



September 23, 2015

Edward Gresser
Acting Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508

RE: Request for Comments Concerning China's WTO Compliance, Docket No. USTR-2015-0010

Dear Mr. Gresser:

In response to a request from the Office of the United States Trade Representative ("USTR"),¹ the American Iron and Steel Institute ("AISI"), on behalf of its U.S. member companies, hereby submits comments to the interagency Trade Policy Staff Committee ("TPSC") regarding China's compliance with the commitments it made upon its accession to the World Trade Organization ("WTO"). Of the categories listed in USTR's request, these comments particularly relate to import regulation, export regulation, internal policies affecting trade, intellectual property rights, and other WTO commitments.

Executive Summary

Now more than 13 years after it acceded to the WTO, China continues to fail to comply with its WTO obligations. In fact, there is now a broad consensus, based on an overwhelming amount of evidence, that China has largely abandoned its policy of liberalizing its economy and instead adheres to a policy of state capitalism that is antithetical to the principles of free and fair trade. This trend is a major problem for steel producers in the United States, other U.S. manufacturers, and the broader U.S. economy. Once again, AISI strongly urges the U.S. government to recognize China's compliance failures and adopt a more aggressive strategy that is commensurate with the scope and severity of China's failure to comply with its WTO obligations. 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. Since 2000, the U.S. trade deficit with China has soared 309 percent, the United States has lost millions of manufacturing jobs, thousands of U.S. factories have been shuttered, and the American steel industry has been severely disrupted. The United States must take much bolder and more imaginative steps to address this chronic problem.

¹ See *Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments*, 80 Fed. Reg. 47985 (USTR August 10, 2015).

- From 2000 to 2014, Chinese crude steel production increased by 695 *million* metric tons (“MT”) – a volume that is nearly *eight* times total crude steel production in the United States. China’s increased production has been made possible, in large part, by massive government subsidies. The U.S. Department of Commerce (“DOC”) has specifically identified numerous subsidies benefiting Chinese steel producers. China not only maintains policies that will lead to further subsidization going forward, but also manipulates its value added tax (“VAT”) system to manage and promote exports of its steel products.
- Although China pledged as part of its WTO accession that it would not “influence” commercial decisions of its state-owned enterprises (“SOEs”), the Chinese government maintains a heavy amount of control over SOEs. Moreover, China’s 12th Five-Year Plan, 12th Five-Year Program for Steel and its 2015 Steel Industry Adjustment Policy will strengthen the Chinese government’s control over its steel industry.
- China has taken numerous measures to inappropriately aid its producers in securing access to raw materials and to manipulate raw material prices in a manner that gives Chinese producers an unfair advantage over their U.S. competitors. AISI commends USTR for the victories it has won at the WTO challenging certain export restraints as violating China’s WTO commitments. However, given China’s pervasive use of export restraints and other measures to control raw material prices, winning these challenges will only be the first step to bring China’s policies into compliance with its WTO commitments.
- Despite years of complaints by American manufacturers – and widespread criticism from government officials and other experts – China continues to keep the value of its currency at artificially-low levels that give Chinese producers an unfair advantage in the U.S. market, the Chinese market, and third country markets. The recent two-percent devaluation of the yuan in August 2015 by the China’s central bank wiped out four years of appreciation that had occurred.
- Effective enforcement of intellectual property rights (“IPR”) has still not been achieved in China, and IPR infringement remains a serious problem. Moreover, China’s “indigenous” innovation campaign – which has already caused U.S. firms to lose market share – appears to violate many of China’s WTO commitments to protect IPR and not raise technical and other non-tariff barriers to trade. Additionally, there is now evidence that China is using its anti-trust laws to curtail the IPR of foreign firms and protect its domestic firms from foreign competition.
- The fact that China has not fully complied with its WTO obligations underscores the importance of effective enforcement of U.S. trade remedy laws. Among other things, the United States should continue to treat China as a non-market economy for purposes of U.S. antidumping laws, ensure that Chinese companies are not circumventing and evading U.S. antidumping and countervailing duties, and investigate and take strong action to address attempts by China to gain an advantage in unfair trade proceedings by hacking the computer systems of domestic producers in the United States.

Each of these points is discussed in more detail below.

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

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

China acceded to the WTO on December 11, 2001 – nearly fourteen years ago. This submission marks the *twelfth* time that AISI has supplied the TPSC with detailed comments regarding China's failure to comply with its WTO commitments.² AISI has documented over this period essentially the same facts – *i.e.*, that China is using 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 annual report in 2013, “[d]uring most of the past decade, the Chinese government emphasized the state’s role in the economy, diverging from the path of economic reform that had driven China’s accession to the WTO.”³

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 and for the first time since President Ulysses S. Grant, the U.S. is no longer biggest economy on the planet.⁴ The International Monetary released figures that when national economic output is measured in real terms of goods and services, China surpassed the U.S. – \$17.6 trillion for China compared to \$17.4 trillion for the U.S.⁵ The fact that such a major 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. Indeed, some observers now argue that China's aggressive mercantilist policies are threatening the entire world economic order:

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

² See Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 14, 2004); Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 6, 2005); Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 18, 2006); Letter from Barry D. Solarz, Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 14, 2007); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 22, 2008); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 22, 2009); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 27, 2010); Letter from Barry D. Solarz, Senior Vice President of AISI, to Gloria Blue, Executive Secretary of the TPSC (Sept. 26, 2011); Letter from Barry D. Solarz, Senior Vice President of AISI, to Douglas M. Bell, Chair of the TPSC (Sept. 26, 2012); Letter from Kevin M. Dempsey, Senior Vice President of AISI, to Douglas M. Bell, Chair of the TPSC (Sept. 20, 2013); Letter from Kevin M. Dempsey, Senior Vice President of AISI, to Douglas M. Bell, Chair of the TPSC (Sept. 23, 2014).

³ USTR, 2013 Report to Congress on China's WTO Compliance (Dec. 2013) (“2013 USTR Report”) at 2.

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

⁵ International Monetary Fund, Gross Domestic Product Based on Purchasing-Power-Parity (PPP), (December 2014)

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.⁶

Current U.S. policies are plainly not sufficient to persuade China to comply with its WTO obligations. The U.S. government should adopt far more aggressive policies – including multilateral and even unilateral action where necessary – to address China's recalcitrance.

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

Back in 2000, supporters of normalizing trade relations with China promised that China's accession would lower our trade deficit, strengthen our manufacturing base, and create jobs.⁷ The facts have not borne out these assertions. Instead, as shown below, China's entry into the WTO has contributed to numerous problems in the U.S. and world economies:

- **The U.S. Trade Deficit Has Soared.** The U.S. trade deficit with China *soared 309%* from \$83.8 billion in 2000 to \$343.1 billion in 2014.⁸ Furthermore, our trade deficit with China is on pace to top \$340 billion again in 2015.⁹
- **The U.S. Manufacturing Base Has Been Dramatically Weakened.** In 2000, U.S. exports of manufactured goods were triple the amount of Chinese exports of the same goods.¹⁰ By 2010, however, China's manufacturing exports were 50 percent higher than U.S. manufacturing exports.¹¹ Furthermore, the U.S. trade deficit in manufactured goods with China reached an all-time high of *\$372 billion* last year.¹²

⁶ Heriberto Araújo and Juan Pablo Cardenal, "China's Economic Empire," *New York Times* (June 1, 2013) ("China's Economic Empire").

⁷ See, e.g., President Clinton, Press Release, "Permanent normal trade relations for China: An historic moment for U.S.-China relations" (Sept. 19, 2000), available at <http://clinton4.nara.gov> (last visited Sept. 9, 2014) ("Permanent Normal Trade Relations for China").

⁸ See Foreign Trade Statistics, U.S. Department of Commerce, "U.S. International Trade in Goods and Services" (June 2015) at Exhibit 20a.

⁹ See *id.* In the first half of 2015, the U.S. trade deficit with China totaled \$170.8 billion. *Id.* $2 \times 170.8 = 341.6$.

¹⁰ Len Boselovic, "Trade deficit rise kills jobs in factories," *Pittsburgh Post-Gazette* (August 21, 2011).

¹¹ *Id.*

¹² These data are available at <http://tse.export.gov> (last visited Aug. 27, 2015).

- **Millions of U.S. Jobs Have Been Lost and Wages Eroded.** According to one estimate published by the Economic Policy Institute last year, our growing trade deficit with China between 2001 and 2013 resulted in 3.2 million jobs being lost or displaced, over 2.4 million of which were in manufacturing.¹³ In addition, this study found that competition with low-wage workers in China has driven down wages for workers in U.S. manufacturing and reduced the wages of other workers throughout the economy.¹⁴ Even when reemployed in other industries, the net wages lost due to the U.S. trade deficit with China total \$37.0 billion per year.¹⁵ A separate study conducted by the National Bureau of Economic Research that was published in 2014 reached a similar conclusion – *i.e.*, the increase in U.S. imports from China between 1999 and 2011 resulted in net job losses of 2.0 to 2.4 million.¹⁶
- **Chinese Mercantilism Is Preventing a Necessary Rebalancing in Global Trade.** For many years now, it has been broadly recognized that our relationship should be “rebalanced” so that the United States manufactures more goods and China consumes them.¹⁷ 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.”¹⁸ In fact, as recently as 2013, investment spending was still rising faster than consumption and increasing its overall share of China’s economy.¹⁹ Investment spending continues to account for nearly half of China’s GDP.²⁰ While some recent evidence suggests that China’s economy may be shifting away from investment and heavy industry, this transition threatens to exacerbate trade imbalances as little to no progress has been made in reducing industrial overcapacity. With less demand for steel from construction and heavy

¹³ Will Kimball and Robert E. Scott, “China Trade, Outsourcing and Jobs,” *Economic Policy Institute* (Dec. 11, 2014).

¹⁴ *Id.*

¹⁵ Robert E. Scott, “Trading Away the Manufacturing Advantage,” *Economic Policy Institute* (Sept. 30, 2013).

¹⁶ Daron Acemoglu, Davit Autor, David Dorn, Gordon H. Hanson, Brendan Price, NBER Working Paper No. 20395: “Import Competition and the Great U.S. Employment Sag of the 2000s” (Aug. 2014).

¹⁷ 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.

¹⁸ USCC, 2013 Annual Report to Congress, (Nov. 20, 2013) (“2013 USCC Report”) at 78.

¹⁹ Jamil Anderlini, “China’s rebalancing requires more investment of the right kind,” *Financial Times* (Jan. 23, 2014).

²⁰ Eswar Prasad, “The Path to Sustainable Growth in China,” *Brookings Inst.* (Apr. 22, 2015).

industry, for example, Chinese producers have shipped greater volumes overseas in an attempt to use foreign markets as an outlet for excess supply.²¹

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, with some predictions that Chinese steel use may have peaked in 2013:

- Chinese crude steel production soared from 128 million MT in 2000 to 823 million MT in 2014 – an increase of 695 million MT.²² To put this figure in context, consider that in 2014 the United States produced 88 million MT of crude steel.²³ Over the last 14 years, therefore, China's steel production *increased* by a volume of nearly eight times the *total* production of the U.S. industry.²⁴ At the same time, China's official steel capacity levels reached 1,160 million MT last year,²⁵ meaning it had excess capacity of 337 million MT.²⁶ In other words, China has enough *excess* steel capacity to produce almost four times as much steel as the entire U.S. industry.²⁷
- In 2014, the chairman of state-owned Baosteel, Xu Lejiang, disclosed that the official estimates of China's national crude steel output in 2013 were understated.²⁸ He estimated that China's production of crude steel in 2013 actually totaled 822 million MT, nearly 6 percent above official data.²⁹ This is not the first year that China has significantly understated its official steel production output.³⁰
- It appears that in 2015, China will once again produce far more steel than market conditions justify. Even though prices are low and inventory levels are high, steel production has

²¹ "Rising Chinese Steel Exports Continue to Wreak Havoc on Global Steel Industry," *Forbes* (Sept. 3, 2015).

²² World Steel Association, "Monthly Crude Steel Production 2014"; World Steel Association, "Monthly Crude Steel Production 2000."

²³ *Id.*

²⁴ $695 / 88 = 7.9$.

²⁵ The Chinese Ministry of Industry and Information Technology (MIIT) announced Chinese capacity of 1.16 billion metric tons (1.277 billion net tons) in 2014.

²⁶ $1,160 - 823 = 337$ MT.

²⁷ $337 / 88 = 3.83$.

²⁸ "China's 2013 steel output higher than official data – Baosteel," *Reuters* (Aug. 5, 2014).

