United Steelworkers of America

AFL-CIO•CLC

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May 19, 2004

Via e-mail: webmaster-support@ita.doc.gov

James J. Jochum
Assistant Secretary for Import Administration
Subject: Public Hearings on U.S.-China Joint Commission on
Commerce and Trade Working Group on Structural Issues
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Re: Comments of United Steelworkers of America, AFL-CIO·CLC, in Response to the Federal Register Notice of May 3, 2004 and Notification of Intent to Testify at Hearing.

Dear Mr. Jochum:

The United Steelworkers of America, AFL-CIO·CLC (USWA), is a union representing a majority of the workers in the United States engaged in the production of steel products. The USWA has been a participant in numerous antidumping proceedings before the Department involving Chinese imports of steel and other products. The USWA submits the following comments pursuant to the Department's Federal Register notice of May 3, 2004 (69 Fed. Reg. 24132-33). The USWA also hereby notifies its intent to testify at the Department's hearing scheduled for June 3, 2004.

Introduction

The Department's Federal Register notice states that, pursuant to an agreement between the United States and China at the April 21, 2004 meeting of the U.S.-China Joint Commission on Commerce and Trade, a working group has been established to engage in a "dialogue on the range of issues that are relevant to considering China's desire to no longer be treated as a non-market economy country ("NME") under U.S. antidumping law." 69 Fed. Reg. at 24133. The Department further states that among the type of specific issues that would be taken up under this agenda would be "structural characteristics of the Chinese economy that appear to be inconsistent with the normal experience of a market economy, as well as Chinese government policies and practices which have the potential to distort the market and U.S.-China trade." *Id.* Accordingly, the Department is seeking public comment "for the purpose of identifying relevant topics and issues for discussion in the working group."

In response to the Department's request, the USWA submits comments regarding topics and issues that are relevant to a consideration of China's desire to be treated as a market economy country. Specifically, the following comments address the current NME methodology, labor and subsidy issues.

Statutory Factors Relevant to Non-Market Economy Country Status

A consideration of issues that are relevant to considering China's desire to no longer be treated as an NME for purposes of antidumping law must start with the statutory factors that must be considered in determining NME status. Section 771(18) of the Tariff Act of 1930, as amended, (19 U.S.C. § 1677(18)), sets out the factors. First, the statute provides that the term "nonmarket economy country" means "any foreign country" that the Department "determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." 19 U.S.C. § 1677(18)(A). In making this determination, the statute directs the Department to consider the following factors.

> (i) the extent to which the currency of the foreign country is convertible into the currency of other countries;
> (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
> (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,
> (iv) the extent of government ownership or control of the means of production,
> (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
> (vi) such other factors as the administering authority considers appropriate.
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> 19 U.S.C. § 1677(18)(B).

NME designation is appropriate for antidumping purposes where an economy does not operate according to "market principles of cost or pricing structures," and the focus of the foregoing factors is upon indicia that demonstrate whether an economy is operating under market principles. In the case of China, although there has been marked reform toward a market economy in recent years, many of the relevant indicia demonstrate that China's economy is still not yet operating under market principles.

NME Antidumping Methodology

The antidumping law applies to China as well as to other countries. Where, however, a country, such as China, is considered to have an economy that does not operate according to market principles, that country is designated an NME and the Department applies a special methodology for calculating normal value whereby the Department values the factors of production based on data from a surrogate country. This NME methodology has been the norm for antidumping proceedings involving Chinese imports.

China now aspires to be considered a market economy country for antidumping purposes and the U.S. and China have established a working group to discuss issues relevant to achieving China's desire. However, it is important to remember that in the U.S.-China Bilateral Trade Agreement (signed November 15, 1999) the U.S. expressly negotiated the right to use the NME methodology in antidumping proceedings with respect to Chinese imports for a period of 15 years following China's accession to the WTO.

