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**Hearing on “U.S.-China Economic Relationship”**  
**Committee on Ways and Means**  
**U.S. House of Representatives**  
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## **I. Introduction**

The unbalanced U.S.-China economic relationship continues to affect American manufacturing in a very detrimental way. On this 10-year anniversary of China’s accession to the World Trade Organization (WTO), China continues to rely on a series of market-distorting trade and industrial policies and these policies are having serious consequences for American steel producers, other American manufacturers, and the U.S. and world economies.

Over the last decade, the U.S. trade deficit with China has more than tripled, soaring from \$83 billion in 2000 to over \$273 billion in 2010. Additionally, according to one recent estimate, over the past decade since China joined the WTO, 2.8 million U.S. jobs have been lost or displaced, including 1.9 million in manufacturing. Further, last year, China ended the United States’ 110-year run as the world’s largest manufacturer of goods. This bilateral trade deficit is unprecedented, unsustainable and causing serious, long-term damage to our manufacturing base. The United States must take much bolder and more imaginative steps to address this chronic problem. My testimony outlines a number of market-distorting practices that require immediate U.S. government action. Failure to address these issues will only worsen the U.S.-China trade relationship, and reduce economic growth and employment in the United States.

## **II. Issues of Particular Importance to U.S. Steel Producers**

### **Currency Manipulation**

One of the most critical issues of concern is China’s policy of currency manipulation. According to a recent Peterson Institute report, China’s currency is today undervalued by more than 28 percent. In addition, the Economic Policy Institute reports that if China’s currency were to rise by this amount to a market-based level, U.S. GDP would increase by more than \$200 billion; over 1.6 million U.S. jobs would be created; and our federal budget deficit would decline by nearly \$52 billion. These figures would be greater still if other key countries in Asia (such as Taiwan, Singapore, Hong Kong and Malaysia) – which have all devalued their currencies to remain competitive with China – were also to revalue. Chinese currency manipulation is hurting U.S. growth, limiting U.S. exports and destroying U.S. jobs.

The U.S. government and other countries have long sought to address concerns about currency manipulation through dialogue with the Chinese government. Unfortunately, these efforts have not been successful. 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. After China's announcement, the yuan appreciated from 8.28 yuan per dollar to 6.81 yuan per dollar in July 2008, an adjustment of only 17.8 percent. Starting in July 2008, China halted the appreciation of the yuan "due to the Chinese government's fear that a strong {yuan} will damage China's exports."<sup>1</sup> 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. By August 2010, however, it was clear that China would only allow minimal movements against the dollar. As of last month, the yuan had appreciated only 6.8 percent in nominal terms since June 2010 - including a 0.8 percent gain in early August. Furthermore, analysts familiar with Beijing's policy-making process cautioned that any expectations of a significant shift in China's management of the yuan were "overblown."<sup>2</sup> Tao Wang, China economist at UBS, explained that "{d}omestically, maintaining a relatively rapid growth and social stability are always top concerns - and a sharp renminbi appreciation may hurt exports and job growth too much."<sup>3</sup> Moreover, the Bank for International Settlements found that although the yuan had made gains against the dollar in nominal terms since June 2010, its value against a trade-weighted basket of currencies dropped 4.6 percent and fell 2.3 percent in real terms over the same period.

During his confirmation hearings before the U.S. Senate, Treasury Secretary Timothy Geithner stated that "President Obama - backed by the conclusions of a broad range of economists - believes that China is manipulating its currency." He added that President Obama pledged "to use aggressively all the diplomatic avenues open to him to seek change in China's currency practices." However, despite this testimony, Secretary Geithner has refused to cite China as a currency manipulator in semi-annual reports to Congress on the currency practices of key trading partners submitted in April 2009, October 2009, July 2010, February 2011, and May 2011. Despite this refusal, in his most recent report, Secretary Geithner acknowledged "that the real effective exchange rate of the renminbi remains substantially undervalued."

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<sup>1</sup> USCC 2008 Report at 42.

<sup>2</sup> Kevin Yao, "China allows slightly faster yuan gains, no big shifts," *Reuters* (Aug. 25, 2011), available at <http://www.reuters.com> (last visited Sept. 8, 2011).

<sup>3</sup> *Id.*

The Department of Commerce has likewise failed to address China's currency manipulation. Indeed, on April 4, 2011, the Commerce Department issued a final decision in the countervailing duty (CVD) investigation of aluminum extrusions from China in which it determined that it would not investigate the petitioners' allegation that the undervaluation of China's currency was a countervailable subsidy.

