American Iron and Steel Institute

25 Massachusetts Ave., NW
Suite 800
Washington, DC 20001
P: 202.452.7100
F: 202.452.1039

www.steel.org

Kevin M. Dempsey
President and CEO

September 20, 2023

William Shpiece
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

RE: Request for Comments and Notice of Public Hearing Concerning China's Compliance with WTO Commitments – Docket Number USTR-2023-0008

Dear Mr. Shpiece:

In response to a request from the Office of the United States Trade Representative (USTR),[1] the American Iron and Steel Institute (AISI) 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 American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI's membership is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

Executive Summary

Despite over two decades having now passed since 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 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 year, crude steel production in China is expected to exceed *one billion* metric tons for the

[1] Office of the United States Trade Representative, "Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments," 88 *Federal Register* No. 158 (Aug. 17, 2023) 56117-18

.

fifth year in a row, which is approximately ten times annual steel demand in the United States. AISI strongly urges the Biden administration to take action to hold China accountable for its trade-distorting policies and practices by reinforcing the trade actions taken by the previous administration that aimed to counter China's export-driven economic policies that adversely impact 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. Despite a decline in the U.S. trade deficit in goods with China in 2020, last year the annual trade deficit again surged to $382.2 billion, an increase of 8 percent over 2021 levels. In 2022, the annual trade deficit was 356 percent higher than it was in 2000.[2] Meanwhile, manufacturing employment in the U.S. declined from approximately 17.3 million jobs in 2000 to 12.8 million jobs in June 2022, a decline of 26 percent.[3]

-- From 2000 through 2022, annual Chinese raw steel production increased by 890 *million* metric tons (MT) – a volume over *9 times* greater than the total crude steel production in the United States in 2022. 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.

-- 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.

-- 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 in recent years. However, given China's pervasive use of export restraints and other

---

2 U.S. Census Bureau, "Trade in Goods with China," last accessed Sep. 5, 2023, available at https://www.census.gov/foreign-trade/balance/c5700.html.

3 U.S. Bureau of Labor Statistics, "Employment, Hours, and Earnings from the Current Employment Statistics survey (National)," last accessed Sep. 9, 2022, available at https://data.bls.gov/timeseries/CES3000000001.

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.[4] However, while China was no longer deemed a currency manipulator in January 2020 – in the run-up to the Phase One agreement reached between the U.S. and China – it remains on the currency monitoring list[5] and it must be recognized that the Chinese government continues to exert significant control over its currency.

-- 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 and should ensure that Chinese companies are not circumventing and evading U.S. antidumping and countervailing orders.

Each of these points is discussed in more detail below.

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

This submission identifies 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.

China acceded to the WTO on December 11, 2001 – over 20 years ago. Despite more than 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

[4] 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.

[5] U.S. Department of the Treasury, "Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," (Jun. 2023), available at https://home.treasury.gov/system/files/136/June-2023-FX-Report.pdf

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."[6]

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.[7] In 2022, for the ninth year in a row, China was the largest economy with purchasing power parity (PPP) estimated at $30.3 trillion, compared to $25.4 trillion for the United States.[8] 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 in 2013:

> 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.[9]

Past U.S. policies were clearly not sufficient to persuade China to comply with its WTO obligations, and as a result, we encourage the Biden administration to continue to take strong actions to address China's recalcitrance.

---

6 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.

7 Brett Armends, It's Official: America is Now No. 2, *Marketwatch* (Dec. 4, 2014).

8 World Bank, GDP PPP (current international $) for 2021, last accessed Sep. 5, 2023, available at https://data.worldbank.org/indicator/ny.gdp.mktp.pp.cd?most_recent_value_desc=true

9 Heriberto Araújo and Juan Pablo Cardenal, "China's Economic Empire," *New York Times* (Jun. 1, 2013) (China's Economic Empire).

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.[10] 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 356 percent, from $83.8 billion in 2000 to $382.2 billion in 2022.[11]

- **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.[12] By 2010, however, China's manufacturing exports were 50 percent higher than U.S. manufacturing exports.[13] Furthermore, the U.S. trade deficit in manufactured goods with China reached *$389 billion* in 2021, over three times bigger than the U.S. manufactured goods trade deficit with Mexico, which is the country the U.S. has the second-largest deficit of manufactured goods trade.[14]

- **Millions of U.S. Jobs Have Been Lost and Wages Eroded.** A 2018 working paper[15] 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

---

10 *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].

11 U.S. Census Bureau, "Trade in Goods with China," last accessed Sep. 5, 2023, available at https://www.census.gov/foreign-trade/balance/c5700.html.

12 Len Boselovic, "Trade deficit rise kills jobs in factories," *Pittsburgh Post-Gazette* (Aug. 21, 2011).

13 *Id.*

14 International Trade Administration, "20219 balances for NAICS Manufactures," last accessed Sep. 9, 2022, available at https://www.trade.gov/data-visualization/tradestats-express-us-trade-partner-countries-and-regions.

15 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.

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."[16] Additionally, these job losses were not evenly dispersed across the country, but rather concentrated, having profoundly harmful, cascading effects on certain communities. In 2020, the Economic Policy Institute (EPI) released a study outlining job losses associated with the growing U.S. trade deficit with China and the impact on each U.S. state and congressional district. The report found that 3.7 million American jobs were lost between 2001 and 2018, of which 2.8 million of those were in the manufacturing sector, which helps to explain why manufacturing has lagged overall economic growth since the rebound from the Great Recession.[17]

- **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.[18] Yet there is little reason to believe that China will achieve such 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."[19] Investment spending continues to account for nearly half of China's GDP, accounting for approximately 43 percent in 2021, no change from 2019 levels, but significantly higher than the investment as a share of GDP

---

16 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

17 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/.

