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January 17, 2020

Erland Herfindahl
Deputy Assistant U.S. Trade Representative
for the Generalized System of Preferences
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

RE: Request for Comments on Indonesia Market Access under the Country Practice Review of the Generalized System of Preferences [Docket Number USTR-2018-0007]

Dear Mr. Herfindahl:

In response to a request from the Office of the United States Trade Representative (USTR),¹ the American Iron and Steel Institute (AISI), on behalf of its U.S. producer member companies, hereby submits comments to USTR on its country practice review for Indonesia market access under the Generalized System of Preferences (GSP).

AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. The domestic iron and steel industry plays a significant role in the U.S. economy, directly accounting for 387,000 American jobs and indirectly supporting nearly two million American jobs. Additionally, the iron and steel industry is a large purchaser of domestic products and inputs for the steelmaking process.

As detailed further below, given that the government of Indonesia has recently reinstated a full ban on the export of nickel ore, a key component of stainless steel, and has taken other steps to manipulate the global nickel market to the detriment of U.S. stainless steel producers, AISI is of the view that Indonesia no longer meets a key statutory criterion for GSP beneficiary country status.

¹ *Request for Public Comments on Generalized System of Preferences (GSP): Notice Regarding a Hearing for Country Practice Reviews of Azerbaijan, Ecuador, Georgia, Indonesia, Kazakhstan, Thailand, South Africa, and Uzbekistan, and for the Country Designation Review of Laos*, Fed. Reg. Vol. 84, No. 223 (Office of the U.S. Trade Rep. Nov. 19, 2019).

I. Introduction

Stainless steel is a low carbon steel that contains 10.5 percent or more chromium by weight,² which provides corrosion resistance. Another critical alloying element in most stainless steel is nickel, which enhances important properties of stainless steel such as formability, weldability and ductility, while increasing corrosion resistance.³ The most common stainless steel grade (304) requires approximately eight percent nickel, and 70 percent of nickel is purchased globally by stainless steel producers. Furthermore, the price of nickel has a significant effect on the price of stainless steel, as nickel accounts for approximately 50 percent of the U.S. domestic price for stainless steel products.

II. Indonesia does not provide equitable and reasonable access to its basic commodity resources

According to the U.S. Geological Survey, in 2018, Indonesia was the world's largest mine producer of nickel, while also holding the largest nickel ore reserves in the world.⁴ As part of a national plan to develop certain downstream industries, including in particular stainless steel, Indonesia in 2014 imposed a complete ban on the export of unprocessed mineral ore exports, including nickel ore.⁵ In 2017, the government of Indonesia partially relaxed this export prohibition by issuing a set of rules allowing companies that meet certain stringent requirements to export mineral concentrates, including certain amounts of low-grade nickel ore with a concentration of less than 1.7 percent nickel (subject to an export tax of ten percent),⁶ with the stated plan to reintroduce a total export ban on nickel in January 2022.⁷ In August 2019 Indonesia's Ministry of Energy and Mineral Resources (MEMR) announced that it was reinstating the total export prohibition for all nickel ore as of January 1, 2020.

² The Harmonized Tariff Schedule of the United States (HTSUS) defines stainless steel as "[a]lloy steels containing, by weight 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements." HTSUS Chapter 72 at Note 1(e), available at <https://www.usitc.gov/publications/docs/tata/hts/bychapter/1401c72.pdf>.

³ Nickel Institute, "Stainless steel: The role of nickel," available at <https://www.nickelinstitute.org/about-nickel/stainless-steel/>.

