Post-Hearing Comments of Metals Service Center Institute ("MSCI")

Concerning Policy Recommendations on the Global Steel Industry Situation and Impact on U.S. Steel Industry and Market Docket No. USTR-2016-0001

The Metals Service Center Institute ("MSCI") respectfully submits these post-hearing comments following the April 12, 2016 joint hearing of the Office of the United States Trade Representative ("USTR") and the U.S. Department of Commerce ("Commerce") on the global steel industry situation and its impact on the U.S. steel industry and market. These comments supplement, and incorporate by reference, MSCI's March 29, 2016 written comments and the testimony of Richard Robinson presented at the hearing on behalf of MSCI.

In particular, MSCI appreciates the opportunity in these post-hearing comments to respond to questions that Marisa Lago, Assistant Secretary for International Markets and Development at the U.S. Department of the Treasury, posed to MSCI's Richard Robinson and other members of Panel No. 1 at the April 12th hearing. Assistant Secretary Lago posed two questions to the panel: (1) how is the current global steel industry situation and its impact on U.S. steel industry and market different today compared to the past; and (2) what can the federal government do about it? MSCI responds to those questions, as follows:

First, much has changed in both the global steel industry and the U.S. steel industry since the 2008 recession, and not for the better. MSCI recognizes that the steel industry is cyclical and is generally tied to periods of economic downturn and periods of economic recovery. But, unlike past cycles, the U.S. steel industry has not fully recovered from its nadir nearly a decade ago. Indeed, as Exhibit 1 attached to our pre-hearing statement shows, steel shipments from MSCI member companies in 2015 were barely 65% of peak shipments before the 2008 recession. And even more disturbing, Exhibit 2 to that statement shows that even that anemic recovery has taken more than twice as long as the average recovery period following previous recessions. The inescapable conclusion is that something more than classic, free market forces are at work in the global steel markets in ways that have harmed U.S. steel producers and manufacturers, the North American steel service center industry, and North American workers.

That something more is the continuing market distorting policies, identified in the 2015 OECD report on *Excess Capacity in the Global Steel Industry*, by certain foreign governments to support their state-directed steel industries through massive subsidies to both create new steel production capacity and to maintain existing inefficient capacities at a time of, at most, modest growth in demand. The resulting disjunction between global capacity and demand has become a predictable formula for foreign dumping and predatory pricing, which in turn has led to record imports of unfairly priced steel and increasing bankruptcies and lay-offs for North American companies that play by the rules. The consequences of the failure to ensure a level playing field is recorded almost daily in the business pages: United States Steel has cut 5,000 jobs since the beginning of last year and warned that thousands more are at risk; Arcelor Mittal, the world's largest steelmaker, recently announced losses for the last year totaling nearly $8 billion, while many U.S. companies have not turned a profit in years. What is different this time is that, quite simply, the status quo is not sustainable.

In response to Assistant Secretary Lago's second question, as to what the U.S. Government can do about it, MSCI would respectfully direct her attention to MSCI's recommendations in our pre-hearing written statement. In those comments, MSCI recommended that U.S. trade policy be guided by three core principles and objectives. First, U.S. trade negotiators should immediately engage in negotiations—both bilaterally and multilaterally—with our trading partners to address excess capacity resulting from foreign governmentsponsored market distorting policies. Failure to negotiate reductions by a certain percentage over a specified period should trigger offsetting trade sanctions under the Government's safeguard authority, such as countervailing tariffs and/or import licenses.

Second, if the United States were to impose additional tariffs on imported steel, then—to avoid unintended damage to the U.S. manufacturers that utilize steel in their finished products—the United States should impose a corresponding and offsetting tariff on imported steel-containing products. The products to be subject to the tariff should be identified by USTR in consultation with domestic steel consuming companies; the tariff should be based upon, and proportional to, the additional tariff imposed on the imported steel itself.

Both of the foregoing remedies would require the U.S. Government to initiate a safeguard action under Section 201 of the Trade Act of 1974, would likely take many months to implement—at a time when the U.S. industry is reeling—and may present the quandary of too little relief, too late. MSCI respectfully submits its third recommendation in its pre-hearing statement could be implemented more expeditiously and provide immediate notice to those countries engaging in unfair trade practices that the United States will take action to protect our companies and our workers from such practices. Specifically, MSCI recommends that the United States take the long-overdue step of declaring that the Chinese government is a currency manipulator. China's substantially undervalued currency makes all Chinese exports to the U.S., not just steel, cheaper and hurts U.S. producers, manufacturers, service centers, and the broader economy. Currency manipulation, as outside experts have attested, is one of the major reasons for the growing merchandise trade deficit with China, which last year exceeded $366 billion.

Such a declaration could be made pursuant to Title VII of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125) (the "Act"), which became law in February 2016 after two years of debate. That Act was intended by Congress to provide the trade agencies of the U.S. Government additional tools and enhanced authority to enforce U.S. trade laws and agreements. Title VII of the Act provides authority for determining whether a trading partner has engaged in currency manipulation and provides enhanced enforcement authorities where the trading partner fails, after negotiation, to correct its practices.