It is thus incumbent on the Congress to enact legislation that is WTO consistent and that will address the issue of currency manipulation. The U.S. Senate recently took this step by passing the Currency Exchange Rate Oversight Reform Act of 2011 (S. 1619) on October 11, 2011, by a vote of 63-35. This bill is similar to legislation that overwhelmingly passed with bipartisan support in the House of Representatives in the 111<sup>th</sup> Congress by a vote of 348-79, and has been reintroduced this Congress (H.R. 639) by Congressmen Sander Levin (D-MI) and Tim Murphy (R-PA). AISI strongly supports this legislation which would give U.S. manufacturers the ability to use the existing countervailing duty law to obtain a remedy for injury caused by goods benefiting from currency manipulation as an export subsidy. S. 1619 includes the CVD provisions in the House bill in addition to language that creates a new framework and criteria for Treasury to utilize in order to identify misaligned currencies and will require action by the administration if countries fail to correct the misalignment. Both bills enjoy bipartisan support because they provide an effective, measured, and WTO-consistent remedy that will save jobs in industries injured by unfair trade practices.

### **Subsidies**

Upon its accession, China assumed certain obligations with respect to subsidies, including the commitment to end all export subsidies. Despite these commitments, Chinese steel and other manufacturers continue to benefit from massive government subsidies. A 2007 report identified more than \$52 billion in subsidies granted to Chinese steel producers.<sup>4</sup> These documented subsidies included \$17.3 billion in preferential loans and directed credit, \$18.6 billion in equity infusions and/or debt-to-equity swaps, \$5.1 billion in land-use discounts, \$1.3 billion in government-mandated mergers and \$258.6 million in direct cash grants.

In the last year alone, the Commerce Department has issued affirmative U.S. CVD decisions involving Chinese drill pipe, galvanized steel wire and steel wheels. It is clear that China will continue to subsidize its steel production. At the same time, we have seen China continue to manipulate its value-added tax (VAT) system to manage and promote the exports of certain steel products. Given that China has long subsidized steel and other strategic sectors - and that Chinese government policy provides for

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<sup>4</sup> *Money for Metals: A Detailed Examination of Chinese Government Subsidies to its Steel Industry*; available at [http://www.wileyrein.com/public\\_document.cfm?id=16051](http://www.wileyrein.com/public_document.cfm?id=16051).

further subsidies going forward – AISI joins with those who say a more aggressive approach is needed.

### **State-Owned Enterprises (SOEs)**

Upon its accession, China committed that it “would not influence, directly or indirectly, commercial decisions on the part of state-owned enterprises.” However, 95 percent of the production of the top 20 Chinese steel groups is state-owned or controlled, and operates in accord with bureaucratic policies and not market principles. This is a clear violation of China’s WTO commitments and a significant distorting force in steel markets around the world. While China has yet to publish the details of its new 12<sup>th</sup> Five Year Plan for Steel, we know that government ownership, control and direction will remain key elements with respect to: consolidating and reorganizing; relocating; controlling access to iron ore; “going out” and internationalizing its steel industry by acquiring overseas steel producers and constructing new steel factories overseas; and providing detailed instructions regarding capacity and production. USTR should take all possible steps – including WTO litigation as appropriate – to encourage China to comply with its WTO commitments regarding SOEs for steel and other manufacturing industries.

### **Raw Materials**

China has also taken numerous inappropriate measures to help its producers secure access to raw materials and manipulate supply and prices to give Chinese producers an unfair advantage in the marketplace. These measures include implementing export restraints on numerous raw materials, promoting low-priced imports of iron ore for Chinese mills and helping Chinese mills with raw materials purchases.

In June 2009, the U.S. filed a request for consultations at the WTO regarding China’s export restrictions on nine raw materials that impact the production of steel and other manufactured products. In July 2011, a WTO panel found these export restrictions to be in violation of China’s WTO commitments. While an important step in the right direction, China has appealed this decision and has shown no intention of changing its practice on export restrictions. We urge the U.S. Government to work with other governments to pursue additional WTO litigation where appropriate against Chinese raw materials export restrictions.

### **Intellectual Property Rights (IPR)**

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.<sup>5</sup> In June 2009, the WTO adopted a panel report ruling that Chinese

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<sup>5</sup> USTR, “United States Requests WTO Panel in Case Challenging Deficiencies in China’s Intellectual Property Rights Laws” (Aug. 13, 2007).

law does not adequately provide for the protection and enforcement of IPR on a wide range of products.<sup>6</sup> 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."<sup>7</sup>

Given the breadth of China's IPR infringement and indigenous innovation policy and their enormous potential to harm U.S. companies, USTR must take a far more aggressive approach to ensure that the policy does not seriously distort world markets.