The right to use an NME methodology was multilateralized in the Protocol of Accession, so this commitment of China applies to all WTO Members. *See* China's Protocol of Accession, WT/L/432 (23 November 2001) at art. 15. Thus, for 15 years from December 11, 2001, the U.S. and other WTO Members have a right to use a special NME methodology in determining price comparability that is not based on a strict comparison with domestic prices or costs in China. The Protocol does provide that if China can clearly show that market conditions prevail and it meets a WTO importing member's national law criteria for a market economy, then the NME methodology will cease to apply in that country. However, absent those circumstances, that the U.S. negotiated the <u>right</u> to apply, and China agreed to the use of, an NME methodology for 15 years is a point that should not be lost in the context of the JCCT working group's discussions. Any change in China's status as an NME must be based upon a clear demonstration by China that market principles prevail in its economy according to criteria set out in the U.S. statute.

<u>Labor Issues</u>

The second statutory factor in considering NME status is "the extent to which wage rates in the foreign country are determined by free bargaining between labor and management." 19 U.S.C. § 1677(18)(B)(ii). The record of China with respect to permitting free bargaining between labor and management is woeful and is a stark illustration that China has not achieved a labor market characteristic of a market economy.

Although China has not ratified the International Labour Organization's (ILO) core Conventions on freedom of association and collective bargaining, China is bound, as a member of the ILO, to respect, promote, and realize the underlying rights in accordance with the ILO's 1998 Declaration of Fundamental Rights and Principles at Work. As such, China has committed to maintain these internationally-recognized labor standards.

The recent Section 301 petition filed by the AFL-CIO concerning China's labor practices provides cogent evidence that China does not meet the standards of free wage bargaining that are common to market economy countries. The Petition states:

> The PRC uses all organs of state power – the Communist Party, the People's Liberation Army, the People's Armed Police, the Public Security Bureau (political police), the Labor Department, and the state judicial, procuratorial, and penal systems -- to suppress workers' right of association, right of collective bargaining, and right to strike. The suppression is comprehensive, unremitting, and brutal.
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> In its 2003 annual country report on China, the U.S. Department of State concludes that China's regulations "prevent the formation of truly autonomous…labor organizations." Similarly, the 2003 Annual Report of the Congressional-Executive Commission on China concludes:
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>> The Chinese government continues to deny its citizens the right to freely organize and to bargain collectively and continues to imprison labor leaders and actively suppress efforts of workers to represent their own interests….The Chinese government denies its citizens the freedom to associate and forbids them from forming independent trade unions. The government has made no progress in the past year toward respecting this right.

AFL-CIO Section 301 Petition Regarding Violation of Workers' Rights in China, March 17, 2004, at 21. The 301 Petition sets out in detail how China has denied workers the right to strike, the right to free association , and the rights of collective bargaining. *See Petition* at 20-55. In sum, the Petition states:

> In sum, factory workers in China are wholly denied the fundamental rights of association and collective bargaining, by law and practice. Either the monopolistic ACFTU {All-China Federation of Trade Unions} is present in an enterprise, or there is no union at all. Where the ACFTU is present, its role is to discipline the workforce on behalf of Party policies, local development strategies, and investor goals, not to assert worker interests and rights. * * * The PRC unremittingly represses rights of association and strikes in all sectors of manufacturing – textiles, toys, leather goods, footwear, electronics, auto, motorcycle, petrochemicals, metallurgical, machinery, paper, printing, plastics, and all other sectors.

AFL-CIO Section 301 Petition, at 28-29.

Moreover, the Congressional-Executive Commission on China, in their annual reports, and the Department of State, in its annual country reports, have stated that China denies its workers free association and the right to collective bargaining. *See, e.g.,* Department of State, Country Reports on Human Rights Practices 2003: China; Congressional-Executive Commission on China, 2003 Annual Report, at pp. 23-24.

The denial of labor rights in China has a distortive effect on U.S. China trade, the most visible being the loss of U.S. manufacturing jobs. As the AFL-CIO Petition notes:

> China's persistent denial of workers' rights gives China-based producers an unfair cost advantage. This *artificial and illegitimate* cost advantage enables firms located in China to out-compete firms located in the U.S. and elsewhere, whether those firms are producing for U.S., Chinese, or third-country markets. U.S. workers, workers in other developed and developing countries, and Chinese workers are all injured by China's repression of workers' rights.

AFL-CIO Section 301 Petition, at 64-65 (emphasis in original).

China's record with respect to worker rights and freedom to bargain collectively must undergo significant reform before China can be considered to meet the standard of a market economy.