²⁹ *Id.*

³⁰ See, e.g., "Hebei slammed for underreporting steel output," *Want China Times* (Sept. 8, 2012) ("Hebei slammed for underreporting steel output"), available at <http://www.wantchinatimes.com> (last visited Sept. 5, 2013); see also MEPS, "China's Under Reported Stainless Steel Production in 2012 Revealed" (May 1, 2013).

remained close to an all-time high, with many struggling mills worried that any decision to cut output would reduce their cash flow and put them at further risk of closure.³¹ While Chinese steel production year-to-date through July 2015 is down 1.8 percent compared to the same period in 2014,³² it is still on pace to produce 816 million MT of steel this year.³³

- The Chinese steel industry has substantially increased production and grown overall capacity even though prices are falling and Chinese steel producers are losing money. The China Iron and Steel Association (“CISA”) reported that the overall profit margin of the Chinese steel industry in 2013 was only 0.13 percent and that 40 percent of the steel producers were operating at a loss.³⁴ As *World Steel Dynamics* has explained, “China’s larger steel companies . . . are able to sustain production almost no matter what the price. They have extensive borrowing power at reasonable interest rates from government-owned banks. Hence, these mills are not price driven; they are new order driven.”³⁵
- It should also be recognized that in recent years, a significant portion of China’s excess steel production has been absorbed by the Chinese government’s stimulus spending on fixed asset investment.³⁶ In 2012, *World Steel Dynamics* estimated that this stimulus would account for 380 million MT of Chinese total apparent steel consumption between 2009 and 2012.³⁷ *World Steel Dynamics* warned, however, that “as the stimulus plans finish, the additional steel demand caused by the plan will be gone.”³⁸
- With China’s stimulus spending now almost fully dried up, the Chinese steel industry must rely more than ever on exports to consume surplus production, and its exports are depressing steel prices around the globe. As one Chinese steel trader explained, “We don’t see any bright spots right now – steel mills aren’t making profit and I don’t expect any new stimulus coming from the government any time soon.”³⁹ He stated that “most traders have switched to exporting steel products, where profit can still be made.”⁴⁰ Indeed, China exported a record 94 million MT of steel products in 2014, an increase of 52 percent from 2013.⁴¹ That trend continues into 2015

³¹ “Steel prices reduce on over production and inventory in China” *Steelguru* (Sept. 3, 2014).

³² World Steel Association, “July 2015 Crude Steel Production” (Aug. 20, 2015).

³³ $476 / 7 = 68 * 12 = 816$

³⁴ “Steeled for growth,” *China Daily* (May 2, 2014).

³⁵ World Steel Dynamics, “Chinese Steel Hits the Great Wall, Part III” (Feb. 2012) (“World Steel Dynamics”) at 21.

³⁶ *Id.* at 3-4.

³⁷ *Id.* at 4.

³⁸ *Id.* at 5.

³⁹ “Chinese steel, iron ore fall further as traders stay away,” *Reuters* (Sept. 2, 2014).

⁴⁰ *Id.*

⁴¹ Ruby Lian and David Stanway, “Chinese Steel Exports to Stay High This Year – Industry Group,” *Reuters* (Apr. 29, 2015)

with Chinese steel exports rising to extraordinary levels in the first half of the year, exporting 52.6 million MT for that period,⁴² well on track to exceed 2014's record levels and surpass 100 million MT for 2015. Effective January 1, 2015, China eliminated its export tax rebate on steel alloys containing boron, which could lead to fewer Chinese exports. However, market watchers have indicated that Chinese producers have replaced boron with chrome in order to continue to qualify for the rebate.⁴³ Unsurprisingly, the China Iron & Steel Association (CISA) remains bullish about Chinese steel exports "as low prices and firm demand offset the scrapping of an export tax rebate on certain products."⁴⁴

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.⁴⁵ These predictions have not proven true for U.S. steel producers.

In 2001, the year of China's accession to the WTO, China consumed 168 million MT of crude steel but produced only 152 million MT of crude steel.⁴⁶ Furthermore, by 2014, China's demand for crude steel had reached 711 million MT – an increase of 323%.⁴⁷ If American mills had been able to participate in even just one percent of this increased demand for steel, then they would now be shipping approximately 5.4 million MT of steel products to China each year.⁴⁸ But this has not happened. In 2001, the U.S. steel mills exported 39,485 MT of steel to China, while in 2014, U.S. mills exported only 100,832 MT of steel to China.⁴⁹ In fact, as the chart below illustrates, China continues to import fewer and fewer American steel products in recent years.

⁴² Jake Lloyd-Smith and Swansy Afonso, "Credit Suisse Sees 'Extraordinary Levels' of China Steel Exports," *Bloomberg* (July 29, 2015)

⁴³ Chim Sau-Wai, "Global Steel Prices to Gain from China's Scrapping of Export Tax Rebate," *South China Morning Post* (Jan. 12, 2015).

⁴⁴ Ruby Lian and David Stanway, "Chinese Steel Exports to Stay High This Year – Industry Group," *Reuters* (Apr. 29, 2015)

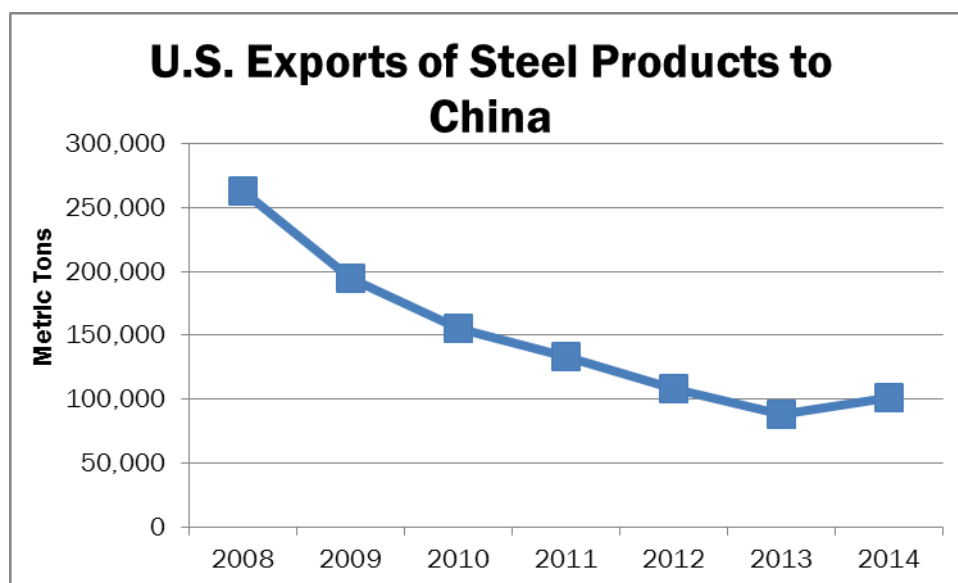
⁴⁵ See, e.g., Permanent Normal Trade Relations for China.

⁴⁶ World Steel Dynamics; World Steel Association, "Annual Crude Steel Production, 2000-2009."

⁴⁷ World Steel in Figures 2014 at 16. $(711 - 168) / 168 = 3.23 = 323\%$.

⁴⁸ $(711 - 168) \times 1\% = 5.4$.

⁴⁹ U.S. Census Bureau, "U.S. International Trade Data," last accessed August 28, 2015



Source of Data: U.S. Census Bureau

It now seems clear that China never intended to permit non-Chinese steel producers to benefit from the country's growing market. In October 2011, China's Ministry of Industry and Information Technology heralded as a "major achievement" the fact that "the domestic steel market share increased from 92% to 97%" over the five previous years.⁵⁰ 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."⁵¹ In 2014, China announced it was imposing import taxes on 78 steel products, including hot-rolled sheet, cold-rolled sheet, narrow strip, wire rod, and electrical steel.⁵² The purpose of these new import taxes is to encourage downstream producers to purchase more domestically-produced steel to "help digest the excess capacity" in China – *i.e.*, to foreclose the possibility that steel producers in the United States and other countries benefit from China's vast market.⁵³

⁵⁰ 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 Sept. 8, 2014) ("12th Five Year Steel Plan") at Art. I.I.1.

⁵¹ *Id.* at Art. I.II.1.

⁵² "Treasure bans some imported steel tax" *China Iron and Steel Association* (July 18, 2014).

⁵³ "Mainland China's Bonded Policies for Imported Steel Products Gone," *China Times* (July 14, 2014) (Chinese language document), *available at* <http://www.chinatimes.com/cn/newspapers/20140714000089-260203> (last visited Sept. 8, 2014).

D. Chinese Steel Has Injured the American Steel Industry

There can be no question that unfairly-traded exports – another result of Chinese mercantilism – have also harmed American steel producers. The United States currently maintains antidumping (“AD”) orders on imports of hot-rolled steel, cut-to-length steel plate, rebar, steel threaded rod, and prestressed concrete steel rail tie wire from China (see Appendix 1 for list of AD/CVD orders on imports of steel products from China). In addition, the United States maintains both AD and countervailing duty (“CVD”) orders on imports of light-walled rectangular pipe; welded standard pipe; welded line pipe; austenitic stainless pressure pipe; oil country tubular goods (“OCTG”); pre-stressed concrete steel wire strand; steel grating; wire decking; seamless carbon and alloy steel standard, line, and pressure pipe; drill pipe; galvanized steel wire; high pressure steel cylinders; non-oriented electrical steel; and wire rod. Each of these 33 orders rests upon findings by the DOC that Chinese mills engaged in unfair trade *and* findings by the U.S. International Trade Commission (“USITC”) that Chinese imports caused or threatened material injury to the relevant domestic industry.

Furthermore, while the AD and CVD orders listed above have certainly helped U.S. mills, recent administrative reviews at the DOC show that in numerous instances, Chinese mills continued to trade unfairly despite the existence of such relief.⁵⁴ Additionally, since June 2015, domestic producers in the U.S. have filed new dumping and subsidy allegations against Chinese mills on imports of corrosion-resistant and cold-rolled steel, with these allegations currently being investigated by the DOC and USITC.

E. China’s Actions Demand a More Aggressive Response

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

Meanwhile, China has been aggressively initiating WTO cases against other members – especially the United States.⁵⁵ Remarkably, nine of the twelve cases brought by China at the WTO alleged violations

⁵⁴ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 78 Fed. Reg. 60849 (Dep’t Commerce Oct. 2, 2013) (final results) (finding that Chinese firms were being subsidized at *ad valorem* rates of 29.83 percent to 620.08 percent); *Certain Steel Threaded Rod from the People’s Republic of China*, 78 Fed. Reg. 66330 (Dep’t Commerce Nov. 5, 2013) (final results) (finding that a Chinese firm had dumped steel threaded rod in the U.S. market at a rate of 19.54%); *Certain Oil Country Tubular Goods from the People’s Republic of China*, 79 Fed. Reg. 52301 (Dep’t Commerce Sept. 3, 2014) (final results) (“OCTG from China”) (finding that a Chinese firm was being subsidized at the *ad valorem* rate of 59.29 percent).

⁵⁵ 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 Sept. 9, 2014).

by the United States – a country suffering from an enormous trade *deficit* with China.⁵⁶ In other words, while China apparently feels free to disregard its own WTO obligations, it sues other countries when it sees an advantage in doing so. These facts led the USCC to conclude several years ago that China was doing serious damage to the WTO system:

The United States and the European Union went to considerable lengths to design and negotiate a system of checks and balances that would permit China to accede to the WTO without jeopardizing the smooth functioning of the organization or endangering the position of existing members in the international trading system. From start to finish, that negotiation process took 15 years. In less than ten years, China has learned the nuances of WTO law and has begun to use it systematically to undo the finely wrought balance that U.S. and E.U. negotiators designed.⁵⁷

Nevertheless, for more than ten years, U.S. policymakers have remained relatively passive in the face of China's ongoing – and unfair – attack on the U.S. and other markets. This approach has not worked. As experts are increasingly warning, with China now exporting its mercantilist policies beyond its own borders, the stakes could not be any higher:

It is important to remember what is really behind China's global economic expansion: the state. . . . [W]hen Chinese state-owned companies go abroad and seek to play by rules that emanate from an authoritarian regime, there is grave danger that Western countries will, out of economic need, end up playing by Beijing's rules. As China becomes a global player and a fierce competitor in American and European markets, its political system and state capitalist ideology pose a threat. It is therefore essential that Western governments stick to what has been the core of Western prosperity: the rule of law, political freedom and fair competition.⁵⁸

It is clearly time for a much more aggressive policy than has been adopted in recent years. As Robert Atkinson, President of the Information and Technology and Innovation Foundation, stated last month, “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.”⁵⁹ 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.”⁶⁰ As part of a new, more aggressive policy to address China's actions, the U.S. government should – at a minimum – do the following:

- Ensure strong and effective enforcement of U.S. trade laws, particularly our AD/CVD laws;

⁵⁶ See WTO, “Table of Disputes by Member,” *available at* <http://www.wto.org> (last visited Sept. 9, 2014).

