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Thomas J. Gibson
President and Chief Executive Officer

May 10, 2013

VIA ELECTRONIC MAIL DELIVERY

Mr. Douglas Bell
Chair
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Request for Comments Concerning the Proposed Transatlantic Trade and Investment Partnership (TTIP)

Dear Mr. Bell:

These comments are submitted on behalf of the U.S. producer member companies of the American Iron and Steel Institute (“AISI”), who collectively account for over three-quarters of the steel produced in the United States. They are in response to a request from the Office of the United States Trade Representative (“USTR”) for comments concerning the proposed Transatlantic Trade and Investment Partnership (“TTIP”) trade agreement.¹ This proposed trade and investment agreement with the European Union (“EU”) was announced on March 20, 2013 when USTR informed the U.S. Congress of the Obama Administration’s intention to enter negotiations with the EU with the goal of increasing trade and investment across the Atlantic Ocean.

I. Introduction

The United States and the European Union share many common values, including a commitment to open markets and full enforcement of the rules of international trade as outlined in the World Trade Organization (“WTO”) agreements. Similarly, the U.S. and EU steel industries have common interests in promoting fair and open international trade in steel, steelmaking raw materials and steel-containing goods. Accordingly, the member companies of the AISI see many opportunities in the context of the proposed

¹ *Office of the United States Trade Representative Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement*, 78 Federal Register 19566 (United States Trade Representative – April 1, 2013).

TTIP negotiations to strengthen U.S.-EU cooperation on external trade and to improve the rules that govern international trade. We therefore urge the USTR to develop negotiating objectives for the proposed TTIP that reflect a high level of ambition and that can result in a high-standard 21st Century trade and investment agreement that will serve as a model and precedent for future trade and investment negotiations.

With these goals in mind, and as further detailed below, AISI urges USTR to focus on the following objectives in the proposed TTIP negotiations:

- Strengthening the effectiveness and enforcement of U.S. trade remedy laws;
- Addressing customs fraud, circumvention and evasion;
- Eliminating export duties and other restrictions on steelmaking raw materials exports;
- Establishing significant disciplines on state-owned enterprises;
- Prohibiting currency manipulation;
- Maintaining the WTO Government Procurement Agreement as the appropriate agreement to address government procurement issues;
- Ensuring that the TTIP agreement contains firm and effective rules of origin;
- Promoting regulatory convergence and mutual recognition of product standards; and
- Ensuring equality of treatment with regard to the border adjustability of U.S. and EU tax systems.

Each of these negotiating principles will be discussed in more detail below.

II. Specific Negotiating Objectives for the Proposed TTIP Agreement

A. Trade Remedy Laws

For decades, Congress has recognized that unfair foreign pricing and government subsidies disrupt the efficient operations of markets both here and abroad. Accordingly, the United States has long maintained strong antidumping (“AD”) and countervailing duty (“CVD”) laws, which can be found in Title VII of the Tariff Act of

1930 ("Tariff Act"). These laws are designed to counter the injurious sale of foreign goods in the United States for less than fair value (i.e., dumping) through the imposition of AD duties and to address the grant of injurious subsidies by foreign governments through the imposition of CVDs. Such trade remedies are necessary to offset the benefit to foreign producers of unfair trade practices and to address any resulting or threatened injury to U.S. domestic producers. Effective and vigorous enforcement of the trade remedy laws is also critical to building and maintaining the political support for trade liberalization.

Given the importance of U.S. trade laws to ensuring true market competition between the United States and its trading partners, it is essential that the TTIP negotiations do nothing to weaken those laws. Accordingly, there should be absolutely no negotiations relating to (or that could require changes in) U.S. AD/CVD laws or practice.