18 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 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.

19 USCC, 2013 Annual Report to Congress (Nov. 20, 2013), at 78.

in the United States (20.7 percent in March 2023) or the European Union (24.3 percent in December 2022).[20]

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 1.017 *billion* MT in 2022 – an increase of over 889 million MT[21] -- and once again this year, it is on track to exceed one billion MT[22] of steel production, for the fifth year in a row. To put this in context, last year in 2022 the United States produced 80.5 million MT of raw steel,[23] while Chinese steelmakers last year produced 12 times that amount in just one year. In fact, in 2021 alone, Chinese steelmakers produced more steel than the United States produced in *12 years* combined from 2010 to 2021.[24]

- In 2022, China accounted for 54 percent of global steel production, up from 53 percent of global steel production in 2021.[25] Meanwhile, through July 2023, Chinese steel production has edged up to 57 percent of the world total year-to-date, as production worldwide has declined by 0.1 percent, compared to the same period in 2022.[26]

---

20 CEIC Data, China Investment % of GDP 1952-2021, available at https://www.ceicdata.com/en/indicator/china/investment--nominal-gdp.

21 World Steel Association, "Total production of crude steel, world total 2022," July 2023, available at https://worldsteel.org/steel-by-topic/statistics/annual-production-steel-data/.

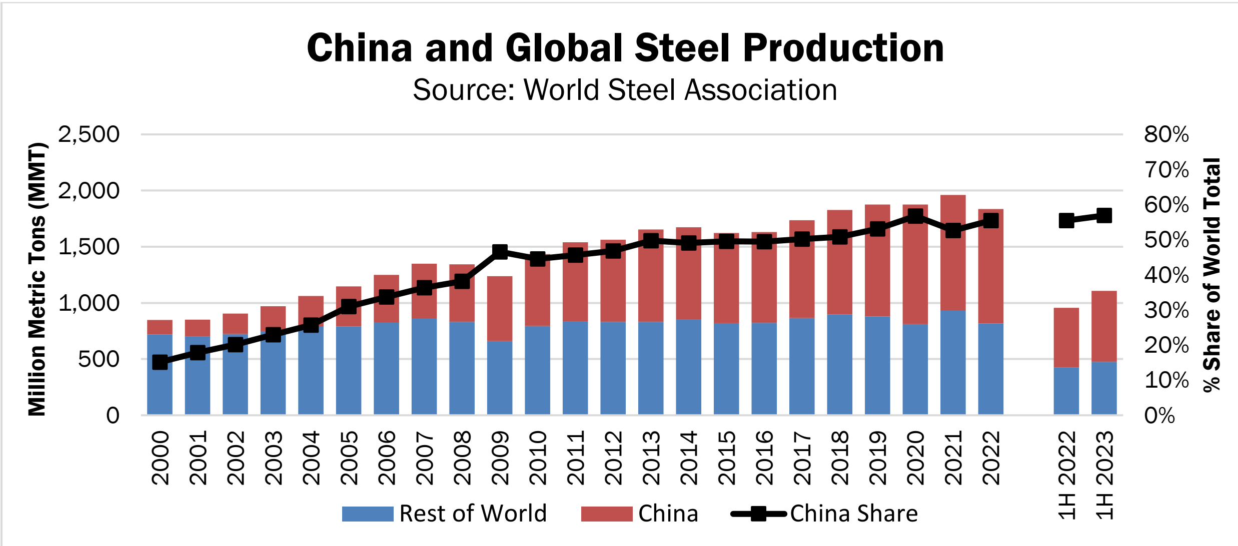
22 World Steel Association, "July 2023 Crude Steel Production," (Aug. 22, 2023), available at https://worldsteel.org/media-centre/press-releases/2023/july-2023-crude-steel-production/

23 World Steel Association, "Total production of crude steel, world total 2022," July 2023, available at https://worldsteel.org/steel-by-topic/statistics/annual-production-steel-data/.

24 World Steel Association, "Steel Statistical Yearbooks," available at https://www.worldsteel.org/steel-by-topic/statistics/steel-statistical-yearbook.html.

25 World Steel Association, "Total production of crude steel, world total 2022," July 2023, available at https://worldsteel.org/steel-by-topic/statistics/annual-production-steel-data/.

26 World Steel Association, "July 2023 Crude Steel product," (Aug. 22, 2023), available at https://worldsteel.org/media-centre/press-releases/2023/july-2023-crude-steel-production/



- In 2021, China exported 66.4 million MT of steel to the global market, an increase of 28 percent since 2020 , and more than twice as much as the world's second-largest steel exporter, Japan.[27] China's steel exports declined each year from 2016 to 2020, before increasing in 2021. So far in 2023, Chinese steel exports have increased by 2.3% and remain on track to be higher in 2022 than annual steel exports from 2018 to 2020. Prior to the pandemic, experts have long believed that China's economy is much weaker than the official government figures suggest[28] and official data regarding steel production are often modified upwards many months later in an effort that could be perceived as a way to disguise significant increases in production with smaller growth figures.

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.[29] These predictions have not proven true for U.S. steel producers.

---

27 International Trade Administration, Global Steel Trade Monitor, last accessed Sep. 5, 2023, available at https://www.trade.gov/data-visualization/global-steel-trade-monitor.

28 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.

29 *See*, *e.g.*, Permanent Normal Trade Relations for China.