⁵⁷ USCC Report, 2011 Annual Report to Congress (Aug. 2011) (“2011 USCC Report”) at 38.

⁵⁸ China's Economic Empire.

⁵⁹ Robert Atkinson, “High-tech harassment,” *The Hill* (Aug. 8, 2014).

⁶⁰ *Id.*

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

Furthermore, it should be noted that while WTO litigation can and should be a part of U.S. plans to deal with China, such litigation cannot solve the whole problem. As the USCC has found, "WTO cases, while important, are frequently inadequate to address the full range of trade-distorting aspects of China's industrial policies" and that "some of the most problematic issues in the U.S.-China trade relationship *do not appear to be solvable using the WTO process.*"⁶¹

Thus, U.S. policymakers should consider all available options – including the assertion of national sovereignty where necessary – to persuade Chinese officials to take their WTO obligations more seriously. One thing is certain: if we continue the same policies, then the market-distorting practices identified in this submission will also continue.

II. Issues of Particular Importance to American Steel Producers

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

⁶¹ USCC, 2010 Annual Report to Congress (Nov. 2010) ("2010 USCC Report") at 2, 55 (emphasis added).

Figure 1: Issues Regarding Key China WTO Commitments

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

A. Subsidies

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Subsidies and Countervailing Measures (“SCM Agreement”).⁶² In particular, China committed that by the time of its accession it would eliminate all subsidies prohibited under Article 3 of the SCM Agreement.⁶³ 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.⁶⁴ Notwithstanding these commitments, Chinese manufacturers – including Chinese steel producers – continue to benefit from massive government subsidies. The

⁶² 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.

⁶³ 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).

⁶⁴ China Protocol of Accession at ¶ 15.

evidence on this point is overwhelming. Indeed, USTR's 2013 report on China's WTO compliance states that "China continues to provide injurious subsidies to its domestic industries, and some of these subsidies appear to be prohibited under WTO rules."⁶⁵

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

As an initial matter, it should be noted that China's failure to comply with its WTO obligations makes it impossible to measure precisely the scope of 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.⁶⁶ Furthermore, as USTR has recognized, this notification was woefully incomplete.⁶⁷ In October 2011, this situation forced the United States to submit a counter-notification to the WTO identifying nearly 200 subsidy programs that China had failed to notify as required under WTO rules.⁶⁸ This counter-notification also contained additional evidence of central government and sub-central government subsidies that China has not yet notified.⁶⁹ Shortly after the United States filed its counter-notification, China finally submitted the new subsidies notification that it had been promising, but this notification was once again inadequate and, in fact, did not even reflect most of the subsidies contained in the United States' counter-notification.⁷⁰ 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.

2. *China Continues to Provide Improper Subsidies*

As discussed above, domestic steel producers have brought and won CVD cases against 14 different categories of Chinese steel imports, ranging from OCTG to wire decking. 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 around the world.

Moreover, China continues to provide improper subsidies to its manufacturers. In September 2014, for example, the DOC issued the final results of an administrative review of the CVD order on OCTG from China.⁷¹ As part of this review, the DOC specifically identified numerous subsidies benefiting Chinese companies, including the following:

⁶⁵ 2013 USTR Report at 49.

⁶⁶ *Id.* at 50.

⁶⁷ *Id.* at 49.

⁶⁸ USTR Press Release, "United States Details China and India Subsidy Programs in Submission to WTO" (Oct. 2011).

⁶⁹ 2013 USTR Report at 50.

⁷⁰ *Id.*

⁷¹ OCTG from China.

- Preferential lending through state-owned commercial or policy banks;⁷²
- Provision of electricity for less than adequate remuneration;⁷³
- Provision of inputs for less than adequate remuneration;⁷⁴
- Export credit insurance reimbursements;⁷⁵
- Refunds of the real estate and land-use taxes paid by companies in certain industrial districts;⁷⁶
- Direct transfers of government funds to steel producers in the form of grants.⁷⁷

These findings are very similar to those made in recent years by the DOC in case after case brought by domestic steel producers against subsidized Chinese imports.

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

[U]nder true market conditions, China would probably have had a large and diverse steel industry, but not one that grew to account for about half of total world steel production within a decade of joining the WTO. *The Chinese steel industry in its current form is the creation of the Chinese government.* It has benefited from massive direct and indirect subsidies, many of which violate the WTO's Subsidies Agreement, China's obligations under its WTO accession agreement, or both. [Moreover], the Chinese government has also adopted an official policy that requires it to continue to provide the steel industry with massive subsidies.⁷⁸

⁷² Decision Memorandum in *OCTG from China* at 27.

⁷³ *Id.* at 27-28

⁷⁴ *Id.* at 28-30.

⁷⁵ *Id.* at 30

⁷⁶ *Id.* at 30-31.

⁷⁷ *Id.* at 31.

⁷⁸ Usha C.V. Haley and George T. Haley, "Subsidies to Chinese Industry: State Capitalism, Business Strategy, and Trade Policy" (2013) (emphasis added).

3. China's Industrial Policies Encourage Continued Subsidization

China apparently intends to continue subsidizing steel production. As a research paper prepared for AISI and the Steel Manufacturers Association in October 2010 demonstrates, China's steel industry has been governed by a number of industrial policies since 2005 that specifically cover the steel industry.⁷⁹ Each of these policies has provided for massive subsidies to steel producers:

- In July 2005, China's National Development and Reform Commission ("NDRC") issued the Steel and Iron Industry Development Policy ("Steel Policy"). The Steel Policy mandated direct government subsidization of the steel industry in the form of tax refunds, discounted interest rates, funds for research, and other policy support for major iron and steel projects utilizing newly developed domestic equipment. The policy also encouraged indirect government support by – among other things – restricting foreign investment, discriminating against foreign equipment and technology, and providing various export credits.⁸⁰
- In March 2009, China's Ministry of Industry and Information Technology ("MIIT") issued an update to the Steel Policy entitled the Steel Adjustment and Revitalization Plan ("Revitalization Plan"). The Revitalization Plan provided for direct and indirect government subsidization of the steel industry through measures including tax reimbursements for exports, loans for technical improvements and research and development, and export credits for metallurgical equipment.⁸¹
- In June 2010, China's chief administrative body, the State Council, released its "Advice for the Promotion of Energy Saving, Emissions Reduction and Industrial Structure Adjustment" ("State Council Policy"). The State Council Policy mandated subsidies and government support such as special privileges with respect to land usage, loans, credit, and capital market financing.⁸²
- China's provinces have issued their own industrial plans that provide for numerous subsidies to the steel producers located within their provincial territory.⁸³

In recent years, China has continued to issue policies that provide for steel subsidies. In March 2011, China issued its 12th Five-Year Plan to govern its economic and social development from 2011 through

⁷⁹ *The Reform Myth: How China is Using State Power to Create the World's Dominant Steel Industry* (Oct. 2010), available at <https://www.steel.org> (last visited Sept. 8, 2014) ("The Reform Myth") at 3.

⁸⁰ *Id.* at 11 (citing NDRC, "Steel and Iron Industry Development Policy" (July 20, 2005) at Articles 16, 20).

⁸¹ *Id.* at 12-13 (citing Gov't of the PRC Steel Adjustment and Revitalization Plan, (Mar. 23, 2009)).

⁸² *Id.* at 13-14 (citing State Council's "Advice for the Promotion of Energy Saving, Emissions Reduction and Industrial Structure Adjustment" (June 17, 2010)).

⁸³ *Id.* at 15-16. *See also* Oliver Melton, "Understanding China's Five-Year Plan: Planned economy or coordinated chaos?" *China Insight Economics* (Nov. 9, 2010) at 6-7 (discussing the role of provincial and municipal governments in implementing policies that have been issued by the central government).

2015.⁸⁴ The 12th Five-Year Plan states that China needs “to fully strengthen the role of industrial policies,”⁸⁵ “stick to the fundamental economic system to keep public ownership in a dominant position,”⁸⁶ and “maintain the current advantages in exporting.”⁸⁷ In October 2011, the MIIT issued a development plan specific to the steel industry – *i.e.*, the Development Plan of the 12th Five-Year Program for the Iron and Steel Industry (“12th Five-Year Steel Program”).⁸⁸ Also, the MIIT released a draft Steel Industry Adjustment Policy (2015 Revision) in March 2015 and while the explicit goal of this revision is moving in the direction of market-driven policies for the allocation of resources,⁸⁹ the Adjustment Policy is no more than a continuation of government control and direction over the Chinese steel industry.

Overwhelming evidence suggests that China will continue to provide significant subsidies to the steel industry. For example:

- An analysis of the annual reports of 13 publicly traded steel producers found that in 2013 they received government subsidies totaling 1.3 billion renminbi (“RMB”).⁹⁰ Some producers were only able to report profits as a result of the subsidies they received.⁹¹ For example, Ma’anshan Iron and Steel reported a net profit of 157 million RMB for 2013 but would have reported a net loss if it had not received government subsidies totaling 452 million RMB that year.⁹²
- In early 2014, the Zhuzhou Smelter Group Co., Ltd. (“Zhuye Group”) reported that it received an environmental protection subsidy of over 89 million RMB from the Zhuzhou Municipal Government, which helped the company reverse its losses in the previous three quarters.⁹³ Zhuye Group’s president told journalists that the company does not know how the government

⁸⁴ CPC Central Committee’s Proposal for Formulating the 12th Five-Year Program for China’s Economic and Social Development (2011-2015) (Mar. 5, 2011).

⁸⁵ *Id.* at ¶ 7.

⁸⁶ *Id.* at ¶ 40.

⁸⁷ *Id.* at ¶ 46.

⁸⁸ 12th Five Year Steel Plan.

⁸⁹ Chinese Ministry of Industry and Information Technology (MIIT), “Steel Industry Adjustment Policy (2015 Revision),” March 2015.

⁹⁰ “13 Publicly Traded Steel Producers Received 60% less in subsidy money than usual” (Chinese language document), *available at* http://finance.ce.cn/rolling/201404/04/t20140404_2600923.shtml (last visited Sept. 10, 2014).

⁹¹ *Id.*

⁹² *Id.*

⁹³ “The Lifestraw of Publicly Traded Companies that suffer from losses: Energy and Environmental Conservation Subsidies” (Apr. 17, 2014) (Chinese language document), *available at* <http://www.infzm.com/content/99969> (last visited Sept. 4, 2014).

came up with the subsidy amount and the government did not specify how the money should be spent.⁹⁴

- In February 2014, the Chinese central government set up a \$1.6 billion fund to reward companies that comply with emission cuts being imposed on the steel and other industries.⁹⁵
- In March 2014, the Chinese MIIT issued a policy that would make it easier for steel producers to finance acquisitions of other companies.⁹⁶
- In July 2014, the Chinese Ministry of Finance issued the *Notice on the Energy Conservation Special Funds*, earmarking 140.5 million RMB worth of financial rewards to steel companies that retire obsolete production capacity.⁹⁷
- In August 2014, an analysis of the mid-year financial statements of eight steel producers showed that they received a total of 250 million RMB worth of government subsidies but only had a combined net profit of 969 million RMB.⁹⁸ This made the ratio of government subsidies to net profit a staggering 25.8%.⁹⁹

4. VAT Export Rebates to Manage and Promote Exports

China also manipulates its VAT system in order to manage and promote the export of its steel products. As USTR recognized in its 2015 National Trade Estimate (NTE) Report, China continues to manipulate its VAT rebate system in order to effectively manage exports primary, intermediate and downstream products which “have caused tremendous disruption, uncertainty, and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries.”¹⁰⁰ The 2015 NTE Report also notes that this manipulation, alongside other government interventions such as massive subsidies, have contributed to significant overcapacities in these industries.¹⁰¹

⁹⁴ *Id.*

⁹⁵ Lucy Hornby, “New steel plants cast doubt on China’s emission control plans” *Financial Times* (Feb. 26, 2014).

⁹⁶ “China ditches steel industry consolidation targets in new plan,” *Reuters* (Marc. 25, 2014).

⁹⁷ “Central Government Reward of 140 million RMB for Retiring Obsolete Production Capacity in Anhui Province” (July 30, 2014) (Chinese language document), *available at* <http://finance.qq.com/a/20140730/054115.htm> (last visited Sept. 8, 2014).

⁹⁸ “Valin Iron and Steel Received Government Subsidy Four Times the Size of its Net Profit: Lots of Bailouts in the Steel Industry” (Aug. 20, 2014) (Chinese language document), *available at* <http://finance.sina.com.cn/chanjing/gsnews/20140820/041920062254.shtml> (last visited Sept. 10, 2014).

⁹⁹ *Id.*

¹⁰⁰ USTR, 2015 National Trade Estimate Report (Mar. 2015) (“USTR 2015 NTE Report”) at 73.