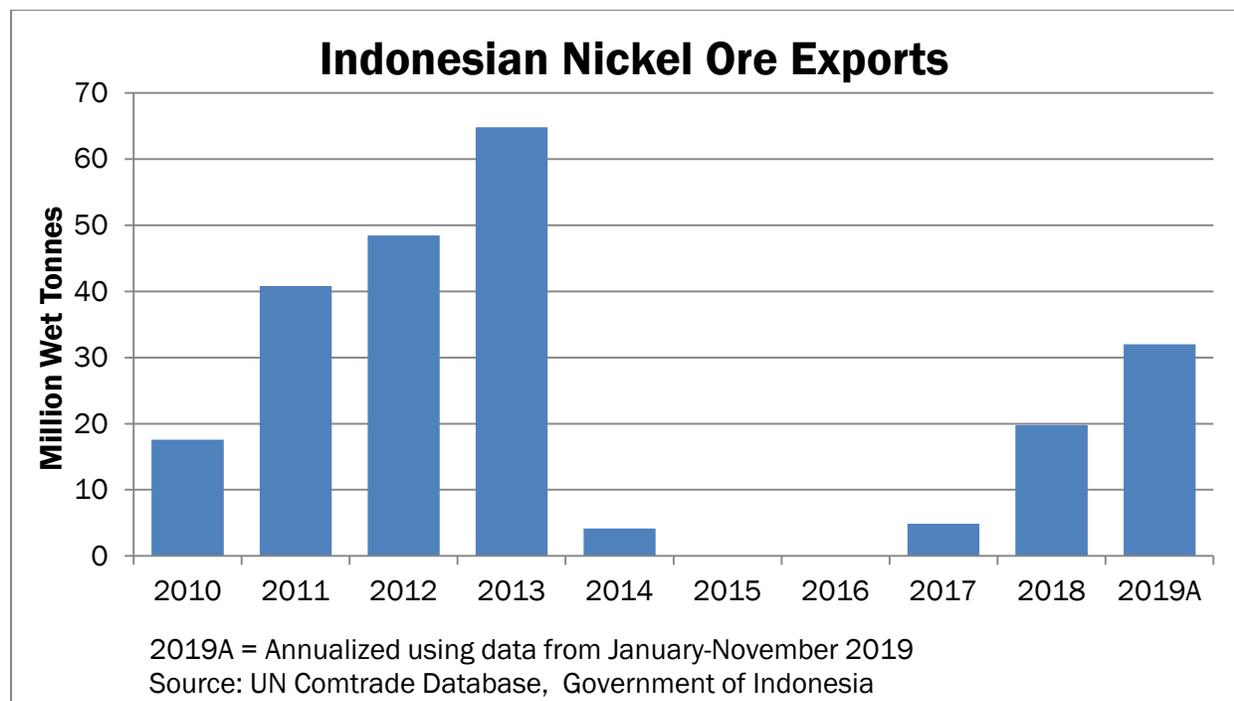
⁴ U.S. Geological Survey, Mineral Commodity Summaries (Feb. 2019), available at <https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/atoms/files/mcs-2019-nicke.pdf>.

⁵ USTR 2018 National Trade Estimate (NTE) Report at 247.

⁶ "Indonesia sets new tax rates for mineral exports," *Reuters* (Feb. 13, 2017), available at <https://af.reuters.com/article/metalsNews/idAFJ9N1EZ02C>.

⁷ See USTR 2017 NTE Report at 227; PwC, *Mining in Indonesia: Investment and Taxation Guide* at 9; Dave Forest, *Indonesia Just Rocked The Mining World With This Unexpected Move* (Jan. 16, 2017); Fedina S. Sundaryani, *Govt issues eagerly awaited rules on mineral export ban relaxation*, *The Jakarta Post* (Jan. 12, 2017).

These measures have caused a very significant drop-off in Indonesian nickel ore exports beginning in 2014, as detailed in the chart below.



III. Indonesia's nickel export restrictions have promoted the development of Chinese-owned export-oriented stainless steel production in Indonesia and distorted global nickel prices

A major beneficiary of the Indonesian export restrictions on nickel has been the Chinese stainless steel producer Tsingshan Holdings Group (Tsingshan). In August 2017, Tsingshan opened a stainless steel mill in Indonesia with the primary purpose of exporting stainless steel to other markets around the world, including in particular the United States and the European Union, as Indonesian consumption of stainless steel products is significantly below the annual production capabilities of this facility. Tsingshan invested \$6-7 billion to build the 3.0-3.5 million metric ton production facility in Morowali, Indonesia,⁸ which was heavily promoted and sponsored by the Indonesian government and was financed as part of the Chinese government's 'Go Global' and subsequent 'Belt and Road Initiative' programs.⁹ Indonesia's total stainless

⁸ Maytaal Angel, "Stainless steel glut builds in China as Indonesia ups output," *Reuters*, May 3, 2018, available at <https://www.reuters.com/article/us-stainless-glut-nickel/stainless-steel-glut-builds-in-china-as-indonesia-ups-output-idUSKBN1I412C>.