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.[30] By 2021, China's demand for finished steel reached 952 million MT – an increase of 467 percent.[31] If American steelmakers had been able to partake in even just one percent of this increased demand for steel, then in 2021, U.S. exports of steel to China would have been 7.8 million metric tons of steel products annually.[32] But this has not happened – in 2021U.S. mills exported just 43,391 MT of steel to China – despite significant stimulus in China that increased demand for steel – and down substantially from the export volumes seen in the mid-2000s and a decline of 50 percent from 2017 levels.[33] Through June 2023, U.S. exports of steel products to China are down 9 percent from last year[34] despite a commitment in the phase one deal with China to increase purchases of U.S.-produced steel.[35]

It is now clear that China never intended to permit steel produced outside its borders to benefit from the country's growing market. In October 2011, China's Ministry of

30 World Steel Dynamics; World Steel Association, "Annual Crude Steel Production, 2000-2009."

31 World Steel Association, "worldsteel Short Range Outlook April 2022," (Apr. 12, 2022), available at https://worldsteel.org/media-centre/press-releases/2022/worldsteel-short-range-outlook-april-2022/.

32 (952 – 168) x 1% = 7.84 million metric tons (MMT)

33 International Trade Administration, Global Steel Trade Monitor, last accessed Sep. 8, 2022, available at https://www.trade.gov/data-visualization/global-steel-trade-monitor.

34 *Id.*

35 *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.

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.[36] At the same time, it lamented that "[a] few key steel products are still dependent on imports" and found it necessary to "further improve" China's steel industry so that it can "provide a complete suite of material solutions for downstream industries."[37] However, for several months in 2020, China became a net steel importer for the first time in 11 years, as a result of "stimulus-fueled economy recovery" by the Chinese government.[38]

China's more recent policy initiatives have doubled down on the pursuit of self-sufficiency. Specifically, China's "dual circulation" strategy "envisions a new balance away from global integration (the first circulation) and toward increased domestic reliance (the second circulation)."[39] The policy "sees the continued decoupling of global supply chains as an enduring trend" and "engag{es} international capital, financial, and technological markets when advantages can be gained while simultaneously bolstering indigenous capabilities to avoid overreliance on the global economy – due to national security concerns or the vagaries of global economic cycles."[40] It is thus likely that U.S. companies in industries like steel and other strategic sectors will continue to find themselves cut out of the Chinese market as the Chinese Communist Party (CCP) aims to satisfy more domestic demand from domestic producers.

D. Chinese Steel Has Injured the American Steel Industry

There can be no question that unfairly-traded steel imports – another result of Chinese mercantilism – have also harmed American steel producers. The United States currently maintains antidumping (AD) orders on imports of 18 steel products from China, while also maintaining countervailing duty (CVD) orders on imports of 17 steel products from China (see Appendix 1 for list of AD/CVD orders on imports of steel products from China). Each of these 35 orders rests upon findings by the DOC that the Chinese mills

---

[36] Ministry of Industry and Information Technology, Guoxingui (2011) No. 480, "Notice on Printing and Distribution of the Development Plan of the 12th Five Year Program for the Iron and Steel Industry" (Oct. 24, 2011) (Chinese language document), *available at* http://www.miit.gov.cn/n11293472/n11293832/n11293907/n11368223/14303771.html (last visited Sep. 8, 2014)"12th Five Year Steel Plan"] at Art. I.I.1.

[37] *Id.* at Art. I.II.1.

[38] Zhang, Jing, Yelin Dai and Paul Bartholomew, "China becomes net steel importer first time in 11 years in June," *S&P Global Platts* (Jul. 27, 2021), available at https://www.spglobal.com/platts/en/market-insights/latest-news/metals/072720-china-becomes-net-steel-importer-first-time-in-11-years-in-june.

[39] Jude Blanchette and Andrew Polk, *Dual Circulation and China's New Hedged Integration Strategy*, Center for Strategic and International Studies (Aug. 24, 2020).

[40] *Id.*

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. Additionally, the U.S. also maintains 18 AD and 13 CVD orders on mainly downstream steel products (See Appendix 2), for a total of 46 AD and CVD orders on steel mill and steel products.[41]

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.[42]

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."[43]

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,

---

41 International Trade Administration, "ADCVD Proceedings," as of Sep. 13, 2022, available at https://www.trade.gov/data-visualization/adcvd-proceedings.

42 *See, e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, the Republic of Korea, Italy, Japan, South Africa, Taiwan, and the Republic of Turkey: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 87 Fed. Reg. 17066-68 (Mar. 25, 2022); *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 87 Fed. Reg. 17068-70 (Mar. 25, 2022); *Stainless Steel Sheet and Strip from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order,* 87 Fed. Reg. 40183-84 (Jul. 6, 2022); *Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2020-2021*, 87 Fed. Reg. 47714-16 (Aug. 4, 2022); *Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Continuation of the Antidumping and Countervailing Duty Orders,* 87 Fed. Reg. 50601-02 (Aug. 17, 2022); *Certain Cold-Rolled Steel Flat Products from the People's Republic of China and the Republic of Korea: Continuation of Countervailing Duty Orders*, 87 Fed. Reg. 51056-09 (Aug. 19, 2022); *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2020-2021,* 87 Fed. Reg. 55392-94 (Sep. 9, 2022).

43 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/chinaviewpoins/201807/20180702770676.shtml.

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.[44] Remarkably, 16 of the 24 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 eight cases against Australia, the European Union or its member states (Greece and Italy).[45] 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.

In response to China's mercantilist policies, the previous administration pursued aggressive actions, such as use of Section 301, to push China to reform. AISI supported those efforts and continues to support the Biden administration as they maintain the Section 301 tariffs that were imposed. In the past, less aggressive initiatives – such as dialogues, consultations and "name-and-shame" policies – have been ineffective at addressing this issue. 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 generally plays by the rules and where they don't, they can be educated about the right path."[46] 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."[47]

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 suppliers to or customers of AISI member companies.

---

[44] 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 (last visited Sep. 9, 2014).

[45] World Trade Organization, "Table of Disputes by Member," *available at* https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (last visited Sep. 9, 2022).