¹⁰¹ *Id.*

The Chinese government does this by lowering VAT rebates on the export of primary or intermediate products, resulting in increased domestic supply and lower domestic prices.¹⁰² China's downstream producers, in turn, benefit from these lower input prices as well as full VAT rebates on export of their finished products.¹⁰³

Over the course of 2007 and 2008, for example, China eliminated VAT export rebates on some, but not all, steel products.¹⁰⁴ As a result, "Chinese steel producers shifted their production to value-added steel products for which full or partial VAT export rebates were still available, . . . causing a surge in exports of these products – many of which ended up in the U.S. market."¹⁰⁵ For example, one of the products for which VAT export rebates were still available was OCTG.¹⁰⁶ Significantly, U.S. imports of OCTG from China tripled from 725,027 net tons ("NT") in 2006 to 2,197,556 NT in 2008.¹⁰⁷

In 2009, as USTR has recognized, "in the face of the economic crisis and in apparent contradiction to its stated goals of discouraging excess capacity, China eliminated most steel export duties and raised VAT rebates on many steel products while continuing to apply differential border tax treatment to encourage the export of more value-added products."¹⁰⁸ In 2010, China announced that it was cutting the VAT export rebate for a number of commodity-grade steel products.¹⁰⁹ The result of these cuts, however, was simply to encourage exports of value-added steel products for which the VAT export rebates were still available.¹¹⁰ One steel industry analyst called these cuts a "Trojan Horse" – *i.e.*, "a seeming benefit that's actually a problem."¹¹¹ Indeed, by manipulating its VAT rebates, China is able not only to encourage the production of certain types of steel products, but also to make it easier for Chinese mills to shift production in response to export opportunities (*e.g.*, changes in market demand, changes in trade relief abroad, etc.).

It seems clear that China continues to treat VAT manipulation as a key element of industrial policy. As the USTR stated in its report last year, "China has been unwilling to commit to any disciplines on

¹⁰² USTR, 2014 National Trade Estimate Report (Mar. 2014) ("USTR 2014 NTE Report") at 63.

¹⁰³ *Id.* See also USTR, 2012 National Trade Estimate Report (Mar. 2012) at 68.

¹⁰⁴ USTR, 2008 Report to Congress on China's WTO Compliance (Dec. 2008) at 37.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Certain Oil Country Tubular Goods from China*, USITC Pub. 4081, Inv. Nos. 701-TA-463 and 731-TA-1159 (Preliminary) (Jun. 2009) at IV-5.

¹⁰⁸ USTR, 2010 National Trade Estimate Report (Mar. 2010) ("USTR 2010 NTE Report") at 11.

¹⁰⁹ See Yan Pei, "China to cut tax rebates on steel products by 4%," *china.org.cn* (June 13, 2010), available at <http://www.china.org.cn> (last visited Sept. 6, 2014); see also Notice of Ministry of Finance and State Tax Administration on Canceling the Export VAT Rebates for Certain Goods, Caishui [2010] No. 57 (Chinese language document), available at http://www.gov.cn/zwgk/2010-06/22/content_1633996.htm (last visited Sept. 10, 2014).

¹¹⁰ Michelle Applebaum, "June Steel Report: Import Licenses Drop, China Surges," *Seeking Alpha* (July 8, 2010).

¹¹¹ *Id.*

its use of VAT export rebates.”¹¹² Since that report was issued, China has kept the same incentives for steel exports in place by maintaining the relevant VAT rates in place.¹¹³

5. Export Finance Support

China has made export financing a “focal point” of its export promotion strategy, launching what one expert has called “the most aggressive export credit financing campaign in history.”¹¹⁴ As part of this campaign, China has provided an enormous amount of export financing support to its companies.¹¹⁵ For example, China has provided one company, telecommunications equipment manufacturer Huawei, with a \$30 billion line of credit for export financing.¹¹⁶

Furthermore, China’s official government system of export financing is supplemented by lending from commercial banks that are owned or otherwise controlled by the government.¹¹⁷ 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.¹¹⁸ 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.”¹¹⁹

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.¹²⁰ 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.¹²¹ As U.S. Export-Import Bank Chairman Fred Hochberg has stated, the “underlying premise” of international export finance rules is that “we ought to let products compete on their own

¹¹² USTR 2013 Report at 46.

¹¹³ See State Administration of Taxation VAT Rebate Rate Database (Chinese language document) (showing that the VAT rebates for 2014 are identical to the VAT rebates in place since 2010), *accessible at* <http://hd.chinatax.gov.cn/fagui/action/InitChukou.do> (last visited Sept. 10, 2014).

¹¹⁴ See Stephen J. Ezell, “Understanding the Importance of Export Credit Financing to U.S. Competitiveness,” *Information Technology and Innovation Foundation* (June 2011) at 7.

¹¹⁵ *Id.* at 7-8.

¹¹⁶ *Id.* at 8.

¹¹⁷ Anna Tucker, “Export Assistance and the China Challenge,” *USCC Staff Research Backgrounder* (Apr. 27, 2012) (“Export Assistance and the China Challenge”) at 4.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See “The EU may initiate a WTO dispute settlement over Chinese export credits,” *Trade Perspectives* (May 6, 2011).

¹²¹ *Id.*

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.”¹²²

There are also some signs that “China’s practices may be creating incentives for countries to engage in rate cutting and to offer exceptional terms that the {OECD} Arrangement seeks to limit.”¹²³ For example, “the growth in export credit in a number of OECD nations has significantly outstripped export credit growth in the United States in the past decade.”¹²⁴ The U.S. Export-Import Bank concluded in its most recent report to Congress that while the \$15 billion in medium- and long-term financing it provided was regulated by the OECD Arrangement, other OECD member countries offered more than \$60 billion alone of unregulated export financing support (on top of \$83 billion in export financing governed by the OECD Arrangement).¹²⁵ Chairman Hochberg has stated that “the increasingly aggressive approach by some foreign competitors in the export financing marketplace presents an ever-growing threat to U.S. jobs.”¹²⁶

In 2013, as part of the U.S.-China Strategic and Economic Dialogue (SE&D) 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.¹²⁷ Following the 2015 S&ED held in Washington, D.C., the U.S. Treasury Department announced that the Administration had received assurances from China that it would adhere to the international export financing norms that are consistent with global best practices.¹²⁸ The Administration must remain vigilant to ensure that China sticks to its commitment to end its mercantilist export financing practices to ensure a level playing field for export financing.

6. Conclusion

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

¹²² Sudeep Reddy, “U.S. Export Financing Challenges China,” *Wall Street Journal* (Jan. 12, 2011).

¹²³ Export Assistance and the China Challenge at 5.

¹²⁴ *Id.*

¹²⁵ Export-Import Bank Report to Congress: Aggressive, Unregulated Financing from Foreign Competitors is Costing U.S. Jobs, U.S. Export-Import Bank (June 25, 2014).

¹²⁶ *Id.*

¹²⁷ CRS China-U.S. Trade Issues at 49.

¹²⁸ U.S. Treasury Department, “2015 U.S. China Strategic and Economic Dialogue U.S. Fact Sheet – Economic Track,” (June 25, 2015).

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.”¹²⁹ This commitment is particularly significant in the steel context. A report published several years ago 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.”¹³⁰ In 2013, *World Steel Dynamics* reported that all but four of China’s large steel producers are at least partly owned by Chinese municipalities, three large steel producers are owned by the Chinese central government, and only one large steel producer is a private enterprise.¹³¹

There is every indication that the Chinese government will continue to maintain a significant amount of control over its steel industry. A study prepared for the USCC in 2011 showed that after years of limited efforts to open its economy to private enterprise, the Chinese government reversed its policy in the mid-2000s and begun reasserting its economic control, particularly in certain “strategic” and “heavyweight” industries that include the iron and steel industry.¹³²

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

- **Consolidating and Reorganizing.** The ten largest Chinese steel producers currently account for 48.6 percent of total Chinese steel production. China plans to consolidate its steel industry through mergers and acquisitions so that by the end of this year, the ten largest Chinese steel producers will account for more than 60 percent of all Chinese production.¹³³
- **Relocating.** China plans on relocating urban-based steel producers to locations outside of their current city by the end of this year.¹³⁴ Most of these steel producers will be relocated to “southeast coastal areas” and interior waterways.¹³⁵ An official who was involved in drafting

¹²⁹ Working Party Report at ¶ 46.

¹³⁰ 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.

¹³¹ *World Steel Dynamics, Truth & Consequences #70* (Aug. 6, 2013) at 18.

¹³² 2011 USCC Report at 48.

¹³³ 12th Five-Year Steel Program at Art. III(III)6.

¹³⁴ *Id.* at Art. III(III)3.

¹³⁵ *Id.* at Art. III(II) & IV(V).

the 12th Five-Year Steel Program stated that China's goal is to have 40 percent of total steel production to come from coastal areas by 2015.¹³⁶

- **Controlling Access to Iron Ore.** China plans to “optimize the global configuration of iron ore resources” to ensure that its steel producers have access to iron ore.¹³⁷ This would include not only acquiring overseas iron ore mines but also “build{ing} transport support systems in an orderly manner in countries and regions, as well as surrounding countries, that have resource advantages.”¹³⁸ China also intends to “intensify the effort in exploration of domestic iron ore resources.”¹³⁹ A report by KPMG predicts that by this year China will: (i) increase the share of imported iron ore from Chinese-owned overseas mines from 15 percent to 50 percent; and (ii) increase the proportion of iron ore that it sources from domestic sources from 38 percent to 45 percent.¹⁴⁰
- **Going Global.** China's 12th Five-Year Program states that “{o}verseas investment to build iron and steel plants is a major strategy for our country's iron and steel industry to carry out ‘going global.’” China's plan of “going global” will also include providing “support for domestic iron and steel enterprises . . . to build iron and steel plants {and} participate in merging and reorganization of foreign iron and steel enterprises.”¹⁴¹
- **Micromanaging Capacity, Production, and Research and Development.** China has provided detailed guidance to its steel producers regarding issues such as the minimum sizes of blast furnaces, converters, and electric arc furnaces that steel producers may use, the amount of water that may be used in the production of steel, and the amount of business income that must be spent on research and development.¹⁴²
- **Increasing the Market Share Held by Chinese Producers for Key Products.** Another “main goal” of the 12th Five-Year Steel Program is that “{l}arge scale production will be realized for products that are imported in large quantities.” By this year, China plans to increase the market share of its domestic producers to above 90% for high-strength and high-ductility steel for automobiles and silicon steel sheets, at least 80% for corrosion-resistant steel for ships, low temperature and pressure container plates, wheel and axle steel for high-speed

¹³⁶ Zhang Qi, “Steel industry plan forged,” *China Daily* (Jan. 27, 2011), available at <http://usa.chinadaily.com.cn> (last visited Sept. 9, 2014).

¹³⁷ 12th Five-Year Steel Program at Art. IV(VI); *Accord* KPMG China, “China's 12th Five-Year Plan: Iron and Steel” (May 25, 2011) (“KPMG China”) at 5.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ KPMG China.

¹⁴¹ 12th Five-Year Steel Program at Art. IV(IX)

¹⁴² *Id.* at Art. IV (IV)2.

railway, and high-pressure boiler pipe, and above 80% for certain high-strength threaded steel bars.¹⁴³

As USTR recognized in 2013, China's national steel policy is particularly "striking because of the extent to which it attempts to dictate industry outcomes and *involve the government in making decisions that should be made by the marketplace*."¹⁴⁴

China has defended its control over the steel industry on the basis that one of its stated goals is to curb production and reduce overcapacity.¹⁴⁵ As in prior years, the media features reports of Chinese government officials promising that this will be the year in which China finally begins to reduce its excess steelmaking capacity.¹⁴⁶ The evidence, however, does not support this defense:

- First, this government interference is a clear violation of China's commitment that it "would not influence, directly or indirectly, commercial decisions on the part of state-owned enterprises."¹⁴⁷ As AISI and other steel producers associations from around the world emphasized in comments submitted to MIIT back in 2009, these necessary changes to China's steel industry should be driven by market forces – not the Chinese government.¹⁴⁸
- Second, as the EUROFER report concluded, conflicting policies within China are exacerbating its overcapacity problems.¹⁴⁹ For example, Rong-Liang He, an economist who conducts analyses for the Government of China, stated that when producers are ordered to shut down steel mills that do not meet the central government's target for minimum capacity requirements, they simply construct larger mills that meet the minimum capacity requirements.¹⁵⁰ As Xu Lejian, chairman of Baoshan Iron and Steel Group, stated last year, "[t]he target ended up raising total capacity rather than cutting it" and that "'administrative factors' had turned steel firms into 'huge monsters' lumbered with massive unprofitable investment."¹⁵¹

¹⁴³ *Id.* at Art. IV(III)1.

