



**American
Iron and Steel
Institute**



CPTI
THE COMMITTEE
ON PIPE AND TUBE
IMPORTS



January 25, 2010

VIA ELECTRONIC MAIL DELIVERY

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Comments Concerning the Proposed United States-Trans-Pacific Partnership Trade Agreement

Dear Ms. Blue:

These comments are submitted on behalf of the U.S. member companies of the American Iron and Steel Institute ("AISI"), Committee on Pipe and Tube Imports ("CPTI"), Specialty Steel Industry of North America ("SSINA") and Steel Manufacturers Association ("SMA"). Together, these entities (collectively referred to hereafter as the "American Steel Producers") account for the vast majority of steel production in the United States. Prior to the current economic downturn, the industry directly employed approximately 165,000 persons in the United States, supported a total of 1.2 million jobs overall and contributed \$350 billion to the economy annually. Steel is the vanguard of manufacturing, essential to the automotive, construction and defense industries -- and each steel industry job generates seven jobs in other sectors. The companies that comprise America's vibrant steel sector are essential to the long-term health and vitality of the U.S. economy.

These comments are being submitted in response to a request from the Office of the United States Trade Representative ("USTR") for comments concerning the proposed Trans-Pacific Partnership ("TPP") trade agreement.¹ The initial TPP negotiating

¹ *Office of the United States Trade Representative Request for Comments Concerning Proposed Trans-Pacific Partnership Trade Agreement*, 74 Fed. Reg. 66,720 (United States Trade Representative December 16, 2009).

partners include Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, and Vietnam -- although USTR has indicated that it intends to expand this initial group to include other countries throughout the Asia-Pacific region.

The American Steel Producers urge USTR to focus on the following objectives in the TPP negotiations:

- Maintaining the effectiveness of U.S. trade laws (*i.e.*, by refusing to engage in any negotiations that would weaken U.S. antidumping and countervailing duty laws);
- Promoting greater transparency in the administration of foreign laws and regulations;
- Working to eliminate both tariffs and non-tariff barriers to trade among TPP nations;
- Requiring all TPP nations to become parties to the Government Procurement Agreement of the World Trade Organization ("WTO");
- Pressing for the privatization of state-owned companies and industries;
- Ensuring that any TPP Agreement contains firm and effective rules of origin;
- Ensuring that negotiations over labor and the environment do not result in concessions that place U.S. manufacturers at an unfair disadvantage;
- Recognizing the need for careful consideration before expanding negotiations to include other countries;
- Refusing to agree to anything that would limit the ability of the United States to treat Vietnam as a non-market economy, while pressing Vietnam to adopt significant market reforms;
- Ensuring that Vietnam would not become a transshipment point for exports from China, India, or any other countries seeking to circumvent U.S. antidumping and countervailing duty orders.

Each of these objectives is discussed in more detail below.

I. General Negotiating Objectives for the Proposed Regional Agreement

A. Maintaining the Effectiveness of U.S. Trade 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 sale of foreign goods in the United States for less than adequate remuneration (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. Indeed, Ambassador Ronald Kirk, the current USTR, has stressed that maintaining strong and effective U.S. trade laws, and the vigorous enforcement of those laws, will "bring home to the American people the jobs and economic prosperity that are the promise of trade" -- the very objectives underlying the TPP trade agreement.²

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 TPP 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.

B. Promoting Greater Transparency in Foreign Legal Regimes

The administration and enforcement of foreign laws affecting exporters and foreign investors in some jurisdictions are clouded in secrecy and involve the provision of minimal due process. Closed proceedings, undisclosed documents and unsupported decisions are not uncommon in some of the TPP countries. Greater transparency would help to ensure that the administration and enforcement of laws affecting trade and investment are fair and objective, thereby ultimately promoting the advancement of true market competition. Given these realities, USTR should work to promote greater transparency in the administration and enforcement of legal regimes by all TPP negotiating partners.

² Statement by Ambassador Ron Kirk - November 14, 2009, *available at* <http://www.ustr.gov/about-us/press-office/fact-sheets/2009/december/tpp-statements-and-actions-date>. Given the ongoing discussions in the WTO Doha Round regarding trade remedy rules (including transparency issues relating to foreign AD/CVD regimes), there is no reason to allow TPP negotiations to serve as an alternative forum for such talks – or as a venue for attempts to weaken vital U.S. trade laws.