[46] Robert Atkinson, "High-tech harassment," *The Hill* (Aug. 8, 2014).

[47] *Id.*

A. Subsidies

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).[48] In particular, China committed that by the time of its accession it would eliminate all subsidies prohibited under Article 3 of the SCM Agreement.[49] 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.[50] 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 2021 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."[51] It went on to further states that "since joining the WTO 20 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 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."[52]

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

---

48 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.

49 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).

50 China Protocol of Accession at ¶ 15.

51 2021 USTR Report to Congress on China's WTO Compliance at 28 (Feb. 2022), available at https://ustr.gov/sites/default/files/files/Press/Reports/2021USTR%20ReportCongressChinaWTO.pdf.

52 *Id.*

with sovereign governments that do not need to use free-market principles to operate," the report found.[53]

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.[54] 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.

The domestic steel industry also applauds the recognition in the communiqué issued by the G7 Trade Ministers in May 2021 that harmful industrial subsidies are a significant concern related to "market-distorting practices" that ultimately "undermin[e] the proper functioning of international trade."[55] This statement also reaffirmed the need to address the global steel excess capacity crisis through continued efforts in multilateral fora, such as the Global Forum on Steel Excess Capacity (GFSEC).[56] We urge the Biden administration to continue to exert pressure on the Chinese government to end its trade-distorting policies and practices.

We are also encouraged by recent efforts by the trade ministers of the U.S., Japan and the European Union in November 2021, to restart the "Trilateral partnership to address the global challenges posed by non-market policies and practices of third countries that undermine and negatively affect… workers and businesses."[57]

---

53 Prepared by the Steel Industry Coalition, "Report on Market Research into the People's Republic of China Steel Industry," (Jun. 30, 2016).

54 "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.

55 G7 Trade Ministers' Communiqué (May 28, 2021), available at https://www.g7uk.org/g7-trade-ministers-communique/.

56 *Id.*

57 "Joint Statement of the Trade Ministers of the United States, Japan and the European Union After a Trilateral Meeting," *USTR* (Nov. 30, 2021), available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/november/joint-statement-trade-ministers-united-states-japan-and-european-union-after-trilateral-meeting.

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 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.[58] 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.[59]

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.[60] 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.[61]

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 raised by the previous administration in an April 20, 2018, filing at the WTO.[62] The Chinese government also subsidizes downstream industries to the detriment of U.S. steelmakers and their domestic customer base. In 2020, 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. However, because the U.S. International Trade Commission (USITC) found that FSS

---

58 2013 USTR Report to Congress on China's WTO Compliance at 50.

59 *Id.*

60 *Id.*

61 2016 USTR Report to Congress on China's WTO Compliance at 65.

62 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

imports did not materially injure or threaten to injure the domestic industry,[63] dumping rates as high as 144 percent and anti-subsidy margins as high as 206 percent were not put into effect[64] and China can continue to provide significant support to its producers without facing any punitive remedy on its exports to the United States.

2. *China Continues to Provide Massive Subsidies*

As discussed above, domestic steel producers have brought and won CVD cases against 14 different categories of Chinese steel imports, on a variety of flat, wire, long, pipe/tube and stainless products.[65] 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.[66] 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.

---

63 U.S. International Trade Commission, "Fabricated Structural Steel from Canada, China and Mexico," 85 Fed Reg. No. 55 (Mar. 20, 2020) at 16129-16130.

64 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-structrual-steel-ad-cvd-final-012420.pdf.

65 See Appendix 1.

66 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.

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. In 2021, the Chinese government publicly issued its 14th Five-Year Plan for 2021-2025, which pledges to transform its steel sector into a more environmentally-friendly behemoth, while continuing to "push forward [with] supply side reform and mergers and acquisitions in the steel sector."[67] Despite recent five-year steel plans touting the importance of moving in the direction of market-driven policies, the Chinese steel industry can only make a significant transition with significant government assistance.

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.[68] While many of them are focused on emerging high-tech 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.[69]

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 2021 show that China's capacity utilization was approximately 79 percent in 2020[70] – close to its intended goal of 80 percent – but with 1.06 billion metric tons of steel produced in 2020, that indicates

67 Min Zhang, Shivani Singh and Emily Chow, "China to 'strengthen management' of strategic mineral sources, eyes green upgrade of steel," *Reuters* (Mar. 5, 2021), available at https://www.reuters.com/article/us-china-parliament-steel/china-to-strengthen-management-of-strategic-mineral-resources-eyes-green-upgrade-of-steel-idUSKBN2AX0CR.

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

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

70 SteelOrbis, "Chinese steel sector's industrial capacity usage rises in Q4 from Q3," (Jan. 18, 2021), available at https://www.steelorbis.com/steel-news/latest-news/chinese-steel-sectors-industrial-capacity-usage-rises-in-q4-from-q3-1181855.htm.

steelmaking capacity of nearly 1.35 billion metric tons,[71] well above the OECD estimation of 1.15 billion metric tons of current capacity.[72]

4. *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."[73] As part of this campaign, China has provided an enormous amount of export financing support to its companies.[74] 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."[75] That year, the ExIm report 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 total, of which approximately 34 billion was related to medium-and-long term (MLT) export financing.[76]

But recently, ExIm has acknowledged that "2021 volumes of Chinese [medium-and-long term export financing] activity are now one-third of their peak."[77] By 2021, Chinese MLT declined to $11 billion, a decline of 38 percent from 2020 levels, on top of the 48 percent decline from 2019.[78] Just as the official Chinese export financing system scaled back its activities in recent years, the Chinese government in early 2021 canceled its value added tax (VAT) rebates on select steel product exports, covering

---

71 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.