Rather, the focus of the TTIP negotiations should be on strengthening the effectiveness and enforcement of these laws. For example, the U.S. and EU steel industries share a common concern about the high level of government ownership and control of the Chinese steel industry, the continued non-market nature of the Chinese economy, and the need for continued strong and effective measures to respond to Chinese unfair trade practices. AISI therefore urges that the TTIP include provisions to promote increased EU-U.S. cooperation to ensure that trade remedy measures continue to be effective in responding to the unique nature of Chinese competition in steel and other sectors.

B. Customs Fraud, Circumvention and Evasion

U.S. and other steel producers are facing a surge in schemes by foreign exporters to evade AD/CVD orders through such means as transshipment, misclassification, fraud and other illegal behavior. In fact, some foreign companies blatantly and boldly advertise services to assist importers in avoiding duty payment. As a result, many U.S. producers who have incurred the legal expense and injury associated with unfairly traded goods are denied the benefit of the remedy provided by law. In addition, the U.S. Treasury is not collecting revenue it is due.

AISI believes that the United States and the European Union share common interests in combatting such practices, and urge that provisions be included in the TTIP to promote increased EU-U.S. customs cooperation to respond to these fraudulent and often illegal schemes.

C. Elimination of Export Duties and Other Restrictions

USTR's negotiating objectives should include not only the elimination of import duties, but also the elimination of export duties on steelmaking raw materials, as well as

elimination of non-tariff restrictions on such exports (other than appropriate national security-based export licensing requirements). While we are not aware of any export duties imposed by the European Union, including such commitments in the TTIP will reinforce an important standard and precedent for all future trade agreements. Foreign export duties and other restrictions are clear barriers to trade, and the United States and the European Union have worked closely together in recent years at the OECD to discourage the use of export restrictions on raw materials. Such measures prevent the free flow of goods between countries and create significant distortions in the global marketplace. Indeed, true market competition is virtually impossible if one trading partner is permitted to impose export duties at the expense of another.

D. Disciplines on State-Owned Enterprises (SOEs)

In order to produce a high-standard agreement, a key negotiating objective of the USTR should be the establishment of strong and enforceable disciplines on state-owned enterprises (SOEs) that will ensure competitive neutrality between SOEs operating in the commercial arena and competing private sector companies. SOEs should be required to act solely on the basis of commercial, rather than governmental or political, objectives, and should not be permitted to receive government subsidies or other benefits not generally available on commercial terms. SOEs also should not receive preferential legal or regulatory treatment that distorts commercial conditions, and should adhere to sound corporate governance standards.

These principles should be incorporated into enforceable obligations for TTIP member countries, and should apply to SOEs at all levels of government, including central, state or provincial, and local government SOEs. In addition, any exceptions to these principles due to exigent circumstances should be limited, temporary, and narrowly tailored.

E. Currency Manipulation

Currency manipulation to gain an unfair competitive advantage is among the most trade-distorting practices utilized today as some countries seek to support their exports and curb imports through the deliberate and willful weakening of their currencies. To this end, AISI urges that strong disciplines against currency manipulation be included in any TTIP agreement. By including provisions prohibiting currency manipulation in the TTIP agreement, the Administration will help achieve its goal of securing a model high-standard 21st Century agreement. Moreover, the inclusion of such provisions in the TTIP agreement will help to foster multilateral consensus against the use of currency manipulation to gain an unfair competitive advantage.

F. Government Procurement

The WTO Government Procurement Agreement (“GPA”) sets forth a framework of rights and obligations among its Parties in terms of government procurement. For example, Parties to the Agreement “are required to accord to the products, services and suppliers of any other Party to the Agreement treatment ‘no less favorable’ than they give to their domestic products, services and suppliers” and “Parties may not discriminate among goods, services and suppliers of other Parties.”² In addition, to ensure that Parties adhere to the principle of non-discrimination, the GPA “also places considerable emphasis on procedures for providing transparency of laws, regulations, procedures and practices regarding government procurement.”³ The United States and the European Union and its Member States are Parties to the GPA,⁴ and have been leaders in promoting further negotiations to expand the scope of this important plurilateral agreement. Accordingly, there is no need to negotiate additional government procurement provisions in the TTIP and any U.S.-EU negotiations on this subject should be reserved for the GPA process.