C. Working to Eliminate Tariff and Non-Tariff Barriers to Trade

USTR's negotiating objectives should include not only the elimination of import duties, but also the elimination of export duties on raw materials by TPP negotiation partners. Foreign import duties and export duties are both clear barriers to trade. They 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 import duties and export duties at the expense of another. Furthermore, non-tariff barriers (such as quantitative restrictions and discriminatory import licensing) in foreign countries also restrict the free flow of goods and place U.S. manufacturers at an unfair disadvantage. While some TPP countries have made progress toward addressing this issue, USTR should work for the full elimination of all such barriers.

D. Requiring that All TPP Parties Accede to the WTO Government Procurement Agreement

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."³ 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."⁴ Among the TPP countries, only the United States and Singapore are Parties to the GPA. Australia, Chile, and New Zealand are only Observers to the GPA and are therefore not bound by its provisions.⁵ Peru, Brunei Darussalam and Vietnam are neither Parties nor Observers to the GPA. To ensure that all TPP negotiating partners make procurements in a non-discriminatory and transparent manner, USTR should make the accession of all TPP negotiation parties to the GPA a central objective of negotiations.

E. Pressing for the Privatization of State-Owned Enterprises

USTR should also insist that countries such as Brunei Darussalam and Vietnam privatize state-owned companies and industries in order to participate in any TPP

³ See WTO's Overview of the Government Procurement Agreement, *available at* http://www.wto.org/english/tratop_e/gproc_e/gpa_overview_e.htm.

⁴ *Id.*

⁵ *Id.*

Agreement.⁶ In Brunei Darussalam, the government owns monopolies in key sectors of the economy such as oil and gas, telecommunications, transport and energy generation and distribution. Such ownership distorts economies and provides an unfair sourcing advantage to Brunei's domestic companies and producers. As discussed in more detail below, Vietnam's steel industry is largely owned or controlled by the state. Unless this issue is addressed, any TPP Agreement will put U.S. companies at a significant and unfair disadvantage vis-a-vis their state-owned competitors.

F. Ensuring that Any TPP Agreement Contains Firm and Effective Rules of Origin

U.S. negotiators need to make certain that the TPP Agreement is not used to improperly provide preferences for steel (or other manufactured goods) from non-TPP parties to the United States. Accordingly, it is essential that the TPP 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 TPP country as a result of a minor transformation that takes place in such a country. To address this problem, the American Steel Producers urge 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 TPP trade agreement. The American Steel Producers further recommend that any TPP 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.

G. Ensuring that TPP Negotiations Involving Labor and Environmental Issues Do Not Place U.S. Manufacturers at an Unfair Disadvantage

U.S. manufacturers adhere to stringent labor and environmental regulations and standards. Given that these regulations and standards reflect considered value judgments by the U.S. government regarding labor and environmental issues, it would make no sense for the same U.S. government to turn around and sign trade deals giving an unfair advantage to countries with much lower standards. Accordingly, USTR should work to ensure that any TPP agreement does not allow foreign producers to take advantage of weaker labor or environmental standards to gain an unfair competitive advantage.

H. Recognizing the Need for Careful Consideration before Expanding Negotiations to Include Other Countries

USTR has indicated that "the U.S. objective is to expand on this initial {TPP} group to include additional countries throughout the Asia-Pacific Region."⁷ Given that the Asia-

⁶ All privatization should be via transparent bidding in which foreign and domestic firms are capable of acquiring the entity on an equal footing.

⁷ 74 Fed. Reg. at 66720.

Pacific region includes some of the world's largest economies (such as China, Japan, Taiwan, India, Russia, Korea, and others), it is obvious that any effort to expand the TPP negotiations to include other countries should only be considered after extensive analysis, comment, and input from potentially affected industries and constituencies in the United States. Any negotiations with such countries would undoubtedly implicate an array of complex issues. Indeed, many of the countries in this region have long engaged in unfair trade -- both in the United States and in other markets. It is difficult to see how such market-distorting practices could be adequately dealt with before giving such countries preferential treatment in the U.S. market. Under these circumstances, the American Steel Producers urge USTR to proceed with great caution before inviting any other countries to join the TPP negotiations. At a minimum, such an expansion should take place only after U.S. manufacturers and other interested parties have been given a full opportunity to comment, after USTR has held public hearings, and after USTR has sought advice from the ITC regarding any such expansion.