72 Statement by Ms. Sheryl Groeneweg, Vice-Chair of the OECD Steel Committee, on the 92nd session held on 19-20 September 2022 (Sep. 20, 2022), available at https://www.oecd.org/newsroom/92-oecd-steel-chair-statement.htm.

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

74 *Id.* at 7-8.

75 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_CompetitivenessReport_FINAL.pdf.

76 *Id.*

77 Export-Import Bank of the United States, "Report to the U.S. Congress on Global Export Credit Competition," (Jun. 2022), available at https://img.exim.gov/s3fs-public/oig/reports/EXIM_2021_Competitiveness_Report.pdf.

78 *Id.*

approximately 70 percent of finished products, in an effort to relieve pressure in the domestic Chinese steel market.[79]

Meanwhile, China's official government system of export financing is supplemented by lending from commercial banks that are owned or otherwise controlled by the government.[80] 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.[81] 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."[82]

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 and granted at non-commercial terms.[83] 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.[84] 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."[85]

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.[86] Following the 2015 and 2016 S&ED meetings, the U.S. Treasury Department

---

[79] "China removes VAT rebate on steel exports," CRU Group (Sep. 30, 2021), available at https://www.crugroup.com/knowledge-and-insights/insights/2021/china-removes-vat-rebate-on-steel-exports/#:~:text=China's%20Ministry%20of%20Finance%20announced,%2C%20cold%20rolled%2C%20galvanised%20products.

[80] Anna Tucker, "Export Assistance and the China Challenge," *USCC Staff Research Backgrounder* (Apr. 27, 2012) ("Export Assistance and the China Challenge") at 4.

[81] *Id.*

[82] *Id.*

[83] *See* "The EU may initiate a WTO dispute settlement over Chinese export credits," *Trade Perspectives* (May 6, 2011).

[84] *Id.*

[85] Sudeep Reddy, "U.S. Export Financing Challenges China," *Wall Street Journal* (Jan. 12, 2011).

[86] CRS China-U.S. Trade Issues at 49.

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.[87]

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."[88] 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."[89] The Biden 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.

5. *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 recent action to push China to reform its trade practices and encourages the Biden administration to take a strong approach that will ensure a level playing field for U.S. manufacturers. AISI strongly supports recent efforts by the U.S. government, including the trilateral work conducted with the European Union and Japan to modernize and strengthen the rules governing industrial subsidies at the WTO, as well as the recent G7 Trade Ministers' Communiqué that recognized the role that industrial subsidies have played in the creation of significant excess capacities, and encourage the U.S. government to continue to engage with our global partners to exert significant pressure on the Chinese government.

---

87 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).

88 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.

89 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.

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."[90] 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."[91]

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 cuts annually.[92] 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.[93] 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."[94]

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."[95] Historically, figures released by the Chinese government do not distinguish

---

90 Working Party Report at ¶ 46.

91 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.

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

93 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.

94 Will China's induction furnace steel whac-a-mole finally come to an end?, S&P Global Platt's (July 3, 2017)

95 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-

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."[96] 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 Chinese government approval announcements.[97] However, while these replacements should in theory reduce overall Chinese steelmaking capacity, "China's capacity has been creeping up again in 2019."[98]

While the OECD records China's steelmaking capacity as 1.15 billion metric tons in 2019,[99] China's National Bureau of Statistics (NBS) reported 80 percent capacity utilization that year, which would indicate steelmaking capacity of approximately 1.25 billion metric tons.[100] 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."[101]

---

steel/china-aims-to-meet-2020-target-for-steel-capacity-cuts-this-year-warns-on-resumption-idUSKBN1FR10M

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

97 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.

98 *Id.*

99 OECD Steelmaking Capacity Database (2000-2019), last accessed Sep. 1, 2021, available at https://stats.oecd.org/Index.aspx?datasetcode=STI_STEEL_MAKINGCAPACITY.

100 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.

101 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.

There is every indication that the Chinese government continues to maintain a significant amount of control over its steel industry. While the U.S.-China Economic and Security Review Commission recently recognized in its 2020 annual report that "[i]n the past, the [Chinese Communist Party] focused its attempts at economic dominance on legacy sectors of steel, aluminum, and transportation, among others,"[102] the most recent five-year steel plan for 2021-2025 continues to provide significant strategic development guidance for its steelmakers.

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.[103] 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.[104]

- 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.[105]

- SOEs operating overseas can serve as conduits for illicit technology transfers as well as outright espionage.[106]

- 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,

---

[102] U.S.-China Economic and Security Review Commission Annual Report, (Dec. 2021), at 27, available at https://www.uscc.gov/sites/default/files/2020-12/2020_Annual_Report_to_Congress.pdf.

[103] *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").

[104] Competitive Neutrality in the Presence of SOEs at 5; SOEs and Competitive Neutrality at 37; SOEs Operating Abroad at 7.

[105] Competitive Neutrality in the Presence of SOEs at 6-7; SOEs and Competitive Neutrality at 38-40.

[106] SOEs Operating Abroad at 5.

> 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.[107]

In recent years, the CCP has also sought to expand its control over purportedly private enterprises. Rather than relying on control through formal ownership shares, the CCP has begun to insert itself directly into the governance of Chinese companies, both state-owned and private alike. According to a recent report, this strategy has two key prongs. "First, the Party is strengthening the role of internal Party organizations established within companies. . . . Second, the CCP is promoting the 'modern enterprise system with Chinese characteristics, a new form of corporate governance that calls for inserting certain 'Party building' provisions directly into corporate charters."[108] This trend further blurs the lines between the state and the private sector, creating new challenges for the United States in areas like identifying unlawful subsidies and enforcing the trade remedy laws.

China has made significant moves towards achieving its goal to "internationalize" its steel industry in recent years. 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.[109] 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.[110]

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., and 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 influence through increased economic integration with its neighbors. However, despite China's

---

107 *Id.* at 6.