¹⁴⁴ 2013 USTR Report at 84 (emphasis added).

¹⁴⁵ For example, the 12th Five-Year Program for Steel states that "we will overcome difficulties and eliminate backward processes and products." 12th Five-Year Steel Program at Art. IV(IV).

¹⁴⁶ See, e.g., "Overcapacity reduction targets raised for 2014," *China Economic Net* (May 9, 2014).

¹⁴⁷ Working Party Report at ¶ 46.

¹⁴⁸ See Letter from AISI, EUROFER, SMA, Canadian Steel producers Association, Committee on Pipe and Tube Imports, Latin American Steel Producers Association, Mexican Steel Producers Association, and Specialty Steel Industry of North America to Government of China, Ministry of Industry and Information Technology (April 15, 2009).

¹⁴⁹ EUROFER Report at 12, 49-51.

¹⁵⁰ Rong-Liang He, "Coastal Project Blocked Illustrating the Dilemma of the Chinese Steel Industry" (Apr. 14, 2011) (Chinese language document), available at http://blog.caijing.com.cn/expert_article-151474-19126.html (last visited Sept. 8, 2014).

¹⁵¹ "Steeled for Change: China's bloated steel industry to face market forces," *Reuters* (Aug. 16, 2013).

- Third, even if the Chinese central government adopted a consistent policy for eliminating overcapacity, it would still encounter significant opposition to its efforts from provincial and municipal governments, which have strong incentives to prevent factories from being forcibly shut down. As *World Steel Dynamics* has explained, given that all but four of China's larger steel companies are partly owned by municipalities, "there's great resistance to reducing output because the municipalities want employment to remain high and are seeking to maximize revenues from their approximate 25% share of the 17% valued added tax."¹⁵² Last year, in explaining why China was adding instead of cutting capacity, analysts noted that for one province, job losses could run as high as 200,000 if all state-required capacity cuts were actually to be carried out.¹⁵³
- Fourth, much of the reported "progress" in reducing overproduction and overcapacity does not hold up to scrutiny. For example, it was reported this year that while one local government made "showy displays of demolishing old steel factories," these factories had actually already stood empty for more than a year."¹⁵⁴ Some steel producers have closed only to reignite their blast furnaces later.¹⁵⁵ Many other steel producers have avoided closure by simply not reporting their production.¹⁵⁶ In 2011, Peter Fish, a steel industry analyst at MEPS Ltd., explained that while China's goal of closing a number of smaller steel mills has been achieved "on paper . . . , in reality many of these mills continue[] producing."¹⁵⁷ In many instances, Chinese steel producers lie about reducing their capacity to obtain subsidies intended to promote such reductions.¹⁵⁸ China's National Audit Office named 126 companies last year that had illegally obtained government subsidies by making fraudulent statements regarding the retirement of obsolete production facilities.¹⁵⁹
- Fifth, there is no reason to believe that China actually intends to reduce steel capacity. China has been promising to "curb steel output" since 1999.¹⁶⁰ Yet China produced more steel in each and every year between 1999 and 2014.¹⁶¹ Indeed, as USTR recognized in its 2013 report, "despite China's goal of eliminating inefficient steel capacity, and despite slowing growth in

¹⁵² *World Steel Dynamics* at 18.

¹⁵³ Chuin-Wei Yap, "China's Steelmakers Not Cutting Capacity Fast Enough," *Wall Street Journal* (Feb. 26, 2014) ("China's Steelmakers Not Cutting Capacity Fast Enough").

¹⁵⁴ *Id.*

¹⁵⁵ Lingling Wei and Bob Davis, "In China, Beijing Fights Losing Battle to Rein In Factory Production," *Wall Street Journal* (July 16, 2014).

¹⁵⁶ Robert Guy Matthews, "China Keeps Steel Industry Guessing," *Wall Street Journal* (May 24, 2011).

¹⁵⁷ *Id.*

¹⁵⁸ The Lifestraw of Publicly Traded Companies.

¹⁵⁹ *Id.*

¹⁶⁰ See Tony Allison, "Chinese market steels itself for giant listing," *Asia Times* (Nov. 9, 2000), available at <http://www.atimes.com> (last visited Sept. 8, 2014).

¹⁶¹ China Steel Hits the Great Wall at 47; World Steel Association, "Monthly Crude Steel Production 2014";

domestic steel demand, stagnant demand in export markets and significant Chinese steel company losses, steel production in China continued to grow in 2012 to 718 million MT and is expected to exceed 785 million MT in 2013, which would account for approximately 49 percent of global steel production.”¹⁶² Wang Jiguang, marketing director at Hebei Iron and Steel’s sales unit, put it succinctly: “This target of eliminating 15 million tons of outdated capacity a year, compared to our addition of new capacity of 30 million tons a year, indicates that the speed of elimination is not quite fast enough to digest the outdated capacity.”¹⁶³

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.¹⁶⁴ 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.¹⁶⁵
- 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.¹⁶⁶
- SOEs operating overseas can serve as conduits for illicit technology transfers as well as outright espionage.¹⁶⁷
- When private companies acquire foreign rivals to appropriate their technologies, they put this technology to commercial use within the acquiring company. When SOEs acquire foreign rivals to appropriate their technologies, however, they often do so to make the acquired technologies available throughout the relevant sectors of the domestic economy of

¹⁶² 2013 USTR Report at 84.

¹⁶³ China’s Steelmakers Not Cutting Capacity Fast Enough.

¹⁶⁴ 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 (Sept. 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”).

¹⁶⁵ Competitive Neutrality in the Presence of SOEs at 5; SOEs and Competitive Neutrality at 37; SOEs Operating Abroad at 7.

¹⁶⁶ Competitive Neutrality in the Presence of SOEs at 6-7; SOEs and Competitive Neutrality at 38-40.

¹⁶⁷ SOEs Operating Abroad at 5.

which they are a part. This fact leads to distortions in the mergers and acquisitions market.¹⁶⁸

The USCC echoed these same concerns with Chinese SOEs investing in the United States in its 2013 report to Congress:

Investments made by Chinese state-owned or –controlled companies can also pose economic security threats. The Chinese government provides significant financial and logistical support. This puts U.S. firms, which receive no such support, at a competitive disadvantage. When Chinese SOEs invest abroad, they do not necessarily seek profit and may instead pursue government goals such as resource acquisition or technology transfer.¹⁶⁹

China has made significant moves towards achieving its goal to “internationalize” its steel industry. Many of these moves are consistent with the concerns raised by the OECD. For example, in 2013, Tanghan Steel purchased a 10-percent share in Switzerland’s Duferco International Trading Holding.¹⁷⁰ The purchase was part of “the efforts of China to export more steel due to domestic overcapacity.”¹⁷¹ As part of the deal, the two companies signed a “structured steel prepayment agreement” worth \$1.2 billion that will allow Tanghan to “expand in the overseas market and avoid international trade issues.”¹⁷² By December of 2013, as a result of the deal with Duferco, Tanghan’s exports increased by 96 percent year-on-year to 2.79 million MT.¹⁷³ Tanghan anticipates that its exports through Duferco will reach 4 million MT in 2014.¹⁷⁴

As we have emphasized in the past, AISI has no objection to market-driven foreign investment in the United States or other countries. However, the prospect of investments in steel mills that are driven by Chinese government policies (including massive subsidization and other trade-distorting measures), rather than by commercial considerations, deserves serious scrutiny by U.S. policymakers. As Robert Atkinson has explained:

[T]here’s a fundamental difference between dislocation produced by economic restructuring by nations pursuing comparative/competitive advantage and dislocation produced by absolute loss of competitive advantage via foreign mercantilism. The former hurts some workers, companies and communities but generates economic growth.

¹⁶⁸ *Id.* at 6.

¹⁶⁹ 2013 USCC Report at 9.

¹⁷⁰ Edward B. Doong, “China’s Tangshan Steel Acquires 10% Stake in Switzerland’s Duferco International Trading Holding,” *International Venture Capital Post* (Mar. 27, 2013).

¹⁷¹ *Id.*

¹⁷² “Tangsteel expands cooperation with Duferco,” *Xinhua* (Mar. 31, 2013).

¹⁷³ “New model to tackle excessive steel capacity,” *China Daily* (Dec. 24, 2013).

¹⁷⁴ *Id.*

The latter hurts many more individuals, companies and communities and generates economy-wide loss.¹⁷⁵

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

C. Raw Materials

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

1. Restraining Exports of Key Raw Materials

Article XI of the GATT 1994 generally prohibits WTO members from maintaining export restrictions (other than duties, taxes, or other charges), although certain limited exceptions are allowed.¹⁷⁶ 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 1994.¹⁷⁷

The evidence is overwhelming that China has not complied with these commitments. In June 2009, the United States filed a request for consultations at the WTO regarding China's export restraints on numerous raw materials.¹⁷⁸ 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.¹⁷⁹ 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

¹⁷⁵ The Explosive Rise of Subsidies to Chinese Industry.

¹⁷⁶ Working Party Report at ¶¶ 155-65.

¹⁷⁷ *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.

¹⁷⁸ USTR Press Release, “United States Files WTO Case Against China Over Export Restraints on Raw Materials” (June 23, 2009); *see also* Request for Consultations by the United States, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/1 (June 23, 2009) at 1.

¹⁷⁹ *Id.*

administrative measures and costs, all of which are inconsistent with WTO rules.¹⁸⁰ 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.¹⁸¹

In its *Trade Policy Review of China* for 2010, the WTO also recognized with respect to China's export restraints that "{t}he resulting gap between domestic prices and world prices constitutes implicit assistance to domestic downstream processors of the targeted products and thus provides them a competitive advantage."¹⁸² Finally, the DOC has recognized that China's export restraints constitute countervailable subsidies. Specifically, in the CVD investigation of seamless pipe from China, the DOC found that China's export restraints on coke provide a financial benefit to Chinese steel producers that use coke in the production of seamless pipe.¹⁸³

On January 30, 2012, the WTO Appellate Body upheld a finding by a dispute settlement panel that China's restraints on the export of these raw materials were not consistent with its WTO obligations.¹⁸⁴ In December 2012, China announced that it was removing a 40-percent export tax on coke to implement the WTO's findings.¹⁸⁵ In the first half of 2013, after China removed this export tax, its coke exports increased by 59 percent in comparison to the first half of 2012, and the export price for Chinese coke decreased by 42.42% over the same period.¹⁸⁶ This positive trend has continued, with China exporting 85 percent more coke in 2014 than it did in 2013¹⁸⁷ and through July 2015, exports of coke have increased 24 percent when compared to the same period in 2014.¹⁸⁸ These facts represent a victory for the United States and show that vigorous pursuit of the enforcement of China's WTO obligations by USTR can pay dividends.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² WTO Trade Policy Review Body, *Trade Policy Review of China*, WT/TPR/S/230 (Apr. 26, 2010) at Section III, p. 44.

¹⁸³ 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 (Dep't Commerce Sept. 21, 2010) (final determ.) at 32-33.

¹⁸⁴ USTR Press Release, "U.S. Trade Representative Ron Kirk Announces U.S. Victory in Challenge to China's Raw Materials Export Restraints" (Jan. 31, 2012).

¹⁸⁵ "China's Coal Imports Poised to Jump as Coke Export Tax Scrapped," *Bloomberg* (Dec. 19, 2012).

¹⁸⁶ "China coke exports to show continued growth momentum in H2," *Steel Guru* (Aug. 27, 2013).

¹⁸⁷ Platts, "China's 2014 Metallurgical Coke Exports Surge 85% to 8.51 Million MT," (Jan. 13, 2015)

¹⁸⁸ Platts, "China's July Metallurgical Coke Export Rise 46% to 700,000," (Aug. 11, 2015)

Consider also China's export restraints on certain rare earths. In recent years, China has imposed quotas to limit exports of rare earths to about 30,000 MT per year and has raised export taxes on rare earths to as much as 25 percent.¹⁸⁹ Rare earth prices have soared outside of China as a result. Many corporate executives have reported that China is using its near-monopoly on rare earths not only to subsidize existing Chinese manufacturers, but also to encourage other manufacturers to relocate or expand capacity in China.¹⁹⁰ 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.¹⁹¹ 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.¹⁹²

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.¹⁹³ In bringing this request, Ambassador Kirk 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."¹⁹⁴ 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.¹⁹⁵

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.¹⁹⁶ China appealed certain aspects of the panel's decision, but on August 7, 2014, the WTO Appellate Body upheld the panel's decision.¹⁹⁷ Earlier this year, China removed the quotas on January 1, 2015, and eliminated the export duties in May, which in turn has caused significant increases in demand and dramatic reduction in prices.¹⁹⁸ However, notwithstanding this victory at the

¹⁸⁹ Keith Bradsher, "Chasing Rare Earths, Foreign Companies Expand in China," *New York Times* (Aug. 24, 2011).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ USTR Press Release, "United States Seeks to Eliminate China's Unfair Export Restraints on Rare Earths," (June 27, 2012).

