June 25, 2007

The Hon. David Spooner
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Re: Federal Register Notice (May 25, 2007 – Volume 72, Number 101) – Regarding Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise

Dear Mr. Spooner:

The American Iron and Steel Institute (AISI), the Committee on Pipe and Tube Imports (CPTI), the Cold Finished Steel Bar Institute (CFSBI), the Metals Service Center Institute (MSCI), the Steel Manufacturers Association (SMA), the Specialty Steel Industry of North America (SSINA) and the United Steelworkers (USW) are united in strong opposition to a Department of Commerce (DOC) proposal that DOC consider granting market-economy treatment to individual respondents in antidumping (AD) cases involving China.

At a time when the United States is already facing a flood of dumped, subsidized and disruptive imports of manufactured goods from China -- and the U.S. bilateral trade deficit with China is heading toward another all-time record in 2007 (in excess of $250 billion) -- adopting this misdirected proposal would seriously weaken U.S. trade laws and cause further harm to U.S. companies, workers and communities. To "graduate" individual companies in China to market-economy status would simply be a "back-door" method of graduating China. To treat individual firms in China as "market-oriented" would encourage more unfair trade and market-distorting behavior in China. This policy would be wholly inappropriate and contrary to the U.S. national economic interest.

China Remains a Non-Market Economy with No Market-Oriented Sectors

The DOC has consistently and correctly found that China is a non-market economy (NME) because, among other reasons: China's currency is not fully convertible; its wage rates are not determined by open bargaining; there are limits and conditions on foreign firms' ability to engage in joint ventures and investments; the government still owns and/or controls many of the means of production; and the government still controls the allocation of resources and the price and output decisions of many enterprises. The DOC reiterated this finding in August 2006, in an 80-page analysis that carefully documents how China's economy is still government-controlled.

For 15 years, the DOC has also had a test that allows Chinese respondents the possibility of market-economy treatment, if their industry is determined to be a "market-oriented industry" (MOI). During these 15 years, the DOC has never found an MOI in China. It is not surprising that the DOC has never found an industry in China to be "market-oriented," when there is *such an infusion of non-market forces throughout the Chinese economy*. In this type of economic environment, it makes no sense to try to identify individual "market-oriented" firms.

The Steel Example: There Are No "Market-Oriented" Companies

America's steel industry has provided extensive documentation showing how government policy in China has shaped steel industry development. The far-reaching steel policy issued by China's National Development and Reform Commission (NDRC) in July 2005 is yet another extraordinary example of government intervention in the market. It provides detailed instructions not only with respect to the overall direction of the Chinese steel industry, but also with regard to particular enterprises. This new National Steel Policy is intended to guide the industry for the next 15 years. It is a central government industry policy that: (1) calls for continuing subsidization of key steel projects, exports and technologies; (2) bans foreign companies from controlling Chinese steel companies; and (3) seeks to micromanage many aspects of future steel industry development -- including the number and size of major firms, the size of new plants, the location of such plants and even the minimum size of blast furnaces to be installed.

This national policy is designed to control almost all major decisions made within the steel sector -- the largest such industry in the world. It demonstrates clearly that China remains in many respects a command economy, in which real power belongs to government officials, not market forces. The key point to keep in mind about the July 2005 NDRC Steel Policy is that it is so far-reaching, *it is absurd to imagine that any individual steel company (or companies related to steel) could be "market-oriented."*[1] What the Steel Policy makes clear is that: (1) government policy control and direction are continuing to affect every corner of China's economy and economic environment; (2)

[1] Recently, House Ways and Means Committee Chairman Charles Rangel (D-NY) requested that the U.S. International Trade Commission (ITC) study a number of issues that are relevant to China's continuing to be treated as an NME under U.S. AD law. One steel-related example that is worthy of further study would be the activities of China's "Metallurgical Price Association," a group of China's largest steel producers. Chaired by the Vice Secretary General of the China Iron and Steel Association (CISA), this group meets periodically to discuss efforts to "stabilize" or "set" steel prices in China. This is not "market-oriented" behavior. Yet, under the DOC proposal, there is no doubt that companies that participate in this group would apply for "market-oriented" status under U.S. AD law.

this economic environment affects all companies within it; and (3) one cannot find a single company that is not affected by this overall economic environment.

The DOC Proposal Has No Logical or Factual Basis, Is Impractical and Would be Extremely Harmful

Any decision to begin treating individual Chinese companies as "market-oriented" would have no logical or factual basis. It would be extremely costly and difficult to administer. It would cause severe harm to U.S. manufacturers at the worst possible time. It would be contrary to the intention of the current law and of the Congress. In recent years, *especially on matters having to do with China trade*, the Congress has clearly expressed its intent that *there should be no weakening of the trade remedy laws*. Opening *an enormous loophole in the NME provisions* of U.S. AD law would fly in the face of *the need to strengthen -- not weaken* -- America's core trade law remedies.