### **Effective Enforcement of U.S. Trade Laws**

Given the extent to which China has not complied with its WTO obligations, the United States must effectively enforce its trade remedy laws and WTO rights. For example, the Commerce Department must continue to treat China as a non-market economy ("NME") in antidumping (AD) proceedings. Under the terms of its WTO accession, China agreed that other Members could treat it as a non-market economy except for limited circumstances in which it is clearly shown that market economy conditions prevail in the relevant industry under investigation.<sup>8</sup> Nevertheless, China has urged the United States in each of the last three meetings of the U.S.-China Strategic and Economic Dialogue to treat China as a "market economy" for purposes of U.S. AD laws.<sup>9</sup> This would be improper and contrary to U.S. law.

Congress has provided that in determining whether a country is a NME, the DOC must take six factors into account: (1) whether the country's currency is convertible; (2) whether wage rates are determined by free bargaining between labor and management; (3) whether foreign investment is permitted in the foreign country; (4) whether the government owns or controls the means of production; (5) whether the government controls the allocation of resources and the price and output decisions of enterprises; and (6) such other factors as the DOC considers appropriate.<sup>10</sup> 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 a NME.<sup>11</sup> Nothing has changed

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<sup>6</sup> USTR, "World Trade Organization Adopts Panel Report in China – Intellectual Property Rights Dispute" (June 22, 2009).

<sup>7</sup> *Id.*

<sup>8</sup> See Protocol on the Accession of the People's Republic of China at Section 15, part of *Accession of the People's Republic of China*, WTO Doc. No. WT/L/432 (Nov. 23, 2001) at 10.

<sup>9</sup> U.S. Department of Treasury, *The Third U.S.-China Strategic and Economic Dialogue Economic Track Joint Fact Sheet* (May 10, 2011), available at <http://www.treas.gov> (last visited Sept. 8, 2011); U.S. Department of Treasury, *The Second U.S.-China Strategic and Economic Dialogue Economic Track Joint Fact Sheet* (May 21, 2010), available at <http://www.treas.gov> (last visited Sept. 8, 2011); U.S. Department of Treasury, *The First U.S.-China Strategic and Economic Dialogue Economic Track Joint Fact Sheet* (Jul. 28, 2011), available at <http://www.treas.gov> (last visited Sept. 1, 2011).

<sup>10</sup> See 19 U.S.C. § 1677(18)(B) (2006).

<sup>11</sup> 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

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.”<sup>12</sup>

Additionally, Commerce should fully countervail Chinese subsidies, including those bestowed prior to China’s WTO accession. Normally, in determining the benefit bestowed on the recipient of a non-recurring subsidy, the DOC will allocate the subsidy over the average useful life of the productive assets benefited by the subsidy.<sup>13</sup> In October 2007, the DOC decided for the first time to apply the CVD law to China.<sup>14</sup> Unfortunately, it determined that the “uniform date” from which it will identify and measure Chinese subsidies is December 11, 2001, the date on which China became a WTO member.<sup>15</sup> In other words, non-recurring subsidies provided prior to this date are treated as though they were *not* subject to U.S. CVD laws.

AISI strongly disagrees with the DOC’s decision on this issue. First, there is no basis in U.S. law or the WTO agreements to use an arbitrary cut-off date from which to identify and measure Chinese subsidies. Second, the decision to use such a date provides China a benefit that is not provided to any other country. Third, the decision fails to capture subsidies bestowed prior to China’s WTO accession that have an average useful life that extends beyond December 11, 2001. Fourth, many of the subsidies provided prior to December 11, 2001 are extremely large and continue to provide countervailable benefits to this day. Finally, a condition of China’s WTO accession was that it would become subject to subsidies disciplines, and Congressional approval of China’s WTO accession was conditioned upon China’s commitments in this regard. To decline to countervail subsidies bestowed prior to China’s WTO accession is thus inconsistent with both China’s WTO commitments and Congressional intent.<sup>16</sup>

Commerce should also continue applying both AD non-market economy rules and CVD law to Chinese import. The DOC’s ability to apply both the AD non-market

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Products from the People’s Republic of China (“China”) – China’s Status as a Non-Market Economy (“NME”) (Aug. 30, 2006) (Public Document).

<sup>12</sup> 2008 USTR Report at 4 (emphasis added).

<sup>13</sup> See 19 C.F.R. § 351.524 (2010).