108 Scott Livingston, *The New Challenge of Communist Corporate Governance*, Center for Strategic and International Studies (Jan. 2021) at 1-2.

109 David Stanway and Ruby Lian, "China looks overseas in bid to slim down bloated steel sector," *Reuters* (Apr. 20, 2016).

110 *Id.*

continued rhetoric about the open and inclusive process, "Chinese state-owned enterprises are winning the lion's share of contracts for BRI projects."[111]

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.

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 Chine 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.[112] 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.[113] While the U.S. market has seen little imports of semi-finished stainless steel slabs since this joint venture was announced, Indonesian stainless steel exports to the global market have increased by over 570 percent, from 716,000 MT in 2017 to 4.7 million MT in 2022[114] Since 2017, Indonesian stainless steel exports have increased to several countries, including India, Italy, South Korea, Taiwan and Vietnam,[115] where semi-finished stainless steel is likely rerolled into finished stainless steel products, before being exported to the global marketplace, including the United States.

Meanwhile, in August 2020, the second largest Chinese stainless steel producer, Taiyuan Iron and Steel (TISCO) announced that it plans to develop an integrated

---

111 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

112 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.

113 ATI PR, "ATI and Tsingshan to Form Innovative Stainless Steel Joint Venture," (Nov. 2, 2017), available at https://ir.atimetals.com/news-events/news-details/2017/ATI-and-Tsingshan-to-Form-Innovative-Stainless-Steel-Joint-Venture/default.aspx; and 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.

114 International Trade Administration, Global Steel Trade Monitor, last accessed Sep. 7, 2023, available at https://www.trade.gov/data-visualization/global-steel-trade-monitor

115 *Id.*

stainless steel operation in Indonesia.[116] This follows the announcement in 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.[117]

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, like 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.[118]

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.

---

116 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/.

117 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.

118 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.[119] 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.[120]

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.[121] 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.[122] 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.[123] 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.[124]

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

---

119 Working Party Report at ¶¶ 155-65.

120 *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.

121 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.

122 *Id.*

123 *Id.*

124 *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.[125]

Additionally, consider China's export restraints on certain rare earths. 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.[126] 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.[127] 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.[128] 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.[129]

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.[130] 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."[131] Significantly, China imposed essentially the same export quota on 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.[132]

---

125 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.

126 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.

127 *Id.*

128 *Id.*

129 *Id.*

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

131 *Id.*

132 "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).

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.[133] China appealed certain aspects of the panel's decision, but on August 7, 2014, the WTO Appellate Body upheld the panel's decision.[134] 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.[135]

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."[136] In 2021, China's MIIT "proposed draft controls on the production and export of 17 rare earth minerals in China"[137] that will significantly limit exports of crucial rare earths that are traditionally used in the defense sector. These proposed regulations would have significant ramifications for the strategic relationship between the U.S. and China and is just another example of China implementing trade-distorting measures to advantage its own domestic manufacturers at the expense of foreign producers.[138] In December 2021, the Chinese government approved the merger of three of the largest rare earth metals companies to create the second largest rare earth metals producer in the world, just as rare earth metals prices have increased to their highest in over a decade.[139]

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."[140] 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

---

133 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).

134 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).

135 "Turnover of China's Rare Earth Exchange Surges in July," *Want China Times* (Aug. 11, 2015)

136 "China won't bow in rare-earth battle," *Global Times* (Jun. 18, 2014).

137 Sun Yu and Demetri Sevastopulo, "China targets rare earth export curbs to hobble US defence industry," *Finantical Times* (Feb. 16, 2021), available at https://www.ft.com/content/d3ed83f4-19bc-4d16-b510-415749c032c1.

138 *Id.*

139 Felix K. Chang, "China's Rare Earth Metals Consolidation and Market Power," Foreign Policy Research Institute (Mar. 2, 2022), available at https://www.fpri.org/article/2022/03/chinas-rare-earth-metals-consolidation-and-market-power/.

140 "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).

prices of these materials by American and other global manufacturers.[141] 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,[142] but there has been little, if any, movement in this case since the panel was composed.

It should also be noted that China maintains a 40 percent export tax on steel scrap that creates additional distortion in the marketplace.[143] While the tax does not explicitly prohibit scrap exports, it makes such shipments extremely unprofitable in most cases. Meanwhile, in late 2020, the Chinese government announced it would cut the import duty for steel scrap to zero beginning in 2021,[144] which effectively ended its import ban on steel scrap. Last year, China imported 558,900 MT of steel scrap, a slight increase from the 553,000 MT that was imported in 2021, which was already a 1,938 percent increase,[145] As the world's largest scrap consumer, any action taken by the Chinese government related to the trade of steel scrap 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 recent efforts by the U.S. government to hold China accountable for its trade-distorting policies and 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. The Chinese government 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

---

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

142 World Trade Organization, "DS508: China – Export Duties on Certain Raw Materials" (last updated Nov. 8, 2016).

143 *See* China State Administration Customs Committee, Shuiweihui (2011) No. 27, 2012 Custom Tax Implementation Program (Dec. 9, 2011) (Chinese language document), *available at* http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201112/t20111215_615749.html (last visited Sep. 9, 2014).

144 Chi Hin Ling, "China removes import tax for ferrous scrap," *Argus Media* (Dec. 23, 2020), available at https://www.argusmedia.com/en/news/2171724-china-removes-import-tax-for-ferrous-scrap.