⁹ "Belt and Road Gets Indonesian Boost," Hong Kong Trade Development Council, Jun. 8, 2018, available at <https://hkmb.hktdc.com/en/1X0AE6D5/market-spotlight/Belt-and-Road-Gets-Indonesian->

steel production capacity is expected to expand to over 50 times its annual 200,000 metric ton domestic demand by 2025,¹⁰ and thus production in Indonesia is almost entirely intended for export. Moreover, this investment in Indonesia is in addition to Tsingshan's stainless steel production capacity of 7.0 million metric tons in China, providing the company with a total stainless steel production capacity of 10 million metric tons, nearly 20 percent of global stainless steel demand.¹¹

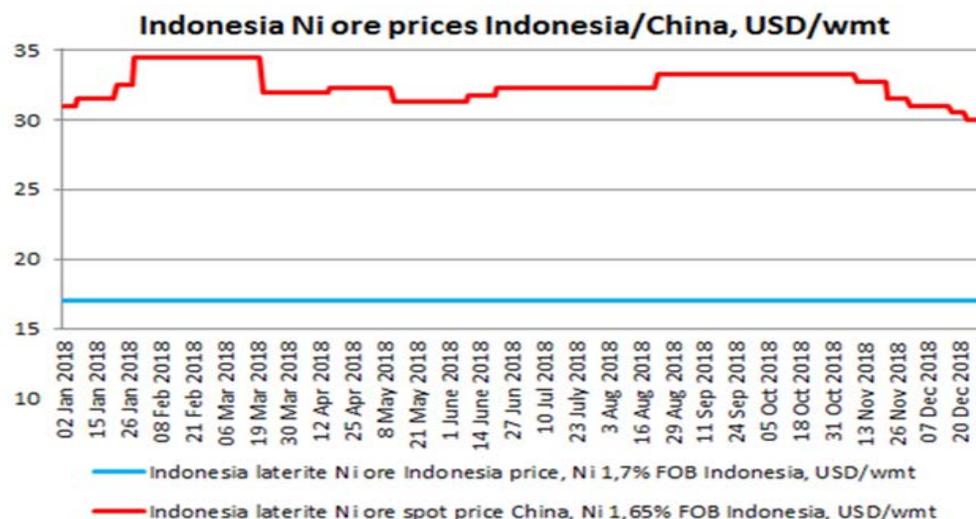
The tight restrictions on nickel ore exports from Indonesia have subsidized the massive growth in Indonesian stainless steel production and export by creating an oversupply of nickel ore in the Indonesian domestic market. This, coupled with the export tax on low-grade nickel ore (below 1.7 percent nickel content) and a minimum export price requirement has caused a *de facto* dual pricing system for nickel ore in Indonesia, based on whether the ore is exported or is sold to Indonesian stainless steelmakers.

For example, in 2018, nickel ore (1.7 percent nickel content) was sold domestically in Indonesia at US\$17 per wet metric ton, while Indonesian nickel ore (1.65 percent nickel content) sold to China was priced around US\$32.5 per wet ton – almost twice the domestic Indonesian price, despite the lower nickel content of the exported ore.

Boost; Wood Mackenzie, "Tsingshan Indonesia shakes up stainless steel markets in South East Asia," (15 July 2019), available at <https://www.woodmac.com/press-releases/tsingshan-indonesia-shakes-up-stainless-steel-markets-in-south-east-asia/>.

¹⁰ Dave Keating, "Coke and nickel keeping EU steel industry up at night," *Euroactiv.com*, available at <https://www.euractiv.com/section/energy-environment/news/coke-and-nickel-keeping-eu-steel-industry-up-at-night/1410939>.

¹¹ Maytaal Angel, "Tsingshan to offer fixed-price stainless contracts with no alloy surcharge: SMR," *Reuters*, Oct. 12, 2018, available at <https://www.reuters.com/article/us-metals-lmeweek-indonesia-stainless/tsingshan-to-offer-fixed-price-stainless-contracts-with-no-alloy-surcharge-smr-idUSKCN1MM1AR>.