<sup>14</sup> *Coated Free Sheet Paper*: Final Affirmative Countervailing Duty Determination, 72 Fed. Reg. 60645 (Dep’t of Commerce Oct. 25, 2007).

<sup>15</sup> *Circular Welded Carbon-Quality Steel Pipe from the People’s Republic of China*, Preliminary Affirmative Countervailing Duty Determination, 72 Fed. Reg. 63,875, 63,880 (Dep’t of Commerce Nov. 13, 2007).

<sup>16</sup> The recent decision of the CIT in *GPX* should also cause the DOC to reconsider its position on this issue. In *GPX*, the court found that that it was not lawful for the DOC to apply a “uniform” cut-off date. See *GPX Int’l Tire Corp v. United States*, 645 F. Supp. 2d at 1231 (Ct. Int’l Trade 2009)(“*GPX*”) The CIT found that the application of such a cut-off date was contrary to the DOC’s duty “to determine the existence of countervailable subsidies based on the specific facts for each subsidy, rather than by examining those subsidies found after an arbitrary cut-off date.” *Id.* at 1250. Moreover, in its remand determination pursuant to *GPX*, the DOC was able to apply a methodology that did not use a uniform cut-off date but instead identified and measured subsidies prior to December 11, 2001. *GPX* Remand at 25-26.

economy (NME) methodology and the CVD law to imports from China has recently been at issue before the WTO. Specifically, in March 2011, the WTO Appellate Body ruled that the practice of simultaneously applying the AD NME rules and the CVD law to imports from China results in “double counting” and is not consistent with the United States’ WTO obligations.<sup>17</sup> In so doing, it reversed a WTO panel decision which had found the practice consistent with the United States’ WTO obligations.<sup>18</sup> U.S. Trade Representative Ron Kirk has declared the WTO Appellate Body’s report to be “deeply troubl[ing]” and “a clear case of overreaching by the Appellate Body.”<sup>19</sup> Indeed, decisions like this contribute to a “growing perception that WTO appellate judges are choosing to substitute their own views for the rules negotiated by the WTO Parties.”<sup>20</sup> AISI strongly disagrees with this decision and urges the Administration to make all possible efforts to preserve the United States’ ability to apply both AD NME methodology and the CVD law to imports from China.

AISI and its members are also very concerned about widespread evidence of Chinese circumvention 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.<sup>21</sup> One such company, Globe Success International Transportation, 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 that originate from the third country.<sup>22</sup> Another company, Pulink International, boasts that its “years of experience in antidumping duty evasion” will allow it to assist in evading AD duties on U.S. imports of Chinese oil well pipes.<sup>23</sup> Significantly, these companies involve large operations doing business in a public manner without any apparent fear of reprisal from the Chinese authorities. Indeed, Globe Success reports that it employs a staff of 450, maintains offices in

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<sup>17</sup> See Report of the WTO Appellate Body, *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (Mar. 11, 2011) at 223.

<sup>18</sup> See *id.* at 224.

<sup>19</sup> “USTR Statement Regarding WTO Appellate Body Report in Countervailing Duty Dispute with China,” *USTR Press Releases* (Mar. 11, 2010).

<sup>20</sup> Robert E. Scott, Testimony before the U.S. China Economic and Security Review Commission (Mar. 30, 2011), available at <http://www.USCC.gov> (last visited Sept. 6, 2011) at 3-4 (citing Scott Otteman, “Appellate body reversal on ‘double remedies’ sparks angry U.S. reaction,” *Inside China-U.S. Trade* (Mar. 16, 2011) (internal quotation omitted)).

<sup>21</sup> 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).

<sup>22</sup> Globe Success International Transportation (Shenzhen) LTD: Company Profile, available at [http://gsitanna.en.ec21.com/company\\_info.jsp](http://gsitanna.en.ec21.com/company_info.jsp) (last visited Sept. 1, 2011) (“Globe Success Profile”).

<sup>23</sup> Pulink International, “How to Evade Antidumping Duties on Steel Pipe Products” (Oct. 6, 2009), available at <http://blog.luosi.com/articles/33690.html> (last visited Sept. 7, 2011) (Chinese language document).

multiple cities throughout China and other countries, and earns an annual revenue of up to five million U.S. dollars.<sup>24</sup>

Steel producers as well as companies in other industries have repeatedly brought evidence of China's circumvention of U.S. trade laws to the attention of U.S. Customs and Border Protection ("CBP").<sup>25</sup> This evidence of circumvention includes illegal transshipment of goods through third countries, falsified country of origin markings, undervalued invoices that offset the payment of AD/CVD duties, and the misclassification of goods.<sup>26</sup> Unfortunately, CBP has been slow to address this blatant circumvention.<sup>27</sup> As such, AISI urges the Congress to pass the "ENFORCE Act" (H.R. 3057/S. 1133) legislation to address this growing problem of Chinese customs fraud to evade AD/CV duties.