- **There is no right under the WTO or U.S. law to provide company-specific market-oriented treatment**. China *does not have the right* under World Trade Organization (WTO) rules or U.S. law to obtain this proposed methodology. There is *no requirement* under the WTO or U.S. law for the DOC to engage in a company-by-company analysis of market orientation. This proposed approach would appear to be a clear attempt to evade both the intention of the Congress and of the existing law to ensure that there is NME treatment where an economy or an industry does not meet the statutory requirements for market treatment.

- **This would be enormously costly, both for the Department and for litigants, and would be an administrative nightmare**. At a time when the DOC is already sorely strained for resources and is having difficulty meeting all of its core responsibilities -- including trade law enforcement -- this is the last thing the DOC trade law administrators need right now. Expectations are that, under this proposal, in virtually every AD case against China, most if not all Chinese producers would claim that they were "market-oriented" enterprises. This would require the DOC to investigate and rule on the merits for a very large number of companies. These claims would quickly overwhelm the DOC staff, and add significantly to the cost of a case for domestic industry petitioners as well. Any decision to begin treating individual Chinese companies as market-based would also be *extremely difficult, if not impossible, to administer in practice*. If the DOC were to find that some Chinese companies are market-oriented while others are not, *there is no practical way that the DOC could "mix" its market economy and NME methodologies within a single AD case*. The practice would create an administrative nightmare and a legal quagmire. Differential treatment of Chinese companies within the same case would be quickly challenged as a violation of U.S. WTO obligations.

- **This would further politicize the process, and makes no sense from a concept standpoint**. With so many individual respondents in China likely to argue in future AD cases that they are "market-oriented," this would greatly politicize AD cases involving China. In addition, as we have seen in the steel sector -- because the entire economic environment in China remains heavily influenced by government control and direction -- *it makes no sense, in such an environment, that one could find individual firms that are somehow isolated from this overall economic environment*. For example, even if a seller of goods in China were treated as "market-oriented," this would ignore that *the seller's customers are not-market oriented.* Chinese selling prices are still distorted. No accurate calculation of normal value is possible. This would also ignore that *the*

seller's suppliers are not market-oriented, creating the possibility of substantial artificial cost advantages. The result could be an artificially low break-even point that would cast doubt on the validity of the use of the seller's home market sales as a basis for normal value.

- **This would be a "back-door" way to graduate China**. What China wants more than anything, under U.S. AD law, is to be "graduated" and treated as a "market economy." This proposal could give the Chinese government much of what it wants, notwithstanding the abject failure of China to meet the DOC statutory criteria for graduation. In addition, even it were feasible, the proposed methodology could have perverse effects in terms of the long-term objective of China's development as a market economy. Indeed, selecting a few members of an exporting industry to receive more favorable treatment *could actually strengthen the hand of governments at all levels to maintain their control over the remaining, less efficient and less market-oriented producers*.

- **This would essentially remove the entire benefit of the recent DOC policy decision to apply CVD law to China**. Designating individual Chinese "market-oriented" companies would open an enormous avenue to manipulate margin calculations, and could thereby result in much lower AD margins than if appropriate methodologies were used. Any change in practice by the DOC *would more than negate any benefit to U.S. companies by the recent DOC preliminary decision to begin applying CVD law to China*. In fact, by taking away with one hand what it has given with the other, this DOC proposal on AD law *could actually lead to a worse situation* for U.S. industries and workers facing injurious Chinese import surges than was the case before the DOC decision to apply CVD law to China. It would lead inevitably to a large number of gaping loopholes, and to significant trade law evasion, on the dumping side.

- **With an ongoing manufacturing crisis in the United States, this would be the worst possible time to give special trade law treatment to China**. We have already lost more than 3 million manufacturing jobs since 2000. Our bilateral trade deficit with China is continuing to skyrocket. Numerous U.S. manufacturers of steel-containing goods (steel's customers) have complained publicly to the Administration and the Congress that they are increasingly having to compete against surging imports from China that are entering the U.S. marketplace *at a price lower than the U.S. manufacturers' input costs*. U.S. manufacturers need *more, not fewer, trade remedy tools* to help level the playing field and be able to compete against Chinese market-distorting practices. Any decision to begin treating individual Chinese companies as "market-oriented" would be *extremely harmful to U.S. industries and workers that use the trade laws*.

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AISI, CPTI, CFSBI, MSCI, SMA, SSINA and the USW appreciate the opportunity to provide comments on this proposal. As carefully stated in these comments, these organizations believe this proposal has no merit and does not warrant adoption.