfortunately, this problem continues as Chinese-originated steel continues to make its way to the U.S. market, despite continued efforts to address exports of unfairly-traded Chinese steel products. In September 2016, U.S. steelmakers alleged that some corrosion-resistant steel and cold-rolled steel products from Vietnam were circumventing AD and CVD orders on imports from China by using substrate originating in China.<sup>191</sup> It took nearly two years for the Commerce Department to announce final affirmative rulings in these anti-circumvention investigations.<sup>192</sup>

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<sup>188</sup> See, e.g., Staff Report Regarding Duty Evasion: Harming U.S. Industry and American Workers, Prepared for Senator Ron Wyden (Nov. 8, 2010) ("Staff Report Regarding Duty Evasion") at 5 (describing how staff received written confirmation from numerous Chinese companies that were willing to evade AD/CVD duties).

<sup>189</sup> See, e.g., Statement of Karl G. Glassman, Chief Operating Officer of Leggett & Platt, Before the U.S. Senate Subcommittee on International Trade, Customs, and Global Competitiveness (May 5, 2011) at 3 (stating that since 2008, Leggett & Platt had met with or sent CBP information regarding specific evidence of duty evasion on 21 separate occasions).

<sup>190</sup> Staff Report Regarding Duty Evasion at 5.

<sup>191</sup> Kelley Drye & Warren LLP Press Release, "Major U.S. Steel Producers Accuse China of Circumventing Trade Orders," (Sep. 22, 2016), available at <https://www.marketwatch.com/press-release/major-us-steel-producers-accuse-china-of-circumventing-trade-orders-says-kelley-drye-warren-llp-2016-09-22>.

<sup>192</sup> U.S. Department of Commerce, "U.S. Department of Commerce Issues Affirmative Final Circumvention Rulings on Steel from Vietnam," (May 2018) available at <https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-issues-affirmative-final-circumvention-rulings>

In August 2019, DOC self-initiated anti-circumvention proceedings on whether imports of corrosion-resistant steel products from five countries (Costa Rica, Guatemala, Malaysia, South Africa or the United Arab Emirates) are circumventing U.S. AD and CVD duties using hot-rolled or cold-rolled substrate originating from China and Taiwan.<sup>193</sup> In its final decision issued this past summer, DOC determined that imports of corrosion resistant steel completed in Costa Rica and United Arab Emirates using Chinese substrate hot-rolled steel and/or cold-rolled steel were circumventing the AD and CVD orders on corrosion resistant steel.<sup>194</sup>

Additionally, in May 2020, DOC self-initiated an anti-circumvention inquiry on whether imports of stainless steel sheet and strip finished in Vietnam are circumventing the AD and CVD orders on stainless steel sheet and strip from China.<sup>195</sup> AISI applauds the Trump Administration for utilizing existing statutory authority to penalize China for its unfair trade practices. We also support recent efforts by DOC to enhance the application and enforcement of the AD and CVD laws.<sup>196</sup>

### **III. Conclusion**

This is the *seventeenth* submission of AISI documenting China's failure to comply with its obligations under the World Trade Organization. When AISI made its first submission to USTR in 2004, China produced 280 million MT of crude steel and held a global market share of 26.2 percent.<sup>197</sup> This year, China is expected to exceed *one billion* metric tons of crude steel produced, despite predictions that China's steel demand had peaked in 2014. Meanwhile, China's share of global production now exceeds 50 percent

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<sup>193</sup> U.S. Department of Commerce, "U.S. Department of Commerce Self-Initiates Inquiries into Possible Circumvention Involving Exports of Corrosion-Resistant Steel Products Completed in Costa Rica, Guatemala, Malaysia, South Africa and the United Arab Emirates," (Aug. 14, 2019) available at <https://www.commerce.gov/news/press-releases/2019/08/us-department-commerce-self-initiates-inquiries-possible-circumvention>.

<sup>194</sup> U.S. Department of Commerce, "U.S. Department of Commerce Announces Final Rulings in Self-Initiated Circumvention Inquiries Regarding Certain Corrosion-Resistant Steel Products, (Jul. 7, 2020), available at <https://www.trade.gov/press-release/us-department-commerce-announces-final-rulings-self-initiated-circumvention-inquiries>.

<sup>195</sup> U.S. Department of Commerce, "*Stainless Steel Sheet and Strip From the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping and Countervailing Duty Orders*," 85 Fed Reg. No. 95 (May 15, 2020) 29401-29403.

<sup>196</sup> U.S. Department of Commerce, "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*," 85 Fed Reg. No. 157 (Aug. 13, 2020) 49472-49504.

<sup>197</sup> World Steel Association, "Steel Statistical Yearbook 2008" (2009) at 5.