Title VII requires that the Treasury Department, within 180 days of enactment and every 180 days thereafter, submit to Congress a report on the currency exchange rate and economic policies of our major trading partners, including "enhanced analysis" of the policies of those countries that have (1) a significant trade surplus with the United States, (2) a current account surplus, and (3) have engaged in a "persistent one-sided intervention" in the foreign exchange markets. Upon a finding that a trading partner has met these criteria, the Act requires that the President, through the Secretary of the Treasury, initiate bilateral negotiations to address the causes of the undervaluation, and remedial actions if the country fails to take sufficient action to correct the undervaluation, including, for example, prohibiting OPIC from approving any new financing for a project in that country, prohibiting the Federal Government from procuring goods or services from that country, and engaging the International Monetary Fund to counter the macroeconomic and exchange rate policies of that country.

On April 29, 2016, the Department of the Treasury issued its first Report to Congress, as required by the Act, but MSCI respectfully submits that Treasury missed an important opportunity to address the effects on the U.S. and global steel industry of currency manipulation by foreign governments. In particular, in analyzing the policies of the Government of China, the

Department determined that the first two criteria of currency manipulation applied, *i.e.,* China has (1) a significant bilateral trade surplus with the United States, and (2) a material current account surplus. However, Treasury determined that the third criterion did not apply, *i.e.* that China has not engaged in "persistent one-sided intervention in the foreign exchange market." On that basis, the Department determined not to undertake an "enhanced analysis" of Chinese policies or to declare the Chinese government a currency manipulator. MSCI believes that Treasury's decision on the latter factor is wrong—and misses an opportunity to address the steel industry situation—because it fails to consider China's long-term and well-known record of currency manipulation.

In implementing Title VII of the Act, Treasury has adopted a narrow definition of "persistent one-sided intervention" in the foreign exchange markets. Under the Treasury definition, a country has engaged in such intervention only if it has conducted repeated net purchases of foreign currency that amount to more than 2 percent of its GDP *over the course of a year*. In its report, Treasury found that China does not *currently* meet the definition of "persistent one-sided intervention" in the foreign exchange markets. MSCI submits that that conclusion may fit the narrow definition, but it defies common understanding which would be captured by a broader definition or by analyzing intervention practices over a longer period of time.

Moreover, in its report, Treasury focused on the People's Bank of China's ("PBOC") sales of foreign currency assets from August 2015 through March 2016, which Treasury interpreted as an attempt by China to support its currency, but which ignores China's actions that precipitated those sales. Indeed, many observers have concluded that China's sales were necessitated by the market's over-reaction to China's attempt last August to *devalue* its currency against the strengthening U.S. dollar. China's attempt in August to *devalue* its currency against the U.S. Dollar, and its actions taken merely to correct a market over-reaction to its own attempts to *devalue* its currency, should thus be considered together. MSCI respectfully submits that a more holistic and common sense analysis of China's actions in this period, as well as over the last several years, in fact demonstrates a "persistent one-sided intervention" in the foreign exchange markets.

MSCI recommends that the Secretary of the Treasury should nevertheless, as contemplated by Congress, and as amply supported by the evidence, initiate negotiations with China *on an expedited basis* to ensure that China regularly and promptly adjusts the rate of exchange between its currency and the U.S. Dollar, to permit effective balance of payments adjustments and to eliminate the unfair advantages of China's practice of currency manipulation. Failure to achieve *on an expedited basis* adequate corrective measures and adherence to those measures would justify, at the very least, the above-referenced remedial actions. And, as noted above, any sanctions under the Act should be in addition to, not in lieu of, any other offsetting trade sanctions, such as tariffs or licenses, and corresponding and offsetting tariffs on steel-containing products, consistent with MSCI's first two recommendations as outlined above.

And finally, the U.S. Government must resist efforts by the Government of China to be declared a "market economy" for purposes of enforcing the anti-dumping laws of the United States and other countries. The issue of China's market economy status will come to a head at the end of this year—15 years after China's accession to the World Trade Organization ("WTO"). In its Protocol of Accession, the WTO generally allowed WTO member countries to use surrogate country prices and costs in prosecuting anti-dumping cases against Chinese products for the first 15 years after China's accession because of the opacity of Chinese prices and costs in a heavily government-directed economy. China has claimed that at the end of this year, under the terms of its Protocol of Accession, all countries must accord China market economy status, and that WTO members will no longer be able to use surrogate country costs and prices in anti-dumping cases. As discussed in MSCI's pre-hearing comments, hearing testimony, and these post-hearing comments, as well as by other panel members and commentators, China's economy is, and remains, a government-dominated, non-market economy, and its steel industry continues to be state-owned, -controlled, and -subsidized, fails to disclose financial information in accordance with generally-recognized international standards, and conducts business with obvious disregard to the rules of the free market. MSCI therefore urges the U.S. Government to take whatever action is necessary to ensure that China's status as a non-market economy remains in full effect until such time that China can demonstrate that its economy is no longer government-subsidized and that market economy conditions prevail in its steel and other export-oriented industries.