¹⁹⁴ *Id.*

¹⁹⁵ "China's Commerce Department Issues Second Rare Earth Quota of 15,5000 tons in 2013," *Reuters* (July 1, 2013) (Chinese language document), available at <http://cn.reuters.com/article/chinaNews/idCNCNE96009S20130701> (last visited Sept. 9, 2014).

¹⁹⁶ 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).

¹⁹⁷ 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).

¹⁹⁸ "Turnover of China's Rare Earth Exchange Surges in July," *Want China Times* (Aug. 11, 2015)

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.”¹⁹⁹

It should also be noted that China maintains a 40 percent export tax on steel scrap that creates additional distortion in the marketplace.²⁰⁰ In other words, China enjoys the benefit of open trade in steel scrap, and in fact is the largest importer of steel scrap from the United States, yet imposes a 40 percent tax on its own exports. While China reserved the right to impose such a tax in its WTO accession agreements, there is no reasonable justification for such disparate treatment of scrap imports and exports – and China’s actions on this point show its unwillingness to adopt policies based on the principles of free and fair trade.

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

2. Helping Chinese Mills in the Acquisition of Raw Materials

In addition to imposing export restraints, China has an established policy of assisting its steel producers in their efforts to obtain raw materials across the world. Indeed, a study conducted by the American Scrap Coalition (“ASC”) in 2008 documents such assistance being provided in the form of “direct subsidies to Chinese enterprises investing overseas, funding of SOEs to obtain raw materials, backing from China’s sovereign wealth fund, support from state-owned policy banks, and intervening in negotiations relating to long-term contracts for iron ore and other raw materials.”²⁰¹

China continues to maintain such policies. As discussed above, China plans to increase the share of imported iron ore from Chinese-owned overseas mines from 15 percent to 50 percent. As part of China’s plan to expand its overseas mines, the 12th Five-Year Steel Program states that by this year “[m]ore than 100 million tons of new overseas production capacity of iron ore will be added.”²⁰² Consistent with this goal, China has continued to provide assistance in the acquisition of iron ore deposits overseas.

¹⁹⁹ “China won’t bow in rare-earth battle,” *Global Times* (June 18, 2014).

²⁰⁰ 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 Sept. 9, 2014) .

²⁰¹ “Raw Deal: How Governmental Trade Barriers and Subsidies are Distorting Global Trade in Raw Material,” *American Scrap Coalition* (Nov. 2008) at 15-16.

²⁰² 12th Five-Year Program for Steel at Art. III(III)4.

In 2014, for example, Chinese activity in emerging iron ore deposits overseas included :

- a \$20 billion mining deal in the West African nation of Guinea by state-owned Aluminum Corp. of China to tap into one of the largest reserves of iron ore on the planet;²⁰³
- the \$1 billion acquisition by Baosteel Resources of Australian Aquila Resources for Baosteel to develop Aquila Resource's \$7 billion West Pilbara Iron Ore mine;²⁰⁴
- the announcement by China Kingho Energy Group of plans to invest over \$6 billion in iron ore mining operations in Sierra Leone;²⁰⁵
- an agreement between the Chinese Metallurgical Corporation and the Pakistani state of Punjab to explore iron ore reserves and possibly establish a steel mill;²⁰⁶ and
- the first shipment of iron ore from Liberia by China-Union Investment since it took over the Bong Mines in 2008 with a \$2.6 billion investment.²⁰⁷

As Graeme Hosie, chief executive of London Mining, has explained, Chinese investment in such emerging deposits is only possible because of China's policy of assisting its steel producers in the acquisition of raw materials: "You have Chinese banks that can fund these projects at a low cost of capital, because they are helping state-owned enterprises strategically ensure supply."²⁰⁸ It should also be noted that, unlike their Chinese counterparts, American companies must comply with laws that require them to disclose their payments to governments as part of efforts to improve transparency and accountability for revenues derived from natural resources.²⁰⁹ Indeed, many multi-national companies complain that their competitive position in bidding for natural resource contracts is undermined by their having to adhere to laws that do not apply to state-owned companies in China.²¹⁰

The Chinese government is also helping Chinese steel firms develop iron ore mines in China. One of the goals of the 12th Five-Year Steel Program is to "intensify the effort in exploration of domestic iron ore resources."²¹¹ An analysis of China's domestic iron ore industry by Bank of America in November

²⁰³ Matthew Bell, "How is China expanding its economic empire in Africa?" *Public Radio International* (May 27, 2014).

²⁰⁴ "Aurizon, Baosteel to buy Aquila after raising stake," *Reuters* (July 8, 2014).

²⁰⁵ "China Kingho has partners for \$6 bln-plus ore investment in Sierra Leone," *Reuters* (Apr. 11, 2014).

²⁰⁶ "Chinese company to explore iron reserves in Chiniot," *Chinamining.org* (Apr. 4, 2014).

²⁰⁷ "China-Union makes its first shipment of iron ore from Liberia," *Reuters* (Feb. 13, 2014).

²⁰⁸ William MacNamara, "Chinese money to open new iron ore projects," *Financial Times* (Apr. 13, 2010).

²⁰⁹ Stella Dawson, "China urged to reveal payments on natural resources," *Reuters* (Aug. 4, 2014).

²¹⁰ *Id.*

²¹¹ 12th Five Year Program for Steel at Art. IV(VI).

2012 found that Chinese iron ore producers received a number of “hidden subsidies.”²¹² Furthermore, *World Steel Dynamics* has reported that China invested \$24 billion in domestic iron ore projects in 2012 and \$27 billion in such projects in 2013.²¹³ In 2014, it was reported that China is drafting a plan to restructure China’s iron ore sector between 2016 and 2025 so that “it can play a bigger role in negotiating iron ore prices with more established rivals in the world.”²¹⁴ As part of these plans, China intends to establish a large mining conglomerate focusing on iron ore extraction and smelting operations led by the state-owned Ansteel Group which will have an annual iron ore production capacity of 200 million MT.²¹⁵

China’s unfair assistance in the acquisition of raw materials distorts markets worldwide. The Administration should aggressively press China to cease this practice. It should also find that where China provides assistance to certain enterprises or industries 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.²¹⁶ In February 2014, the Economic Policy Institute performed an analysis of the impact of currency manipulation of the yuan and other currencies that remain undervalued to compete with the yuan.²¹⁷ This analysis showed that the elimination of currency manipulation would reduce the U.S. trade deficit between \$200 billion and \$500 billion in three years.²¹⁸ This would increase annual U.S. GDP by between \$288 billion and \$720 billion (between 2.0 percent and 4.9 percent).²¹⁹ The reduction of the U.S. trade deficit and expansion of U.S. GDP would create 2.3 million to 5.8 million

²¹² Bank of America, “China’s iron ore industry, and why it matters globally,” (Nov. 23, 2012) at 1.

²¹³ *World Steel Dynamics* at 24.

²¹⁴ “China seeks more influence in setting iron ore prices,” *China Daily* (Mar. 22, 2014).

²¹⁵ *Id.*

²¹⁶ 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.afcio.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.

²¹⁷ See Robert E. Scott, “Stop Currency Manipulation and Create Millions of Jobs,” *Economic Policy Institute* (February 26, 2014) (“Stop Currency Manipulation”).

²¹⁸ *Id.*

²¹⁹ *Id.*

jobs, reducing the U.S. jobs deficit by between 28.8 percent and 72.5 percent.²²⁰ Other recent analyses have likewise recognized the harmful impact of China's currency manipulation.²²¹

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 2005, in response to international pressure, China announced that it would allow more flexibility in its exchange rate. At the time, estimates placed the value of the yuan at up to 40 percent below what its value would have been absent government intervention.²²² After China's announcement, the yuan appreciated from 8.28 yuan per dollar to 6.81 yuan per dollar in July 2008,²²³ an adjustment of only 17.8 percent.²²⁴ Starting in July 2008, China all but halted the appreciation of the yuan "due to the Chinese government's fear that a strong {yuan} will damage China's exports."²²⁵ In other words, China's government allowed the yuan to rise in value *only so long as this rise did not significantly limit Chinese exports*.

On June 19, 2010, in response to mounting international pressure for China to stop manipulating its currency, China announced that it would allow the yuan to fluctuate against the currency of other countries.²²⁶ By August of 2011, however, it was clear that China was only allowing minimal movements against the dollar.²²⁷ In fact, from January 1, 2012 to December 17, 2013, the yuan appreciated by only 3.6 percent against the U.S. dollar, leading analysts to conclude that the Chinese government is continuing to heavily intervene in currency markets to hold down the value of the yuan in the face of weak global demand for Chinese exports.²²⁸ Consistent with this conclusion, as part of an announcement of measures intended to boost China's slowing economy last year, Chinese Premier

²²⁰ *Id.*

²²¹ See, e.g., C. Fred Bergsten, "Currency Wars, the Economy of the United States, and Reform of the International Monetary System," *Peterson Institute for International Economics* (May 16, 2013) ("Currency Wars") at 5 (finding that currency manipulation is responsible for up to \$500 billion of the U.S. trade deficit and the loss of up to 5 million U.S. jobs); Lawrence Edwards and Robert Z. Lawrence, *Rising Tide: Is Growth in Emerging Economies Good for the United States?* Peterson Institute for International Economics (2013) at 83 (concluding that currency manipulation was responsible for the loss of 2.7 million jobs in 2010).

²²² Jonathan E. Sanford, Congressional Research Service Report for Congress, "China's Currency: Brief Overview of U.S. Options" (Nov. 29, 2005), available at <http://fpc.state.gov/documents/organization/57797.pdf> (last visited Sept. 10, 2014) at CRS-2.

²²³ See Federal Reserve Statistical Release: Foreign Exchange Rates (Daily), available at <http://www.federalreserve.gov> (last visited Sept. 16, 2014).

²²⁴ $8.28 - 6.81 = 1.47$; $1.47 / 8.28 = 0.178 = 17.8$ percent.

²²⁵ USCC, 2008 Report to Congress (Nov. 2008) at 42.

²²⁶ See Keith Bradsher, "China's Trade Surplus Climbs to \$28.7 billion," *New York Times* (Aug. 9, 2010).

²²⁷ *Id.*

²²⁸ Wayne M. Morrison, Congressional Research Service Report for Congress, "China-U.S. Trade Issues" (July 10, 2014), available at <http://fas.org/sgp/crs/row/RL33536.pdf> (last visited Sept. 10, 2014) at 46.

Li Keqiang pledged to keep the yuan's exchange rate "basically stable at a reasonable and balanced level."²²⁹

There is every indication that China has no intention of ending the manipulation of its currency. In March 2014, China's central bank weakened the daily reference rate for the yuan by the largest percentage in more than 18 months, continuing a push to drive the yuan lower after news that China had recorded a rare trade deficit the prior month.²³⁰ On August 11, 2015, China's central bank devalued the yuan by 1.9 percent, while simultaneously announcing a change in the calculation of the yuan's daily trading band. This caused the value of the currency to fall nearly 3 percent against the dollar, the largest two-day drop in 20 years.²³¹ Under the new rules, the mid-point for the value of the yuan would be set utilizing the previous day's closing value. While Beijing claims the devaluation is a result of an effort to move towards a more market-determined exchange rate, many observers claim it was likely meant to boost China's export economy which has declined in recent weeks.²³²

This state of affairs has led C. Fred Bergsten of the Economic Policy Institute to identify currency manipulation as the greatest challenge to the current international financial system:

The single greatest flaw in the entire international financial architecture is its failure to effectively sanction surplus countries, especially to counter and deter competitive currency policies. Indeed, this systemic failure almost assures that the problem will continue because the manipulators get away with it and thus are presented a policy option, especially attractive in tough economic times, through which they can subsidize exports, import substitutes and jobs without budget costs domestically or effective restraint internationally.²³³

Despite these facts, the U.S. Treasury Department has refused to cite China as a currency manipulator in semi-annual reports to Congress on the currency practices of key trading partners required by law. In its most recent report from April 2015, Treasury refused to cite China as a currency manipulator even though the report recognized both that China's currency is "undervalued" and that its appreciation is essential for global rebalancing to take place:

China continues to work its way out of a significant undervaluation that led to large internal and external imbalances, and the Report concludes that fundamental factors for RMB appreciation remain intact, highlighting the need for further strengthening over the medium-term. In recent months, China has benefited from a sizeable terms of trade gain from lower oil prices, with its monthly goods surplus repeatedly reaching new nominal highs. The current account surplus exceeded \$200 billion in 2014 (2.1 percent of GDP),

²²⁹ Zhou Xin and Jun Luo, "China's Li Vows Support Measures From Rail to Tax Breaks," *Bloomberg* (July 24, 2013).