Sources: CNFEOL (Blue Line), Ferroalloy.net (Red Line)¹²

Most global stainless steel producers, including all U.S. producers melting stainless steel, purchase the nickel needed for their stainless steel production at prices pegged to the London Metal Exchange (LME) nickel price. Tsingshan, by contrast, has access to nickel ore in Indonesia at below world market prices which it then processes into nickel pig iron for use in its stainless steel production. As a result, the cost of nickel to Tsingshan is determined by the artificially depressed domestic Indonesian price of nickel ore and its production process cost for converting the ore into nickel pig iron, and this price does not move with the fluctuations seen on the LME.

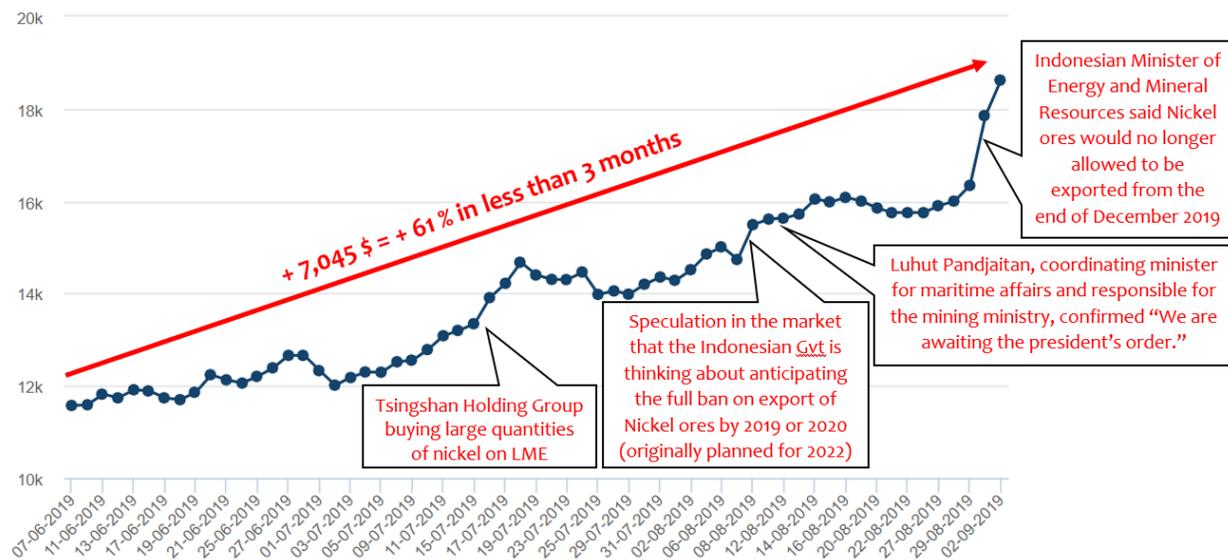
Last year, reports that the Indonesian government was planning to re-implement a complete ban on nickel ore exports, together with actions taken by Tsingshan to purchase large quantities of nickel on the LME, led to a sharp spike in world nickel prices, resulting in a significant increase in costs for U.S. and other stainless steel producers around the world.¹³ According to the London Metal Exchange, the price of a metric ton of nickel from June 7, 2019 to September 2, 2019 soared from \$11,575 to \$18,620, an increase of 61 percent in less than three months, before settling at almost \$14,000 by the end of 2019 after a slowdown in demand in the latter part of the year.¹⁴

¹² CNFEOL, available at <https://www.cnfeol.com/>; Ferroalloy.net, available at <https://www.ferroalloy.net/NickelOre/>.

¹³ Thorsten Schier, "Stainless steel prices soar on nickel gains," Fast Markets AMM (Sep. 12, 2019), available at <https://www.amm.com/Article/3893817/Stainless-steel-prices-soar-on-nickel-gains.html>.

¹⁴ LME Nickel Historical Price Graph, London Metal Exchange, last accessed Jan. 7, 2020, available at <https://www.lme.com/en-GB/Metals/Non-ferrous/Nickel#tabIndex=0>.