II. Negotiating Objectives Specific to Vietnam

A. The United States Should Agree to Nothing that Will Limit Its Ability to Treat Vietnam as a Non-Market Economy, and Should Press Vietnam for to Make Significant Market Reforms

Vietnam is a non-market economy ("NME") for purposes of U.S. AD law. Indeed, when Vietnam acceded to the World Trade Organization in 2006, it specifically agreed that it could be considered as an NME for U.S. trade remedy purposes. The American Steel Producers believe that this is the first time that the United States has even considered the possibility of entering into a free-trade agreement with an NME country. This causes us great concern.

In determining whether to designate a country as an NME, the Tariff Act directs the Department of Commerce (the "Department") to consider the following factors: (1) currency convertibility; (2) the extent to which wage rates in the foreign country are determined by free bargaining; (3) the extent to which the foreign country permits joint ventures or investments by foreign firms; (4) the extent to which the government owns or controls products; (5) the extent to which the government controls resource allocation and the price and output decisions of enterprises; and (6) any other factors that the administering authority deems appropriate.⁸ The Tariff Act further provides that any country designated as an NME must remain an NME until it submits a formal request for reconsideration and the Department concludes that the country has a market economy.⁹ The available evidence shows that Vietnam -- like China -- remains far from undergoing sufficient reforms to warrant such a change.

⁸ See Sections 771(18)(A) and 771(18)(B) of the Tariff Act.

⁹ See Notice of Initiation of Inquiry Into the Status of Lithuania as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changes Circumstances Review.

In November 2002, after conducting a thorough analysis of Vietnam's economy, the Department concluded that Vietnam should continue to be treated as an NME.¹⁰ As the Department stated:

{T}he level of government intervention in the economy is still such that prices and costs are not a meaningful measure of value. The Vietnamese currency, the *dong*, is not fully convertible, with significant restrictions on its use, transfer, and exchange rate. Foreign direct investment is encouraged, but the government still seeks to direct and control it through regulation. Likewise, although prices have been liberalized for the most part, the Government Pricing Committee continues to maintain discretionary control over prices in sectors that extend beyond those typically viewed as natural monopolies. Privatization of SOEs and the state-dominated banking sector has been slow, thereby excluding the private sector from access to resources and insulating the state sector from competition. Finally, private land ownership is not allowed and the government is not initiating a land privatization program.¹¹

Since the Department made its findings in 2002, the Vietnamese government's intervention in the economy has continued to severely undermine market forces and to create an unlevel playing field. For example, "[h]igh tariffs on selected products remain," including on agricultural products, cheese and flatbread, and Vietnam continues to prohibit the commercial importation of several products.¹² In addition, "insufficient custom clearance remains a key concern" regarding customs valuation in Vietnam. As in China, numerous U.S. companies have complained about Vietnam's failure to protect intellectual property rights. Moreover, Vietnam's Investment Law continues to set "criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions." In light of these facts, it seems clear that Vietnam should still be designated as a NME.

Under these circumstances, it is clear that the U.S. government should not agree to any provision that would limit its ability to continue treating Vietnam as an NME. Indeed, given the significant non-market forces that remain pervasive in the Vietnamese economy, USTR should press Vietnam to implement significant market reforms before

¹⁰ See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration from Shauna Lee-Alaia, George Smolik, Athansios Mihalakas and Lawrence Norton, Office of Policy through Albert Hsu, Senior Economist, Office of Policy, Import Administration, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Determination of Market Economy Status (November 8, 2002).

¹¹ *Id.*

¹² USTR 2009 National Trade Estimates Report on Foreign Trade Barriers: Vietnam, *available at* <http://www.ustr.gov/about-us/press-office/reports-and-publications/2009/2009-national-trade-estimatesreport-foreign-trade>.

it even considers negotiations on this NME's possible entry into a TPP trade agreement. These reforms should include, among other things, full currency convertibility, free floating exchange rates and greater privatization of state-controlled enterprises. Such market reforms are necessary to ensure the free flow of fair trade between Vietnam and TPP negotiation partners. Moreover, even if Vietnam were to implement further market reforms, the Department should not grant it market economy status under U.S. AD law until and unless Vietnam is able to meet all of the required statutory criteria for a sustained period of time.

B. The Government of Vietnam Exercises Significant Control over Vietnam's Steel Industry

The government of Vietnam remains heavily involved in many industries, including the steel industry. Indeed, as further discussed below, the Vietnamese government frequently intervenes in the Vietnamese steel industry by manipulating value-added taxes and imposing import duties and export taxes for strategic purposes.