Furthermore, USTR should make clear from the outset of the negotiations that the existing U.S. GPA reservation for the Buy America restrictions attached to Federal funds for mass transit and highway projects will not be subject to negotiation in the TTIP process.

G. Rules of Origin

U.S. negotiators need to make certain that any TTIP agreement is not used to improperly provide preferences for steel (or other manufactured goods) from non-TTIP parties to the United States. Accordingly, it is essential that the TTIP agreement contain strict “rules of origin” to make sure, for example, that steel that was actually made in China, India, or some other country cannot claim to have originated in a TTIP country as a result of a minor transformation that takes place in such a country. Such strict rules of origin are also critical to the effective and proper enforcement of trade remedy orders. To address this issue, AISI urges that the steel rules of origin adopted in the North American Free Trade Agreement (“NAFTA”) be used as the basis for the rules of origin in the TTIP agreement. AISI further recommends that any TTIP agreement should not follow the approach of the U.S.-Korea Free Trade Agreement, which contains less restrictive steel rules of origin than those contained in the NAFTA.

² See WTO’s Overview of the Government Procurement Agreement, available at http://www.wto.org/english/tratop_E/gproc_e/gpa_overview_e.htm.

³ *Id.*

⁴ *Id.*

H. Regulatory Convergence and Mutual Recognition

AISI urges USTR to pursue regulatory convergence and mutual recognition of product standards as key negotiating objectives in the TTIP for those sectors where the EU and U.S. industries have identified specific areas for cooperation. We note, in particular, that the EU and U.S. automotive industries have proposals for mutual recognition of standards and regulations affecting automotive products, and the U.S. steel industry supports these proposals. At the same time, AISI opposes any efforts to use the TTIP negotiations to pursue harmonization of environmental or other regulations affecting production processes, including with respect to carbon emissions.

I. Border Adjustability of Taxes

The USTR should also address in the TTIP negotiations a critical issue relating to border adjustability of taxes – an issue that significantly affects trade with the European Union and other major trading partners. There is a fundamental disparity caused by existing international rules that unfairly rewards countries that rely on VAT systems while penalizing the United States (which relies principally on an income tax system). Existing WTO rules allow countries relying on VAT systems to rebate indirect taxes on exports and apply them on imports, while the United States is denied similar treatment for its “direct” (i.e., income) tax system. As a result, U.S. exports to the EU and other major markets are essentially double-taxed, while European and other foreign producers can sell in the U.S. market largely tax-free. By one estimate, this distortion of free trade represents a net disadvantage for U.S. exporters of more than \$100 billion per year.⁵ There is no legitimate economic justification for such a practice.⁶

In 2002, when Congress approved trade promotion authority in the context of the Doha Development Agenda of WTO negotiations, it specifically provided that “[t]he principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.”⁷ USTR should pursue this issue in the TTIP negotiations and do so aggressively.

⁵ Ernest Christian and Gary Hufbauer, “End this damaging tax and trade charade,” *Financial Times* (“Tax and Trade Charade”) at 11 (March 9, 2004).

⁶ *Id.*

⁷ Trade Act of 2002, P.L. 107-210, 116 Stat. 933, 1001 (Aug. 6, 2002) at § 2102(b) (15).

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III. Conclusion

As discussed above, the proposed TTIP negotiations provide an opportunity to address a number of critical issues and to promote a new, higher standard for trade and investment agreements going forward. In order to make the most of this opportunity, USTR should pursue aggressively the aforementioned objectives in the TTIP negotiations with the European Union. The AISI and its U.S. member companies appreciate this opportunity to provide comments on the proposed Transatlantic Trade and Investment Partnership.

Sincerely,



Thomas J. Gibson
President and CEO