Tianran Zhao, "China imports 553K tonnes of steel scrap in 2021," *Fastmarkets* (Jan. 25, 2022), available at https://www.fastmarkets.com/insights/china-imports-553k-tonnes-of-steel-scrap-in-2021.

at the expense of U.S. steelmakers. In 2017, it was announced that the China Investment Fund and the government of Angola are working to sign an investment deal to mine deposits of iron ore in the Kwanza Norte province.[146] In 2020, it was reported that China Baowu Steel Group Corp. Ltd. attempted to lead a consortium of Chinese steel producers to invest in the Simandou mine in southern Guinea, which has the potential to be the largest iron ore mining project in the world, as the region "boasts the world's largest untapped iron ore reserves."[147] While the project was delayed by "legal disputes and political disruptions,"[148] Baowu and Winning Consortium Simandou recently signed a cooperation agreement to begin development of Simandou blocks one and two.[149]

China has long been the world's largest consumer of iron ore, while Australia provides nearly 60 percent of global seaborne iron ore supply.[150] 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."[151] But developing these iron ore deposits in Guinea could save China billions of dollars each year as a low-cost alternative to Australia.[152]

China recently established a new state-owned iron ore conglomerate, the China Mineral Resources Group, in July 2022, which will become China's central purchaser of iron ore and will oversee processing and trading of the industry, including investments abroad

---

146 Macau Hub, "China Investment Fund negotiates exploration of iron ore deposits in Angola," (Aug. 1, 2017).

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

148 Luo Guoping, Fan Ruohong, and Han Wei, "China's steel industry at a crossroads as long winter looms" *Caixin,* Nikkei Asia (Sep. 7, 2022), available at https://asia.nikkei.com/Spotlight/Caixin/China-s-steel-industry-at-a-crossroads-as-long-winter-looms.

149 Ding Yi and Luo Guoping, *Baowu Steel Forges Deal to Develop Simandou Iron Ore Mine*, Caixin Global (Sept. 7, 2023).

150 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.

151 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.

152 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.

like the operation in Guinea.[153] In 2021, China imported 1.1 billion MT of iron ore, and with the creation of a central purchaser, the Chinese government can now exert significant market pressure over the global iron ore market, particularly amid growing political tensions between the Chinese and Australian governments.[154] China's unfair assistance in the acquisition of raw materials distorts markets worldwide and the Biden 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.[155] 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 from the rapid growth in Chinese imports that began when China joined the WTO.[156] Other

---

153 Alfred Cang, "China wants to rewire its billion-dollar iron ore trade," *Bloomberg* (Jul. 25, 2022), available at https://www.bloomberg.com/professional/blog/china-wants-to-rewire-its-billion-ton-iron-ore-trade/.

154 *Id.*

155 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.

156 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

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 prior administration officially designated China as a currency manipulator on August 5, 2019,[157] 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."[158]

The prior administration and the 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.[159] In a statement, then-Treasury Secretary Steven Mnuchin said that "China has made enforceable commitments to refrain from competitive devaluation, while promoting transparency and accountability."[160] While China remains on the list of countries on Treasury's monitoring list,[161] the domestic steel industry encourages the Biden administration to continue to take a hard line with the Chinese government on currency manipulation.

E. 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

---

157 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.

158 *Id.*

159 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.

160 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.

161 U.S. Department of the Treasury, "Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," (Jun. 2022), available at https://home.treasury.gov/system/files/136/FINAL_Spring_2022_FXR.pdf.

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.[162] 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.[163] As explained below, such treatment is improper and contrary to U.S. law, and the previous administration reached the same conclusion in 2017.[164]

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.[165]

On December 12, 2016 – the day after the 15th 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

---

162 *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).

163 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).

164 Department of Commerce Memorandum, Subject: "China's Status as a Non-Market Economy", (Oct. 27, 2017).

165 *See* 19 U.S.C. § 1677[18] [B] (2006).

investigations."[166] 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."[167] While a portion of this Protocol expired on December 11, 2016,[168] 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."[169] 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."[170]

- 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.[171]

---

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

167 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).

168 China's Protocol of Accession at ¶ 15[d].

169 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).

170 China's Protocol of Accession at ¶ 15[a][i].

171 *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."[172] 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."[173]

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 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."[174]

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 U.S. government 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."[175] China eventually dropped its challenge at the WTO against the EU in 2019, following an

---

172 *Id.* at Art. 2.7.

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

174 Department of Commerce Memorandum, Subject: "China's Status as a Non-Market Economy", (Oct. 27, 2017).

175 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

adverse interim ruling that ultimately was never publicly released.[176] AISI strongly supports the prior administration's conclusion in this matter and continues to support the Office of the U.S. Trade Representative 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 concerned about widespread evidence of Chinese circumvention and evasion of AD and CVD orders. For example, Chinese companies have provided services to evade AD and CVD duties on steel and other products exported to the United States.[177] 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).[178] This evidence of circumvention and evasion includes 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.[179]

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

---

176 Tom Miles, "China pulls WTO suit over claim to be a market economy," *Reuters* (Jun. 17, 2019), available at https://www.reuters.com/article/us-usa-china-wto-eu/china-pulls-wto-suit-over-claim-to-be-a-market-economy-idUSKCN1TI10A.

177 *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).

178 *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).

179 Staff Report Regarding Duty Evasion at 5.

originating in China.[180] It took nearly two years for the Commerce Department to announce final affirmative rulings in these anti-circumvention investigations.[181]

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) were circumventing U.S. AD and CVD duties using hot-rolled or cold-rolled substrate originating from China and Taiwan.[182] In its final decision, 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.[183]

Most recently, in May 2020, DOC self-initiated an anti-circumvention inquiry on whether imports of stainless steel sheet and strip (SSSS) finished in Vietnam are circumventing the AD and CVD orders on stainless steel sheet and strip from China.[184] Over two years later, DOC issued its preliminary affirmative determination in this inquiry, which shows that SSSS of Chinese-origin has undergone further processing in Vietnam and is covered by the orders.[185] We applaud the DOC for utilizing its existing statutory authority to penalize China for its unfair trade practices by self-initiating these inquiries and we also recognize efforts by DOC to enhance the application and

---

180 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.