The ENFORCE Act is bipartisan legislation, introduced in both Chambers of Congress, that will ensure CBP uses its authority to collect the correct amount of AD/CV duties imposed by law and due to the U.S. Treasury. The bill will do this by establishing a process by which domestic producers can petition CBP to investigate claims of customs fraud and AD/CVD evasion and would require that CBP make preliminary and final determinations, to be made public, within a specified time-line. Specific and prompt deadlines for issuing determinations will ensure that lawfully-owed duties are not lost due to the passage of time. The ENFORCE Act will provide a transparent enforcement approach that will ensure our trade laws are being fairly and consistently applied, in addition to demonstrating that the government can and will combat fraud and abuse relating to unfair trade practices.

Finally, AISI expresses our strong opposition to the way China has been applying its trade remedy laws in ways that clearly violate the WTO. 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 reports that China has "engaged in manipulating trade remedy investigations to unfairly restrict exports of American steel" and, in so doing, violated the WTO

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<sup>24</sup> Globe Success Profile.

<sup>25</sup> *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) (stating that since 2008 Leggett & Platt had met with or sent CBP information regarding specific evidence of duty evasion on 21 separate occasions).

<sup>26</sup> Staff Report Regarding Duty Evasion at 5.

<sup>27</sup> Opening Statement of Senator Ron Wyden at the U.S. Senate Subcommittee on International Trade, Customs, and Global Competitiveness Hearing: "Enforcing America's Trade Laws in the Face of Customs Fraud and Duty Evasion," (May 5, 2011) at 2.

requirements that govern the legitimate use of AD/CVD laws.<sup>28</sup> In September 2010, following the Chinese government's AD/CVD investigations of U.S. producers of grain oriented electrical steel, the U.S. government filed a WTO case -- which AISI supports -- against China. As identified by USTR, China's Ministry of Commerce 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 that were not identified in the notice of initiation of the CVD petition.<sup>29</sup>

### **Product Safety Issues**

In 2010, there were 220 U.S. safety recalls of Chinese-made products and, as the two co-Chairs of the Congressional Steel Caucus, Reps. Tim Murphy (R-PA) and Peter Visclosky, (D-IN) stated two years ago, "China has a proven track record of making dangerous, substandard products, including steel." Last year, Commerce discovered that, in the AD/CVD investigation of steel grating from China, the largest Chinese producer of this product had falsified certain mill test certificates. At a time when our nation urgently needs to rebuild its infrastructure, including steel-intensive pipelines and bridges, there are troubling questions about the quality and reliability of at least some Chinese steel. Congress and the Administration must work together to ensure that the relevant WTO agreements governing product safety are fully enforced.

### **III. Conclusion**

The unbalanced relationship between economies of the United States and China continues to erode important sectors in the U.S. that are critical to domestic economic growth and job creation in the United States. China's reliance on market-distorting trade and industrial policies continues to have serious, long-term consequences for American steel producers, other manufacturers and our entire economy. China sees its explosive growth as an affirmation that it is correct and that "Western policies of free trade and open markets do not work as well as previously thought." But the U.S. government must take a firm stance to correct that view. While AISI continues to support the two-pronged U.S. policy of engagement and enforcement, the status quo is just not working. We need a more proactive, pro-enforcement strategy to address the challenge of trying to compete against "China Inc." and its version of state-owned and supported "capitalism." It is long past due to send a clear signal to China that it must comply fully with its WTO obligations and play by the rules.

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<sup>28</sup> See USTR, "United States Files Two WTO Cases Against China," (Sept. 15, 2010), *available at* <http://www.ustr.gov> (last visited Sept. 8, 2011).

<sup>29</sup> *Id.*

There is no doubt that there are a number of critical issues that must be addressed with respect to China. Some issues – such as China’s raw materials export restrictions – are being effectively addressed by USTR through WTO litigation, and these efforts should be continued and strengthened. On other issues – such as China’s currency manipulation and the evasion of U.S. AD/CVD orders – it is clear that the Administration has been unable to address these problems with its existing tools, and legislation is therefore required. We therefore urge the Ways and Means Committee to advanced legislation to address these critical issues, in particular, H.R. 639, the Currency Reform for Fair Trade Act, and H.R. 3057, the ENFORCE Act.