²³⁰ Anjani Trivedi, "China Weakens Yuan by Largest Degree Since 2012," *The Wall Street Journal* (Mar. 10, 2014).

²³¹ CNN Money, "Yuan Tumbles for Second Day as China Devalues," (Aug. 12, 2015)

²³² *Id.*

²³³ *Currency Wars* at 11.

up \$60 billion from the year before, and is expected to remain on a rising trajectory in the year ahead. Additionally, China continues to see relatively higher productivity growth than its major trading partners. Finally, China's currency needs to appreciate to bring about the necessary internal rebalancing toward household consumption that is a key goal of the government's reform plans and necessary for sustained, balanced global growth. While China has made real progress, with its real effective exchange rate appreciating meaningfully over the past six months, these factors indicate an RMB exchange rate that remains significantly undervalued.²³⁴

Given these facts and their significance to the U.S. and global economy, the U.S. government should take far more aggressive and creative action on this issue. A number of proposals have been put forward in this regard:

- The Administration could treat currency manipulation of the type practiced by China as actionable under U.S. trade remedy laws.²³⁵
- The Administration could implement “countervailing currency intervention” by buying the currencies of currency manipulators in sufficient amounts to offset the impact on the exchange rate of the U.S. dollar.²³⁶
- The Administration could declare that it will no longer sell U.S. Treasury bills and other government assets to China and other countries that refuse to allow the United States to purchase their government assets.²³⁷
- The U.S. government could tax the income on Chinese holdings of U.S. Treasury bonds to discourage further manipulation.²³⁸
- Article 15(4) of the General Agreement on Tariffs and Trade 1947 states that WTO Members “shall not, by exchange action, frustrate the intent of the provisions of this Agreement.” The Administration could interpret this provision to allow for the erection of across-the-board barriers against imports from currency manipulators such as China.²³⁹

²³⁴ U.S. Department of Treasury, Semi-Annual Report to Congress on International Economic and Exchange Rate Policies (April 9, 2015) at 3.

²³⁵ See, e.g., Currency Reform for Fair Trade Act, H.R. 1276, 113 Cong. (2013); The Currency Exchange Rate Oversight Reform Act of 2013, S. 1114, 113 Cong. (2013).

²³⁶ Currency Wars at 24.

²³⁷ See Stop Currency Manipulation.

²³⁸ Joseph Gagnon and Gary Hufbauer, “Taxing China’s Assets: How to Increase U.S. Employment Without Launching a Trade War,” *Foreign Affairs* (Apr. 25, 2011).

²³⁹ Aaditya Mattoo and Arvind Subramanian, “Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization” (2009).

- The U.S. government could impose a tax on the conversion of dollars into yuan – either for the purpose of importing Chinese goods or investing in China – equal to the degree of China’s currency manipulation.²⁴⁰

As Mr. Bergsten has stated, even if taking such action did not decisively end currency manipulation on its own, it may “galvanize the needed global systemic reforms in the only manner that would seem to have much chance for doing so.”²⁴¹

E. Intellectual Property Rights

USTR has properly recognized that when China accepted the WTO Trade Related Aspects of Intellectual Property Rights (“TRIPS”) Agreement, it “took on obligations to adhere to generally accepted international norms to protect and enforce the intellectual property rights held by U.S. and other foreign companies and individuals.”²⁴² Despite this agreement, however, USTR reports that “[e]ffective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China.”²⁴³

IPR represents another area in which dialogue between the United States and China has failed to bring China into compliance with its WTO obligations. The Administration recognized this fact in August 2007 when it requested a WTO dispute settlement panel to address deficiencies in China’s legal regime for protecting and enforcing copyrights and trademarks.²⁴⁴ In June 2009, the WTO adopted a panel report ruling that Chinese law does not adequately provide for the protection and enforcement of IPR on a wide range of products.²⁴⁵ Although the WTO’s findings represent a positive step forward, as U.S. Trade Representative Ron Kirk recognized at the time, “[a] great deal of work remains for China to improve its IPR protection and enforcement regime.”²⁴⁶

Indeed, for many years now there have been concerns that China’s compliance with respect to its IPR obligations will worsen as it pursues its so-called “indigenous” innovation campaign. The significance of this campaign to the U.S.-China trade relationship could be profound. In 2010, the U.S. Chamber of Commerce reported that the Central Committee of the Communist Party of China has “elevated indigenous innovation to a strategic level equal to Deng Xiaoping’s ‘reform and opening’ policy” of

²⁴⁰ Peter Morici, “Avoiding a Double Dip, Or Worse” *Seeking Alpha* (June 6, 2011), available at <http://seekingalpha.com> (last visited Sept. 9, 2014).

²⁴¹ Currency Wars at 33.

²⁴² 2013 USTR Report at 98.

²⁴³ *Id.* at 109.

²⁴⁴ USTR Press Release, “United States Requests WTO Panel in Case Challenging Deficiencies in China’s Intellectual Property Rights Laws” (Aug. 13, 2007).

²⁴⁵ USTR Press Release, “World Trade Organization Adopts Panel Report in China – Intellectual Property Rights Dispute” (Mar. 20, 2009).

²⁴⁶ *Id.*

1978.²⁴⁷ The U.S. Chamber of Commerce's report went on to document how the campaign was "an elaborate and extensive ecosystem of industrial policies" of "breathless ambition" that has been crafted "to turn the Chinese economy into a technology powerhouse by 2020 and a global leader by 2050."²⁴⁸

In 2011, China promised to sever the link between its "indigenous innovation" policy and government procurement.²⁴⁹ As the USCC has found, however, "China has a history of making promises and delivering little, particularly when doing as little as possible benefits the Chinese economy, as has been the case with China's promises to bring its intellectual property protections up to international standards and to cease requiring technology transfers from foreign firms."²⁵⁰ Indeed, in 2012, the European Chamber of Commerce in China published a study finding that "the essence of the {indigenous innovation} system . . . appears very much still in force."²⁵¹ Given the breadth of China's indigenous innovation policy and its enormous potential to harm U.S. companies, USTR must take a very aggressive approach to ensure that the policy does not seriously distort world markets.

More recently, as the U.S. Chamber of Commerce recognized in a report published in September 2014, there has been growing evidence that China has begun using its anti-trust laws to promote its industrial policies and curtail IPR in China.²⁵² In 2013, there were suspicions that China was targeting multinational companies as a means of protecting its domestic high-tech industry after actions that included pressuring 30 foreign firms to confess anti-trust violations and advising them not to hire outside legal counsel to defend themselves in anti-trust investigations.²⁵³ These suspicions were further confirmed in August 2014, when China raided Microsoft's facilities in four Chinese cities, claiming it was investigating whether Microsoft violated China's anti-monopoly laws.²⁵⁴ Many analysts are now concluding:

These trumped up charges are part of a broader effort by the Chinese government to hobble U.S. technology companies in China, promote China's domestic IT industry, and ultimately replace the U.S. as the world's IT leader. This high-tech harassment will in all

²⁴⁷ See James McGregor, "China's Drive for 'Indigenous Innovation': A Web of Industrial Policies", *U. S. Chamber of Commerce* (July 27, 2010) at 13.

²⁴⁸ See *id* at 4, 14, 22.

²⁴⁹ USTR, 2011 Report to Congress on China's WTO Compliance (Dec. 2011) at 3.

²⁵⁰ 2011 USCC Report at 5.

²⁵¹ Dan Prud'homme, "Dulling the Cutting Edge: How Patent-Related Policies and Practices Hamper Innovation in China," *European Chamber of Commerce in China* (Aug. 2012) at 8-9.

²⁵² U.S. Chamber of Commerce, *Competing Interests in China's Competition Law Enforcement: China's Anti-Monopoly Law Application and the Role of Industrial Policy* (Sept. 9, 2014) ("Competing Interests in China's Competition Law Enforcement") at 1-2.

²⁵³ 2013 USCC Report at 74.

²⁵⁴ Robert Atkinson, "High-tech harassment," *The Hill* (Aug. 8, 2014).

likelihood continue until China finally gets what it wants: the complete replacement in China of foreign technology companies with Chinese ones.²⁵⁵

In addition, the U.S. Chamber of Commerce's 2014 report on China's abuse of its anti-trust laws describes how China is implementing its anti-trust laws to allow mergers only if foreign companies agree to cap their intellectual property license fees and license their technology on terms that are "exceptionally favorable" to Chinese companies²⁵⁶

In sum, China is not just failing to adhere to generally accepted international norms to protect and enforce IPR held by foreign companies. It is affirmatively using its indigenous innovation policy to acquire the intellectual property of foreign firms and implementing its anti-trust laws in a way that curtails the IPR of foreign firms and protects its domestic firms from foreign competition.

F. Effective Enforcement of U.S. Trade Laws

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

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

Under the terms of its WTO accession, China agreed that other Members could treat it as an NME for purposes of the trade remedy laws.²⁵⁷ Nevertheless, China has urged the United States in several meetings of the U.S.-China Strategic and Economic Dialogue to treat China as a "market economy" for purposes of U.S. AD laws.²⁵⁸ As explained below, such treatment would be improper and contrary to U.S. law.

Congress has provided that in determining whether a country is an NME, the DOC must take six factors into account: (1) whether the country's currency is convertible; (2) whether wage rates are determined by free bargaining between labor and management; (3) whether foreign investment is permitted in the foreign country; (4) whether the government owns or controls the means of

²⁵⁵ *Id.*

²⁵⁶ Competing Interests in China's Competition Law Enforcement at 2.

²⁵⁷ 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).

²⁵⁸ 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 Sept. 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 Sept. 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 Sept. 9, 2014).

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.²⁵⁹ In August 2006, the DOC conducted a detailed analysis of this issue and found that all six of these factors showed that China should continue to be treated as an NME.²⁶⁰ Nothing has changed since that time that would warrant a different conclusion. In fact, as USTR has recognized, since 2006 there has been a “trend toward a *more restrictive* trade regime” in China.²⁶¹

Another issue of critical importance is China’s status as an NME after December 11, 2016. During China’s accession to the WTO, there was concern that “in the case of imports of Chinese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations.”²⁶² 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.”²⁶³ While a portion of this Protocol expires on December 11, 2016,²⁶⁴ there is nothing in the Protocol or elsewhere to suggest that China should or must be treated as a market economy at that time – particularly where its economic development would not justify such treatment.

Legal scholars that have 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.”²⁶⁵ 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 does *not* expire after 2016 states that Chinese prices or costs are to be used in AD proceedings only “{i}f the producers under investigation

²⁵⁹ See 19 U.S.C. § 1677(18) (B) (2006).

²⁶⁰ Department of Commerce, Memorandum from Shauna Lee-Alaia, Lawrence Norton, and Anthony Hill to David M. Spooner, Assistant Secretary for Import Administration, Regarding Antidumping Duty Investigation of Certain Lined Paper Products from the People’s Republic of China (“China”) – China’s Status as a Non-Market Economy (“NME”) (Aug. 30, 2006).

²⁶¹ USTR, 2008 Report to Congress on China’s WTO Compliance (Dec. 2008) at 4 (emphasis added).

²⁶² Ministerial Conference Report, *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (Nov. 10, 2001) at ¶ 150.

²⁶³ 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).

²⁶⁴ China’s Protocol of Accession at ¶ 15(d).

²⁶⁵ 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 Sept 9, 2014).

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.”²⁶⁶

- 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.²⁶⁷
- 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.”²⁶⁸ 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.”²⁶⁹

USTR should defend vigorously the United States’ authority to continue to treat China as an NME. As part of such an effort, USTR should coordinate with the relevant authorities from other WTO members that have an interest in this issue – as well as domestic producers and any other stakeholders with an interest in this issue – to ensure that China continues to be treated as an NME after December 11, 2016.

2. Chinese Circumvention and Evasion of AD and CVD Orders

AISI and its members remain highly concerned about widespread evidence of Chinese circumvention and evasion of AD and CVD orders. For example, Chinese companies provide services to evade AD and CVD duties on steel and other products exported to the United States.²⁷⁰ One such company, Globe Success International Transportation (“Globe Success”), openly advertises that it assists in evading the payment of such duties by sending containers of subject merchandise to third countries and then re-exporting the containers to the United States using documents falsely stating that the merchandise has a country of origin of the third country.²⁷¹ Globe Success reports that it has been in business since 1999 and has annual revenues of up to \$5 million.²⁷² Additional evidence that has

²⁶⁶ China’s Protocol of Accession at ¶ 15(a)(i).

²⁶⁷ See WTO, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 at Article 2.2.

²⁶⁸ *Id.* at Art. 2.7.

²⁶⁹ WTO, General Agreement on Tariffs and Trade (GATT 1947), at Second Interpretative Note to Article VI, ¶ 1 (emphasis added).

