AMERICAN INSTITUTE FOR INTERNATIONAL STEEL, INC.

January 16, 2007

Susan H. Kuhbach
Senior Office Director for Import Administration
U.S. Department of Commerce
Central Records Unit
Room 1870
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Dear Ms. Kuhbach:

On behalf of the American Institute for International Steel, Inc. (AIIS)[1], this letter responds to the Request for Comment on the Application of the Countervailing Duty Law to Imports From the People's Republic of China, 71 FR 75507 (December 15, 2006).

The Department and the U.S. Congress have consistently rejected this idea, which is nothing more than an attempt by complaining U.S. industries to "have their cake and eat it too."

1. It Is Not Fair.

[1] For over fifty years, the AIIS mission has been to promote free trade and economic growth in steel. In that effort, we have supported trade-liberalizing agreements such as NAFTA, GATT and WTO, with special focus on he elimination of steel tariffs and especially making the U.S. trade laws more commercially rational.

AIIS is the only steel-related trade association that supports real free trade in steel and is committed to promoting the interest of steel importers, exporters, distributors, producers, consumers, and related businesses such as pot authorities, customs brokers, transportation companies, logistics firms, and maritime organizations. Through advocacy, public affairs, research, and analyses, AIIS gives a voice to its members on steel trade issues in the political and policy-making debates on national and international levels.

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The Department has affirmed, as recently as last year[2], in conclusive terms, that China is not yet a market economy:

> "Decentralized economic decision-making is a hallmark of market economies, where the independent investment, input-sourcing, output and pricing actions of individuals and firms in pursuit of private gain collectively ensure that economic resources are allocated to their best (most efficient) use. Prices in such economies tend to reflect both demand conditions and the relative scarcity of the resources used in production."[3]

> "Nevertheless, the PRC government, at all levels, remains deeply entrenched in resource allocation. Importantly, as noted in the May 15th memorandum, the various levels of

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[2] MEMORANDUM FOR: David M. Spooner, Assistant Secretary for Import Administration THROUGH: Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Policy and Negotiations, Ronald K. Lorentzen, Director, Office of Policy, Albert Hsu, Senior Economist, FROM: Shauna Lee-Alaia, Lawrence Norton, Anthony Hill, Office of Policy, Import Administration, August 30, 2006: 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"), A-570-901.

[3] Id. at 46.

> government in China, collectively, have not withdrawn from the role of resource allocator in the financial sector. "[4]

> "....market forces in China are not yet sufficiently developed to permit the use of prices and costs in that country for purposes of the U.S. Department's dumping analysis."[5]

China has not changed that much since August 30, 2006, and U.S. law has not changed at all (to the contrary, the Congress has refused to pass legislation applying CVD to China, as discussed below). So the inference that the Department would be bowing to unfair political pressure, rather than following the rule of law, would be unavoidable.

The vehemence with which the same U.S. industries which seek the application of CVD to China as a market economy violently oppose treatment of China as a market economy for AD purposes makes quite clear that those pressure groups think treating China as an NME for AD purposes is in their interest. It is thus no surprise that they are willing to publicly contradict themselves by also seeking "two bites of the apple" – CVD treatment for China.

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[4] Id. at 3.

[5] Id at 5.

2. It Is Not Legal.

As the Department itself has stated:

"Congress could not have intended to apply the countervailing duty law to non-market economies."[6] Instead, as the U.S. Court of Appeals for the Federal Circuit explains, "Congress elected to deal with the problem [of NME imports] under the antidumping law and not under the countervailing duty law."[7]

In the Statement of Administrative Action explaining the current U.S. CVD law, the Department stated the holding in *Georgetown Steel Corp. v. United States*, as "the CVD law cannot be applied to imports from non-market economy countries."[8]

Congress has reviewed U.S. trade law comprehensively twice since the *Georgetown* decision. Neither the major legislation in 1988 nor the major

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[6] *Oscillating Fans and Ceiling Fans from China*, 57 FR 24, 018 (June 5, 1992).

[7] *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986).

[8] Uruguay Round Agreements Act Statement of Administrative Action at 926.

legislation in 1994 applied CVD to NMEs, despite the prominence of the *Georgetown* decision. More recently, legislation has been introduced several times to apply CVD law to NMEs, thus confirming Congressional awareness that CVD is not being applied to China. None of those bills, the most recent of which was introduced less than a year ago[9], has passed, thus indicating that by law China is not subject to U.S. CVD law, and Congress has chosen not to make it so.

3. It Would Waste Government Money And Be A Bad Idea.

U.S. law already provides for numerous remedies for U.S. producers who think they are injured by imports from China:

- 42% of U.S. antidumping cases initiated in Calendar Year 2006 were against China, under the special NME rules.
- A special safeguard against imports from China was put into legislation, 19 U.S.C. 2451.
- On top of that, a super special safeguard has been put into effect on imports of Chinese textiles and apparel, Memorandum of Understanding

[9] H.R. 5043, 109th Cong. 2d Sess. (March 29, 2006).

Between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products, November 8, 2005.

- China is subject to the normal safeguard law, 19 USC 2251-2254.

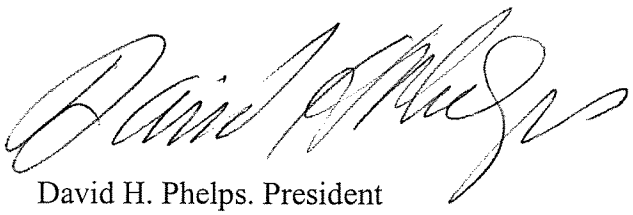
Indeed, it is virtually certain that application of both NME antidumping and "normal" countervailing duties on the same product would include illegal "double counting". The NME methodology for antidumping cases, by rejecting the NME producer's actual costs in favor of the costs of a non-subsidized ME surrogate, has already eliminated any subsidy element, so applying a CVD to the "subsidy" to the product would double the duty element.

The result would be depressingly predictable: for marginal increases in protection afforded U.S. complaining industries, the U.S. Government will spend disproportionate resources investigating Chinese subsidies, most of which will amount to very little, and which will afford protection to products which would usually already be investigated under the antidumping law (since the injury standard appears to be the same). The Department will be placed under further political pressure to exaggerate those subsidies findings, leading to more and more court litigation and

challenges in the WTO. Indeed, were the U.S. to lose such challenges, unrelated U.S. manufacturers of other products could be subject to retaliation in the form of higher tariffs on their exports to China. Indeed, China could seek authorization to move not only against U.S. manufacturers, but against U.S. service industries opening markets in China, or to not pay royalties owed to U.S. intellectual property rights owners.

For these reasons, Commerce should not apply CVD law to The People's Republic of China.

Sincerely yours,



David H. Phelps. President