Mr. Edward Gresser  
September 16, 2020  
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and continues to increase unabated,<sup>198</sup> despite massive declines in demand from the COVID-19 public health and economic crises.

As detailed throughout this submission, China has used massive subsidies and other trade distorting measures that are in violation of its WTO obligations to provide an unfair advantage to its steel industry. Ongoing dialogues between the United States and China regarding these problems have not been successful in bringing China into compliance. AISI therefore continues to support the Trump Administration's aggressive approach to pressing China to end its trade-distorting policies and practices and comply with all of its WTO obligations.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Dempsey". The signature is written in a cursive, slightly slanted style.

Kevin M. Dempsey  
Interim President and CEO

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<sup>198</sup> World Steel Association, "July 2020 Crude Steel Production," (Aug. 24, 2020), available at <https://www.worldsteel.org/media-centre/press-releases/2020/July-2020-crude-steel-production.html>.

## Appendix 1

### Antidumping (“AD”) and Countervailing Duty (“CVD”) Orders on Chinese Steel Products

|                   |    | <b>Product</b>  | <b>DOC Case Number</b> |
|-------------------|----|---|------------------------|
| <b>AD Orders</b>  | 1  | Cut-to-Length Carbon Steel Plate  | A-570-849              |
|                   | 2  | Steel Concrete Reinforcing Bars   | A-570-860              |
|                   | 3  | Certain Hot-Rolled Carbon Steel Flat Products                             | A-570-865              |
|                   | 4  | Certain Circular Welded Carbon-Quality Steel Pipe                         | A-570-910              |
|                   | 5  | Light-Walled Rectangular Pipe and Tube                                    | A-570-914              |
|                   | 6  | Circular Welded Austenitic Stainless Pressure Pipe                        | A-570-930              |
|                   | 7  | Certain Steel Threaded Rod  | A-570-932              |
|                   | 8  | Certain Circular Welded Carbon Quality Steel Line Pipe                    | A-570-935              |
|                   | 9  | Oil Country Tubular Goods   | A-570-943              |
|                   | 10 | Prestressed Concrete Steel Wire Strand                                    | A-570-945              |
|                   | 11 | Certain Steel Grating   | A-570-947              |
|                   | 12 | Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe | A-570-956              |
|                   | 13 | High Pressure Steel Cylinders   | A-570-977              |
|                   | 14 | Non-Oriented Electrical Steel (NOES)                                      | A-570-996              |
|                   | 15 | Wire Rod  | A-570-012              |
|                   | 16 | Cold-Rolled Steel   | A-570-029              |
|                   | 17 | Corrosion-Resistant Steel   | A-570-026              |
|                   | 18 | Carbon and Alloy Steel Cut-to-Length Plate                                | A-570-047              |
|                   | 19 | Stainless Steel Sheet and Strip   | A-570-042              |
|                   | 20 | Cold-Drawn Mechanical Tubing  | A-570-058              |
|                   | 21 | Stainless Steel Flanges   | A-570-064              |
|                   | 22 | Large Diameter Welded Pipe  | A-570-077              |
|                   | 23 | Carbon and Alloy Steel Threaded Rod                                       | A-570-104              |
| <b>CVD Orders</b> | 24 | Certain Circular Welded Carbon-Quality Steel Pipe                         | C-570-911              |
|                   | 25 | Light-Walled Rectangular Pipe and Tube                                    | C-570-915              |
|                   | 26 | Circular Welded Austenitic Stainless Pressure Pipe                        | C-570-931              |
|                   | 27 | Certain Circular Welded Carbon Quality Steel Line Pipe                    | C-570-936              |
|                   | 28 | Oil Country Tubular Goods   | C-570-944              |
|                   | 29 | Prestressed Concrete Steel Wire Strand                                    | C-570-946              |

|    |   |           |
|----|---|-----------|
| 30 | Certain Steel Grating   | C-570-948 |
| 31 | Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe | C-570-957 |
| 32 | High Pressure Steel Cylinders   | C-570-978 |
| 33 | Non-Oriented Electrical Steel (NOES)                                      | C-570-997 |
| 34 | Wire Rod  | C-570-013 |
| 35 | Cold-Rolled Steel   | C-570-030 |
| 36 | Corrosion-Resistant Steel   | C-570-027 |
| 37 | Carbon and Alloy Steel Cut-to-Length Plate                                | C-570-048 |
| 38 | Stainless Steel Sheet and Strip   | C-570-043 |
| 39 | Cold-Drawn Mechanical Tubing  | C-570-059 |
| 40 | Stainless Steel Flanges   | C-570-065 |
| 41 | Large Diameter Welded Pipe  | C-570-078 |
| 42 | Carbon and Alloy Steel Threaded Rod                                       | C-570-105 |