²⁷⁰ 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).

²⁷¹ Globe Success International Transportation (Shenzhen) LTD: Company Profile (“Globe Success Profile”), available at http://gsitanna.en.ec21.com/company_info.jsp (last visited Sept. 7, 2014) .

²⁷² *Id.*

become available over the past several years shows that circumvention and evasion of AD and CVD orders by Chinese companies continues to be a growing problem:

- In January 2014, the DOC determined that innersprings units completed and assembled in Malaysia using Chinese components and exported from Malaysia to the United States were circumventing the AD order on innerspring units from China.²⁷³
- In February 2014, the DOC determined that OCTG that was manufactured in China but then finished in and exported from other countries was evading the AD and CVD orders on OCTG from China.²⁷⁴

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").²⁷⁵ This evidence of circumvention and evasion includes illegal transshipment of goods through third countries, falsified country of origin markings, undervalued invoices that result in the underpayment of AD/CVD duties, and the misclassification of goods.²⁷⁶ Unfortunately, this problem continues. AISI urges the Administration to take an aggressive approach and use all the tools at its disposal to prevent Chinese companies from circumventing and evading U.S. trade laws. In addition, the Administration should work with Congress to develop additional tools, where necessary, to address this problem.

3. China's Application of Its Own AD and CVD Laws

In contrast to the United States – where the application of U.S. trade laws is fully transparent, consistent with our WTO obligations, and administered in a manner that provides ample due process for all parties – foreign producers targeted in Chinese trade remedy proceedings are denied any semblance of due process, denied access to key information needed to defend their interests, and subjected to WTO-inconsistent methodologies.

For example, USTR has reported that China has engaged in “manipulating trade remedy investigations to unfairly restrict exports of American steel” and, in so doing, violated the WTO requirements that govern the legitimate use of AD and CVD laws.²⁷⁷ In September 2010, following the Chinese

²⁷³ *Uncovered Innerspring Units From the People's Republic of China*, 79 Fed. Reg. 3345 (Dep't Commerce Jan. 21, 2014) (final determ.)

²⁷⁴ *Notice of Scope Rulings*, 79 Fed. Reg. 30681 (Dep't Commerce March. 29, 2014). In July 2015 in the case *Bell Supply v. United States*, the Court of International Trade (CIT) remanded the decision back to the Commerce Department for failure to interpret the scope language on the original orders to include green tubes. Court of International Trade, “Slip Opinion 15-73” (July 9, 2015).

²⁷⁵ 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).

²⁷⁶ Staff Report Regarding Duty Evasion at 5.

²⁷⁷ See USTR Press Release, “United States Files Two WTO Cases Against China,” (Sept. 15, 2010).

government's AD and CVD investigations of U.S. producers of grain oriented electrical steel ("GOES"), the U.S. government filed a WTO case against China. As identified by USTR, China's Ministry of Commerce ("MOFCOM") initiated the investigations without sufficient evidence, failed to objectively examine the evidence, failed to disclose "essential facts" underlying its conclusions, failed to provide an adequate explanation of its calculations and legal conclusions, improperly used investigative procedures, failed to provide confidential summaries of Chinese submissions, and included U.S. federal and state programs in its investigation that were not identified in the notice of initiation of the investigation.²⁷⁸

In December 2012, the WTO adopted dispute settlement panel and Appellate Body reports that agreed with the United States, finding that China had conducted an investigation and applied duties in a manner inconsistent with numerous obligations under the SCM Agreement and the AD Agreement.²⁷⁹ On July 31, 2015, the WTO ruled that China failed to comply with the original ruling.²⁸⁰ Even the Chinese government knew it would ultimately lose at the WTO, since it revoked the AD and CVD duties on imports for GOES from the U.S. in April 2015, three months before the WTO decision.²⁸¹

In December 2011, USTR was forced to bring another WTO case against China after the Chinese government imposed AD and CVD duties on imports of chicken "broiler products" from the United States.²⁸² According to USTR, in imposing these duties, Chinese authorities failed to abide by applicable procedures and legal standards, including by finding injury to China's domestic industry without objectively examining the evidence, by improperly calculating dumping margins and subsidy rates, and by failing to adhere to various transparency and due process requirements.²⁸³ The imposition of these duties was followed by an 80-percent drop in American exports of broiler products to China.²⁸⁴ In 2013, a WTO dispute panel issued a report finding that China's imposition of AD and CVD duties on broiler products from the United States was unjustified under WTO rules.²⁸⁵

Finally, USTR has filed a WTO challenge against China's imposition of AD and CVD duties on more than \$3 billion in U.S. exports of automobiles and automobile parts.²⁸⁶ The basis for its challenge is that China initiated the AD and CVD investigations in question without sufficient evidence, failed to

²⁷⁸ *Id.*

²⁷⁹ USTR Press Release, "World Trade Organization Adopts Panel and Appellate Body Reports in Steel Dispute with China," (Nov. 16, 2012).

²⁸⁰ World Trade Organization, "Article 21.5 Panel Report on DS414," (July 31, 2015)

²⁸¹ U.S. Trade Representative, "U.S. Wins Trade Enforcement Challenge to China's Duties on Steel," (July 31, 2015)

²⁸² USTR Press Release, "To Protect American Jobs, United States Announces Next Step in Dispute Against China," (Dec. 8, 2011).

²⁸³ *Id.*

²⁸⁴ USTR Press Release, "United States Wins Trade Enforcement Case for American Farmers, Proves Export-Blocking Chinese Duties Unjustified Under WTO Rules" (Aug. 3, 2013).

²⁸⁵ *Id.*

²⁸⁶ USTR Press Release, "Obama Administration Challenges China's Unfair Imposition of Duties on American-Made Automobiles," (July 5, 2012).

objectively examine the evidence, and made unsupported findings of injury to China's domestic industry.²⁸⁷ In addition, China failed to disclose "essential facts" underlying its conclusions, failed to provide an adequate explanation of its conclusions, improperly used investigative procedures, and failed to require non-confidential summaries of Chinese company submissions.²⁸⁸ In 2014, a WTO panel found in favor of the United States on most claims.²⁸⁹

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

4. China's Cyberespionage Against U.S. Producers

In recent years, there have been numerous reports of the Chinese government hacking into a wide range of public and private computer systems within the United States.²⁹⁰ In May 2014, the U.S. Department of Justice charged five officers of the Chinese People's Liberation Army for using various hacking techniques to steal key technology, attorney-client communications in antidumping cases, and other sensitive information from five U.S. manufacturers, including United States Steel Corporation and Allegheny Technologies Incorporated.²⁹¹ These actions are extremely troubling for many reasons, including the gross violation that they represent of the right of American steel producers to combat unfairly traded imports from China. AISI commends the Administration for bringing criminal charges against those responsible for such hacking activity. AISI also urges the Administration, however, to take additional steps to address these actions. For example, where there is a reasonable basis to believe that a domestic producer has been hacked as part of efforts to gain an advantage in an unfair trade proceeding, the DOC should investigate whether any such hacking has taken place and, where warranted, apply adverse facts available to ensure that parties do not benefit from hacking and to deter such behavior in the future.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ See WTO, *The Disputes: Current Status of China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States*, available at <http://www.wto.org> (last visited Sept. 9, 2014)

²⁹⁰ See, e.g., Deborah Charles and Paul Eckert, "China military hackers persist despite being outed by U.S.: report," *Reuters* (Nov. 6, 2013).

²⁹¹ See Paul J. Gough, "Chinese military officers charged with hacking western Pennsylvania companies," *Pittsburgh Business Times* (May 19, 2014); Indictment, *United States of America v. Wang Dong et. al*, Crim. No. 14-118 (W.D. Pa. May 19, 2014).

G. International Tax Rules – Border Adjustability

As discussed above and as USTR has recognized, China manipulates its VAT system to help Chinese steel producers and other manufacturers.²⁹² At a larger level, there is an even more fundamental issue relating to VAT and border adjustability – an issue that significantly affects trade with China and other major trading partners. In particular, there is a fundamental disparity caused by international rules that unfairly reward countries like China (which rely on VAT systems) and penalize the United States (which relies principally on an income tax system). While this is not technically a compliance matter, it plays a significant role in our trade imbalance with China and other major trading partners.

Existing international rules allow countries relying on VAT systems to rebate indirect taxes on exports and apply them on imports while the United States is denied similar treatment for its “direct” (*i.e.*, income) tax system. As a result, U.S. exports to China and other major markets are essentially double-taxed, while Chinese and other foreign producers can sell here largely tax-free. There is no legitimate economic justification for such a practice.²⁹³

In 2002, when Congress approved trade promotion authority in the context of the Doha Round of WTO negotiations, it specifically provided that “{t}he principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.”²⁹⁴ USTR should pursue this issue and do so aggressively.

III. Conclusion

This is AISI’s twelfth submission detailing China’s non-compliance with its obligations under the WTO. When AISI made its first submission to USTR in 2004, China produced 280 million MT of crude steel and held a global market share of 26.2 percent.²⁹⁵ Today, China is on pace to produce 816 million MT of crude steel and has captured almost half of the global steel market.²⁹⁶

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

²⁹² See USTR, National Trade Estimate Report on Foreign Trade Barriers (2010) at 59.

²⁹³ Ernest Christian and Gary Hufbauer, “End this damaging tax and trade charade,” *Financial Times* (March 9, 2004), available at <http://www.iie.com/publications/opeds/print.cfm?ResearchId=197&doc=pub> (last visited Sept. 10, 2014). According to this 2004 article, this distortion of free trade represents a net disadvantage for U.S. exporters of more than \$100 billion per year. *Id.*

²⁹⁴ Trade Act of 2002, P.L. 107-210, 116 Stat. 933, 1001 (Aug. 6, 2002) at § 2102(b) (15).

²⁹⁵ World Steel Association, “Steel Statistical Yearbook 2008” (2009) at 5.

²⁹⁶ World Steel Association, “World Crude Steel Output Increases by 1.2% in 2014,” (January 22, 2015)

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in bringing China into compliance. Unfortunately, China sees its own economic success over the past decade coupled with the global economic crisis as an affirmation that “China holds the philosophical high ground”²⁹⁷ and that “Western policies of free trade and open markets do not work as well as previously thought.”²⁹⁸ The U.S. government must therefore fundamentally alter its approach to encourage China to end its trade-distorting policies and practices and comply with all of its WTO obligations.

Sincerely,

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

Kevin M. Dempsey
Senior Vice President, Public Policy
and General Counsel

²⁹⁷ USCC, 2009 Report to Congress (Nov. 2009) at 78.

²⁹⁸ Keith Bradsher, “Foreign Companies Chafe at China’s Restrictions,” *New York Times* (May 16, 2010).

Appendix 1

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

		Product	DOC Case Number
AD Orders	1	Cut-to-Length Carbon Steel Plate	A-570-849
	2	Steel Concrete Reinforcing Bars	A-570-860
	3	Certain Hot-Rolled Carbon Steel Flat Products	A-570-865
	4	Certain Circular Welded Carbon-Quality Steel Pipe	A-570-870
	5	Light-Walled Rectangular Pipe and Tube	A-570-914
	6	Circular Welded Austenitic Stainless Pressure Pipe	A-570-930
	7	Certain Steel Threaded Rod	A-570-932
	8	Certain Circular Welded Carbon Quality Steel Line Pipe	A-570-935
	9	Oil Country Tubular Goods	A-570-943
	10	Prestressed Concrete Steel Wire Strand	A-570-945
	11	Certain Steel Grating	A-570-947
	12	Wire Decking	A-570-949
	13	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe	A-570-956
	14	Drill Pipe	A-570-965
	15	Galvanized Steel Wire	A-570-975
	16	High Pressure Steel Cylinders	A-570-977
	17	Prestressed Concrete Steel Rail Tie Wire	A-570-990
	18	Non-Oriented Electrical Steel (NOES)	A-570-996
	19	Wire Rod	A-570-012
CVD Orders	20	Certain Circular Welded Carbon-Quality Steel Pipe	C-570-911
	21	Light-Walled Rectangular Pipe and Tube	C-570-915
	22	Circular Welded Austenitic Stainless Pressure Pipe	C-570-931
	23	Certain Circular Welded Carbon Quality Steel Line Pipe	C-570-936
	24	Oil Country Tubular Goods	C-570-944
	25	Prestressed Concrete Steel Wire Strand	C-570-946
	26	Certain Steel Grating	C-570-948
	27	Wire Decking	C-570-950
	28	Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe	C-570-957
	29	Drill Pipe	C-570-966
	30	Galvanized Steel Wire	C-570-976
	31	High Pressure Steel Cylinders	C-570-978
	32	Non-Oriented Electrical Steel (NOES)	C-570-997
	33	Wire Rod	C-570-012