Subsidies

The sixth statutory factor relevant to a consideration of NME status is a general one -- "such other factors as the administering authority considers appropriate." 19 U.S.C. § 1677(18)(B)(vi). The USWA suggest that among these "other factors" should be a consideration of China's compliance with its WTO obligations respecting subsidies and the degree to which China subsidizes its domestic industries. These are relevant factors in considering whether Chinese government policies and practices have the potential to distort the market and U.S.-China trade.

WTO commitments

To date, China has not fully complied with its WTO commitments regarding subsidies. In its WTO accession agreement, China agreed to eliminate all export subsidies and all subsidies contingent on the use of domestic over imported goods (import substitution subsidies).[1] China also agreed to phase out (by the end of 2000) subsidies provided to certain state-owned enterprises (SOEs) running at a loss.[2] China further committed to notify all of its subsidies that are included within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM).[3]

Among the subsidy programs that China agreed to eliminate was one to ferrous metal industry SOEs running at a loss.[4] However, whether China, in fact, has complied with this commitment is not known because China has not yet submitted any subsidy notifications to the

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1 *See* Protocol of Accession, WT/L/432 (23 November 2001) at section 10, para. 3.
2 *See* Protocol of Accession, WT/L/432 (23 November 2001) at Annex 5B (Subsidies to be Phased Out).
3 *See* Protocol of Accession, WT/L/432 (23 November 2001) at section 10, para. 1.
4 *See* Protocol of Accession, WT/L/432 (23 November 2001) at Annex 5A, item I.

WTO Subsidies Committee.[5] With respect to export subsidies, although China agreed to eliminate them, it is not clear that China has complied because it has not submitted the required notifications. Moreover, USTR has noted that U.S. industries have expressed concern that China continues to use export subsidies for agricultural products, especially for corn and cotton,[6] as well as for industrial products, such as high technology electronics, biomedicine, new materials and integrated circuits,[7] textiles, steel, petrochemical, machinery and copper and other non-ferrous metals industries.[8] China also provides export-contingent tax relief to foreign investors. At the second TRM, China confirmed that it uses tax laws to encourage the formation of wholly foreign-owned enterprises that are export-oriented.[9]

The U.S. has raised its concerns regarding China's lack of transparency in notifying its subsidies, particularly regarding subsidies provided to SOEs running at a loss, at the WTO's annual China Transitional Review Mechanism (TRM) process.[10]

Subsidies cause market distortions

Chinese government subsidies that are provided to industrial goods producers in China contribute to market distortions. The following quote illustrates that subsidies, including subsidies provided to SOEs operating at a loss, have had distortive effects on U.S.-China trade:

> <u>Subsidized Exports</u> -- We continue to receive reports from different industries that Chinese products are being sold in the United States at prices so low that they could not even cover the cost of raw materials and shipping much less full

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5 *See* USTR & Dept. of Commerce, *Subsidies Enforcement Annual Report to the Congress* (Feb. 2004) at 23. WTO Committee on Subsidies and Countervailing Measures, *Chair's Report to the Council for Trade in Goods on Transitional Review of China*, G/SCM/111 (4 November 2003) at 3.

6 *See* USTR, *2002 Report To Congress On China's WTO Compliance*, at 33 (December 11, 2002); USTR, *2003 Report To Congress On China's WTO Compliance*, at 48 (December 11, 2003).

7 *See* USTR, *2003 National Trade Estimate Report on Foreign Trade Barriers* at 58.

8 *See* USTR, *2004 National Trade Estimate Report on Foreign Trade Barriers* at 72.

9 *See* WTO Committee on Subsidies and Countervailing Measures, *Chair's Report to the Council for Trade in Goods on Transitional Review of China*, G/SCM/111 (4 Nov. 2003) at 5.

10 *See Chair's Report To The Council For Trade In Goods On Transitional Review Of China,* G/SCM/111 (4 November 2003) at paras. 8-9.

