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**BEFORE THE BUREAU OF INDUSTRY  
AND SECURITY  
U.S. DEPARTMENT OF COMMERCE**

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**SUPPLEMENTAL COMMENTS ON THE PETITION FOR  
THE IMPOSITION OF MONITORING AND SHORT SUPPLY CONTROLS  
WITH RESPECT TO EXPORTS FROM THE  
UNITED STATES OF COPPER SCRAP  
AND COPPER-ALLOY SCRAP**

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**DOCKET NO. 040419121-4121-01**

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**ON BEHALF OF  
THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

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**May 27, 2004**

**SUPPLEMENTAL COMMENTS OF PATTON BOGGS LLP  
ON THE PETITION FOR THE IMPOSITION OF MONITORING  
AND SHORT SUPPLY CONTROLS WITH RESPECT TO  
EXPORTS FROM THE UNITED STATES OF COPPER SCRAP  
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**I. Introduction**

These Supplemental Comments are submitted by Patton Boggs LLP on behalf of the Institute of Scrap Recycling Industries, Inc. (“ISRI”), and its member companies. ISRI is a trade association that is representative of the United States industry that processes metallic materials capable of being recycled, specifically copper scrap and copper-alloy scrap (“copper-based scrap”), within the meaning of section 7(c) of the Export Administration Act of 1979, as amended (“the Act” or “the EAA”), 50 U.S.C. App. §2406(c)(10)(A) and section 754.7 of the Export Administration Regulations (“EAR”) of the U.S. Department of Commerce, 15 C.F.R. §§ 754.7(a) and (b)(2003).

As explained in our initial comments submitted in this docket, ISRI is opposed to the imposition of either monitoring or export controls on copper-based scrap because, among other reasons, the imposition of such controls in the absence of a critical shortage of copper-based scrap would violate the United States’ obligations under the international trade agreements of the World Trade Organization (“WTO”). It is clear that Article XI of the General Agreement on Tariffs and Trade (“GATT”) prohibits member countries from imposing restraints on the exportation or sale

for export of products destined to other member countries except in certain circumstances. Those circumstances do not exist in the domestic copper-based scrap industry.

## **II. There is not a Shortage of Copper-Based Scrap**

The authority to impose short supply controls is granted by statute, but that authority was intended to be exercised in a manner consistent with, and within the constraints of, the United States' obligations under the GATT. Petitioners allege that there is a shortage of copper-based scrap in the United States and that it is therefore proper and consistent with GATT Article XI (2)(a) for the U.S. Government to implement short supply controls on exports of such scrap. Under GATT Article XI(2)(a), temporary export restrictions are permissible, but only when applied to prevent or relieve critical shortages of food stuffs or other products essential to the member country. Neither the petition, nor any of the testimony provided at the recent public hearing, establish that a shortage exists. In fact, when industry representatives were each asked by the Panel if they were unable to obtain copper-based scrap, only one representative claimed to have been unable to obtain No. 2 grade of copper-based scrap at some point in time. The simple fact is that there is copper-based scrap available to U.S. consumers of copper-based scrap. There is not a shortage. In the absence of a shortage of copper-based scrap, the proposed export controls would violate the Article XI prohibition on export restraints.

### **III. The Imposition of Export Controls are Not Appropriate for Addressing Petitioners' Concerns.**

Petitioners point to China as the primary source of the increased exports. Testimony offered by Petitioners allude to the existence of unfair trade practices, such as Value Added Tax rebates, that promote increased exports of scrap to China. Short Supply Controls are not intended to address these types of concerns. They are intended to address domestic shortages.

China is now a WTO member and subject to its international trading disciplines. The WTO is a forum for governments to negotiate trade agreements and settle disputes. The purpose of the WTO is to help trade flow as freely as possible by removing obstacles that member countries may create. Now that China is a member country, concerns relating to China's trading practices can be addressed by initiating WTO dispute settlement proceedings. Unfair trade practices are what the WTO is designed to prevent. One of the benefits of shared WTO membership is access to a principled international forum to challenge and address trade practices that violate WTO obligations. China's trading practices are already being brought into question by the United States and other WTO members. As China is now a member of the WTO, the United States may initiate WTO dispute settlement proceedings if in fact China's trading practices violate China's WTO obligations.

Just this week, the European Union publicly threatened to initiate WTO dispute settlement proceedings if China does not end its restrictions on exports of coking coal by May 28, 2004. Clearly the EU thinks that export controls like those imposed by China on coking coal violate China's WTO obligations. The export restrictions advocated by Petitioners are no different. Various witnesses testifying in favor of the Petition criticized China's export restrictions on products like coal. It is completely inconsistent for Petitioners to characterize the Chinese export restrictions

as unfair practices and in the same breath urge the U.S. Government to impose controls that are virtually identical.

As explained in our Initial Comments, the U.S. Government has historically opposed export controls that were implemented by other countries in an effort to protect their domestic markets and has supported claims that such conduct violated the WTO. See *Affecting the Export of Bovine Hides and the Import of Finished Leather* (Wt/DS155/R) (December 19, 2000); *Measures Affecting Exports of Unprocessed Herring and Salmon* (L/6268-35s/98) (March 22, 1988).<sup>1</sup> The U.S. Government should continue to oppose these types of export controls when imposed by other countries and should decline to adopt such measures, that it knows will violate the WTO, when asked to do so by domestic industries.

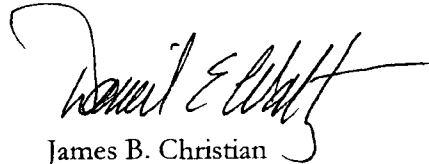
Any unfair trading practices of China that have resulted in an increase of copper-based scrap exports from the United States will not be addressed by the imposition of short supply controls. Instead, such unilateral action on the part of the U.S. will only disrupt the global market for copper metal and copper-based scrap by reducing global supply and thereby increasing the global prices for copper metal and scrap. Petitioners' true hope is to reduce the domestic price of copper-based scrap to lower their input and production costs. The WTO expressly prohibits such protectionist behavior and it is likely that other WTO member countries would consider any controls placed on the export of copper-based scrap to be inconsistent with the United States' WTO obligations. Because the imposition of export restrictions on copper scrap in the absence of domestic shortage

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<sup>1</sup> David Hartquist is correct in noting that the allegations involved in the Argentine *Bovine Hides* case were factually distinct from the export restrictions advocated by Petitioners here. That is hardly surprising as each WTO or GATT proceeding is factually distinct. What we view as significant is the United States' consistent support for the proposition that export restrictions violate GATT obligations if the conditions established by the GATT for the imposition of such restrictions are not satisfied.

of these materials would violate the United States' WTO obligations, the Petition requesting monitoring and controls on the export of copper and copper-alloy scrap should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel E. Waltz". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke extending to the right.

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