As an initial matter, the Vietnamese government directly owns the largest and most important steel producer in Vietnam, Vietnam Steel Corporation ("VSC"). Because of this direct ownership, the government also holds indirect ownership interests in steelmaking joint ventures between VSC and various foreign investors, including the Essar Group, Posco, and Tata Steel.

The Vietnamese government routinely exploits its ownership stake in the steel industry to influence prices. For example, in mid-2008, at a time when rising inflation rates were of concern, the government "asked" VSC to keep its prices unchanged for as long as possible.¹³ That policy, while consistent with the government's policy of combating inflation, was not "good for the company." As VSC's investment and development director Trinh Khoi Nguyen made clear, "We have to keep to the government ceiling price strictly but, at this rate, our profits will be hurt."¹⁴

To help manage the demand for steel products, the Vietnamese government has started, stopped and re-started large construction projects.¹⁵ As shown in Figure 1 below, it has

¹³ Dionne Thompson, "Vietnam may raise billet export tax," American Metal Markets, June 23, 2008.

¹⁴ *Id.*

¹⁵ Megawati Wijaya, "Vietnam's Nov long steel sales up 250% on speculation," American Metal Markets, December 10, 2008 ("The government has also restarted some construction projects to boost steel demand ..."); Megawati Wijaya, "Vietnam removes billet export tax," American Metal Markets, October 30, 2008 ("There are around 800 projects by the country's ministry of investment that have been deferred or slowed down, causing a drop in demand for steel."); Dionne Thompson, "VII warns of 'uncertainty' for Vietnam ops," American Metal Markets, August 28, 2008 ("Many construction projects, particularly government-funded projects, are being delayed in order to curb inflation ..."); Dionne Thompson, "Vietnam re-exports HRC on cash woes, falling demand," Metal Bulletin, May 21, 2008 ("At the end of March, the government also decided to reduce or hold back several big construction projects, causing demand to fall sharply.").

also manipulated VAT rates, import duty rates and export tax rates at a dizzying pace in order to combat inflation, jumpstart the economy and/or increase or decrease imports, exports or re-exports.

Figure 1

Selected Changes in Vietnam's Steel-Related Duties and Taxes			
Date	Action	Change	Product(s)
April 16, 2009	Increase Import Duties	From 5% to 15%	Long Products
		To 10%	Steel Containing Boron
April 1, 2009	Increase Import Duties	From 3% to 8%	Steel Billet
	Increase Import Duties	By 15%	Construction Steel
	Increase Import Duties	From 1% to 8%	Rolled Steel Products
February 1, 2009	Decrease in VAT tax	From 10% to 5%	Long Products
January 1, 2009	Increase VAT Tax	From 5% to 10%	Long Products
December 21, 2008	Increase Import Duties	From 2% to 5%	Square Billet
		From 8% to 12%	Long Products
November 7, 2008	Abolish Export Duty	From 5% to 0%	Square Billet
		From 5% to 0%	Long Products
October 7, 2008	Reduce Export Tax	From 10% to 5%	Square Billet
		From 10% to 5%	Long Products
September 24, 2008	Reduce Export Duty	From 20% to 10%	Square Billet
		From 20% to 10%	Long Products
August 11, 2008	Increase Export Duty	From 10% to 20%	Square Billet
		From 10% to 20%	Long Products
June 28, 2008	Increase Export Duty	From 2% to 10%	Square Billet
August 8, 2007	Reduce Import Duties	From 5% to 2%	Square Billet
		From 10% to 8%	Long Products
Sources:	American Metal Market, Metal Bulletin, Metal Expert, Vietnam News Agency and others		

Moreover, Vietnam also engages in trade-distorting restrictions on exports of raw materials. It currently imposes an export tax of 35 percent on steel scrap and 20 percent on iron ore.