> production and marketing costs. These reports suggest the possibility of widespread use of subsidies, either direct or indirect, to help Chinese exporters gain a competitive advantage in the U.S. market. One important source of indirect subsidy is continued bank lending to money-losing and insolvent Chinese manufacturers, often state-owned or state-controlled enterprises. Since the Chinese banks providing these loans are either state-owned or state-controlled, the Chinese government bears responsibility for their lending practices.[11] {Emphasis added}

China's steel industry, now the largest in the world, has received and continues to receive government support through subsidies. China has subsidized its steel industry through various measures, including government-planned investments, loan forgiveness, and debt for equity swaps. For example, China provided over $11 billion in forgiven debt to the steel industry in 1999-2000.[12] In its July 2000 global steel study, the Commerce Department reported that China had planned to spend $6 billion to "upgrade and transform the steel industry," and that "nearly $3.4 billion" would be in the form of low-interest loans.[13] Significantly, the Department noted that the Chinese government's "allocation and use of investment funds" were "based in large part on nonmarket signals."[14]

When government subsidies are provided to steel companies on this scale, the result is expanded capacity and overproduction, which then causes severe market distortions such as price instability and dumping. These consequences distort the U.S.-China trade relationship. The American Iron and Steel Institute (AISI) observed:

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11 Testimony of Franklin J. Vargo, Vice President, International Economic Affairs, National Association of Manufacturers, On Behalf of The National Association of Manufacturers Before the House Committee on International Relations, Hearing On U.S.-China Ties: Reassessing the Economic Relationship, October 21, 2003.

12 *See Request for the Inclusion of Steel in the National Trade Estimate Report on Foreign Trade Barriers in China*, Submission of Bethlehem Steel, LTV Steel and US Steel to U.S. Trade Representative, December 17, 2001, at 4.

13 Dept. of Commerce, *Global Steel Trade* (July 2000) at 146.

14 *Id.* at 147.

> China is currently implementing a number of policies in the steel sector that . . . distort the market and may result in injury to the U.S. steel industry. These include massive government subsidies and other forms of government support, the encouragement of output restraint cartels and rebate of a Value Added Tax in a manner designed to foster exports. . . . .
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> A particular concern is the fact that many Chinese steel companies remain under the de facto control of the Chinese government and that the Chinese government continues to funnel massive government subsidies into industries such as steel, which it deems to be strategically important.
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> It is important to understand that there has been enormous growth in Chinese steel capacity and in Chinese steel consumption in recent years. Thus, if the Chinese economy were to weaken even slightly, this could unleash a flood of steel into an already saturated global market. That, in turn, could cause significant harm to world steel markets, including serious damage to the U.S. steel industry recovery.[15] {Emphasis added}

Continued subsidies to China's steel industry have encouraged massive capacity increases in China that are not driven by rational market signals. This massive capacity expansion will worsen the problem of global excess capacity and further distort China's market conditions and U.S.-China trade. Indeed, China itself has recognized that China's steel capacity expansion is not a rational response to market signals.

> The State Development and Reform Commission (SDRC) said in a news release Tuesday that a huge amount of steel-making capacity was to come into production in the next three years. This means increasing market risks for existing steel plants and those to be completed in the next few years.
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> It warned that irrational expansion of the steel industry would incur risks of oversupply, an imbalance of industrial structure, cause new bad debts to banks and jeopardize improvement of product and industrial structure.[16]

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[15] *Comments of American Iron and Steel Institute (AISI) to U.S. Trade Representative Concerning China's Compliance with WTO Commitments*, Sept. 9, 2002; available at www.steel.org/policy/trade/st_020909.asp.

[16] People's Daily Online, *Chinese Gov't Warns of Overheating in Steel Industry*, August 13, 2003; available at http://english.peopledaily.com.cn/200308/13/eng20030813_122211.shtml

<u>Notification of Intent to Testify at Hearing</u>

Pursuant to the May 3, 2004 Federal Register notice, 69 Fed. Reg. 24132-33, the USWA hereby notifies the Department that it intends to testify at the public hearing scheduled for June 3, 2004. William J. Klinefelter, Legislative and Political Director of the USWA will testify on behalf of the United Steelworkers of America. Mr. Klinefelter's address and telephone number are: United Steelworkers of America, 1150 17th Street, NW, Suite 300, Washington, DC 20036; (202) 778-4384.

Respectfully submitted,

William J. Klinefelter

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