181 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

182 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.

183 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.

184 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. 29401-03 (May 15, 2020).

185 U.S. Department of Commerce, *"Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Scope Ruling and Preliminary Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam,"* 87 Fed. Reg. 56626-31 (Sep. 15, 2022).

enforcement of the AD and CVD laws[186] through the finalization of regulations that establish critical timelines for the completion of anti-circumvention inquiries, which were finalized last fall.

III. Conclusion

This is the *twentieth* 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.[187] Chinese steel production is now expected to exceed *one billion* metric tons for the fifth year in a row, despite recent drops in demand. China's share of global steel production, meanwhile, routinely exceeds 55 percent, despite pledges to reduce both steelmaking capacity and production levels.

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 supports actions taken by the Biden administration to press China to end its trade-distorting policies and practices and comply with all of its WTO obligations.

Sincerely,

Kevin M. Dempsey
President and CEO

---

186 U.S. Department of Commerce, "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,*" 86 Fed Reg. 52300-84 (Sep. 20, 2021).

187 World Steel Association, "Steel Statistical Yearbook 2008" (2009) at 5.

Appendix 1

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

		Product	DOC Case Number
AD Orders	1	Steel Concrete Reinforcing Bars	A-570-860
	2	Certain Hot-Rolled Carbon Steel Flat Products	A-570-865
	3	Certain Circular Welded Carbon-Quality Steel Pipe	A-570-910
	4	Light-Walled Rectangular Pipe and Tube	A-570-914
	5	Circular Welded Austenitic Stainless Pressure Pipe	A-570-930
	6	Certain Circular Welded Carbon Quality Steel Line Pipe	A-570-935
	7	Oil Country Tubular Goods	A-570-943
	8	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe	A-570-956
	9	Non-Oriented Electrical Steel (NOES)	A-570-996
	10	Carbon and Certain Alloy Steel Wire Rod	A-570-012
	11	Cold-Rolled Steel Flat Products	A-570-029
	12	Corrosion-Resistant Steel Products	A-570-026
	13	Carbon and Alloy Steel Cut-to-Length Plate	A-570-047
	14	Stainless Steel Sheet and Strip	A-570-042
	15	Cold-Drawn Mechanical Tubing	A-570-058
	16	Large Diameter Welded Pipe	A-570-077
	17	Tim Mill Products	A-570-150
	18	Certain Circular Welded Carbon-Quality Steel Pipe	C-570-911
CVD Orders	19	Light-Walled Rectangular Pipe and Tube	C-570-915
	20	Circular Welded Austenitic Stainless Pressure Pipe	C-570-931
	21	Certain Circular Welded Carbon Quality Steel Line Pipe	C-570-936
	22	Oil Country Tubular Goods	C-570-944
	23	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe	C-570-957
	24	Non-Oriented Electrical Steel (NOES)	C-570-997
	25	Carbon and Certain Alloy Steel Wire Rod	C-570-013
	26	Cold-Rolled Steel Flat Products	C-570-030
	27	Corrosion-Resistant Steel Products	C-570-027
	28	Carbon and Alloy Steel Cut-to-Length Plate	C-570-048

	29	Stainless Steel Sheet and Strip	C-570-043
	30	Cold-Drawn Mechanical Tubing	C-570-059
	31	Large Diameter Welded Pipe	C-570-078
	32	Large Diameter Welded Carbon and Alloy Steel Structural Pipe	C-570-078
	33	Tin Mill Products	C-570-151

Appendix 2

Antidumping (AD) and Countervailing Duty (CVD) Orders on Downstream Chinese Steel Products

		Product	**DOC Case Number**
AD Orders	34	Certain Steel Threaded Rod	A-570-932
	35	Prestressed Concrete Steel Wire Strand	A-570-945
	36	Certain Steel Grating	A-570-947
	37	High Pressure Steel Cylinders	A-570-977
	38	Stainless Steel Flanges	A-570-064
	39	Carbon and Alloy Steel Threaded Rod	A-570-104
	40	Non-Refillable Steel Cylinders	A-570-126
	41	Vertical Metal File Cabinets	A-570-110
	42	Carbon Steel Butt Weld Pipe Fittings	A-570-814
	43	Cast Iron Soil Pipe	A-570-079
	44	Cast Iron Soil Pipe Fittings	A-570-062
	45	Drawn Stainless Steel Sinks	A-570-983
	46	Forged Steel Fittings	A-570-067
	47	Refillable Stainless Steel Kegs	A-570-093
	48	Steel Nails	A-570-909
	49	Steel Propane Cylinders	A-570-086
	50	Steel Wire Garment Hangers	A-570-918
	51	Utility Scale Wind Towers	A-570-981
CVD Orders	52	Prestressed Concrete Steel Wire Strand	C-570-946
	53	Certain Steel Grating	C-570-948
	54	High Pressure Steel Cylinders	C-570-978
	55	Stainless Steel Flanges	C-570-065
	56	Carbon and Alloy Steel Threaded Rod	C-570-105

	57	Cast Iron Soil Pipe	C-570-080
	58	Cast Iron Soil Pipe Fittings	C-570-063
	59	Forged Steel Fittings	C-570-068
	60	Forged Steel Fluid End Blocks	C-570-116
	61	Non-Refillable Steel Cylinders	C-570-127
	62	Refillable Stainless Steel Kegs	C-570-094
	63	Steel Grating	C-570-948
	64	Steel Propane Cylinders	C-570-087
	65	Utility Scale Wind Towers	C-570-982
	66	Vertical Metal File Cabinets	C-570-111