At least one observer has recognized that “Vietnam ... is fiercely protective of its domestic steelmakers.”¹⁶ Indeed, the Vietnamese government and Vietnam Steel Association (“VSA”) routinely pursue administrative measures to protect the local steel industry. When long product imports from China increased, for example, the VSA worked to establish technical barriers to these imports.¹⁷ Similarly, when imports of cold-rolled sheet from the Philippines increased, the Vietnamese government re-imposed a 7 percent import duty, which had been reduced to zero under a free-trade agreement between the Association of Southeast Asian Nations (“ASEAN”), notwithstanding protests by Philippine producer Global Steel and the Philippine government.¹⁸

Furthermore, the VSA continues to seek additional measures to help Vietnamese steel producers. While Vietnam already imposes a 20 percent export tax on iron ore, in October 2008 the VSA called on the government to ban exports of iron ore in order to ensure that sufficient domestic supplies are available to support its rapidly growing steel capacity.¹⁹ In December 2009, the VSA called on the government “to enhance stricter supervision on new steel investment projects and licensing for unplanned projects to ensure the demand and supply balance, use regulations to support domestic production and consumption and self-defense measures as foreign made steel floods to Vietnam.”²⁰

The Vietnamese government’s continued intervention in the steel industry becomes even more problematic given Vietnam’s recent expansion in capacity, notwithstanding the global economic crisis and world steel overcapacity. It is no secret that a large number of Vietnamese steel projects have been proposed, approved and are undergoing feasibility studies. In addition, a number of projects continue to be commissioned.

In only the past few months, for example, VSC has announced that it is setting up a \$550 million joint venture to make steel sheets,²¹ TATA Steel has made clear its intention to construct a steel mill in Vietnam,²² Formosa Plastic Groups has announced

¹⁶ Dionne Kho, “Vietnam steelmaker VIS blasted over China imports,” American Metal Market, April 17, 2007.

¹⁷ American Metal Market, “Vietnam mulling barriers to stave off Chinese long product imports,” September 25, 2007.

¹⁸ Carrie Ho, “Global Steel turns up the heat in tariff dispute with Vietnam,” Metal Bulletin, June 22, 2007 (describing the duty as “economic nationalism”).

¹⁹ Dionne Thompson, “Vietnam Steel Assn calls for iron ore export ban,” American Metal Market, October 7, 2008.

²⁰ VSA sees imbalance in Vietnamese steel market in 2010, steelguru.com, December 11, 2009.

²¹ “Danieli SpA inks JV deal in Vietnam to make steel sheets,” steel.guru.com, December 19, 2009.

²² “India asks Vietnam to clear regulatory hurdles for TATA Steel plant,” steelguru.com, December 9, 2009.

a push to speed up the construction of its steel mill in Vietnam²³ and POSCO has opened a cold rolling steel mill.²⁴ As the chairman of VSA recently stated, “2010 will see the starting operation of some new steel mills, which will expand the gap between the domestic steel demand and supply.”²⁵ Vietnam’s massive expansion in capacity coupled with this growing imbalance between supply and demand will only continue to fuel the government’s intervention in the steel industry. Indeed, only recently, VSA “proposed the state to enhance stricter supervision on new steel investment projects and licensing for unplanned projects to ensure the demand and supply balance” and “use regulations to support domestic production.”²⁶

In addition, if Vietnam becomes a TPP agreement partner, it could become a major transshipment point for exports from China or other countries seeking to circumvent U.S. trade remedy orders. Given China’s close proximity to Vietnam, it will have every incentive to capitalize on Vietnam’s zero duty access to the U.S. market by engaging in the transshipment of goods through Vietnam. Accordingly, USTR should vigorously address this issue during any TPP negotiations with Vietnam.

In short, the Vietnamese government continues to exert significant influence over Vietnam’s steel industry and the functioning of the Vietnamese steel market, and this government intervention shows no signs of slowing down. Therefore, in addition to requiring that Vietnam undertake general market reforms, USTR should demand that: (1) Vietnam’s government cease interfering in the Vietnamese steel industry in particular; (2) the Vietnamese government remove all trade restrictive import and export barriers on steel and raw materials trade; and (3) sufficient controls exist to ensure that Vietnam does not become a primary source of trade law circumvention for China.

²³ “Formosa to speed up construction of Vietnam steel mill,” steel.guru.com, November 14, 2009.

²⁴ “POSCO opens new CR steel mill in Vietnam,” steel.guru.com, October 20, 2009.

²⁵ “VSA Sees Imbalance in Steel Market in 2010,” steel.guru.com, December 11, 2009.

²⁶ *Id.*

III. Conclusion

For the reasons discussed above, USTR should pursue the aforementioned objectives in negotiating a TPP trade agreement. The AISI, CPTI, SSINA and SMA appreciate this opportunity to provide comments on the proposed Trans-Pacific Partnership.



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