LME NICKEL HISTORICAL PRICE GRAPH



Data source: London Metal Exchange

This significant increase in the price of nickel was the result of a series of closely-timed actions taken by the Indonesian government and Tsingshan. This began with the reported purchase of large quantities of nickel on the LME by Tsingshan in July 2019.¹⁵ Immediately after this large purchase by Tsingshan, the price of nickel shot up from \$12,500 to \$16,000 per metric ton in just four weeks.¹⁶ This was driven in part initially by market speculation in early August 2019 that the Indonesian government was contemplating the reintroduction of a full ban on the export of nickel ore in 2019 or 2020, instead of the planned 2022,¹⁷ and then further fueled by comments from a senior Indonesian government official responsible for the mining industry that the matter was before the Indonesian president for decision.¹⁸ The formal decision to move up the

¹⁵ Pratima Desai, Tom Daly, "Exclusive: China's Tsingshan roils nickel market with buying spree," Reuters (July 19, 2019), available at <https://www.reuters.com/article/us-metals-nickel-tsingshan-exclusive/exclusive-chinas-tsingshan-roils-nickel-market-with-buying-spreed-idUSKCN1UE1L3>.

¹⁶ LME Nickel Historical Price Graph, London Metal Exchange, last accessed Jan. 7, 2020, available at <https://www.lme.com/en-GB/Metals/Non-ferrous/Nickel#tabIndex=0>.

¹⁷ Andy Home, "Indonesian supply fears stoke brutal LME nickel battle," Reuters (Aug. 9, 2019), available at <https://www.reuters.com/article/uk-metals-nickel-ahome/column-indonesian-supply-fears-stoke-brutal-lme-nickel-battle-idUKKCN1UZ1H5>.

¹⁸ "Indonesia's president to decide whether ore export ban to be brought forward," Reuters (Aug. 13, 2019), available at <https://www.reuters.com/article/us-nickel-indonesia/indonesias-president-to-decide-whether-ore-export-ban-to-be-brought-forward-idUSKCN1V3147>.

reinstatement of the full nickel ore export ban to 2020 was announced by the Indonesian government at the beginning of September 2019, further pushing up nickel prices.¹⁹

Following its large purchase in July, Tsingshan reportedly drew down a record amount from LME nickel inventories in early October of approximately 25,000 metric tons of nickel and then continued to pull out an additional 75,000-80,000 metric tons of nickel from LME inventories later that same month.²⁰ These large purchases, in combination with the announcement of the reinstatement of the full Indonesian export ban, have created an artificial and unnecessary scarcity in the global supply of nickel, driving up nickel prices for Tsingshan's competitors in the United States and around the world, as detailed in the charts below.



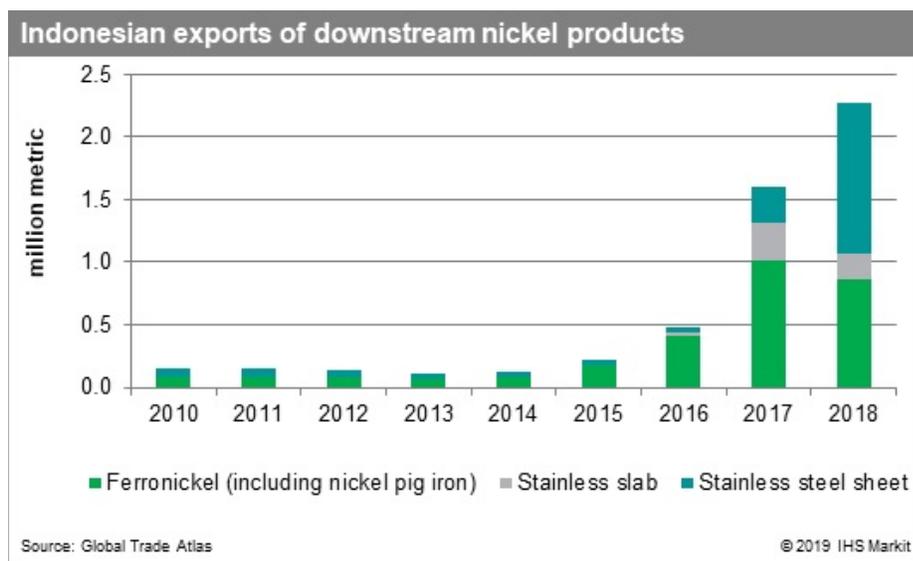
Source: London Metal Exchange

IV. Indonesia's nickel market distorting policies have caused a surge in imports at unfair prices into the U.S. market, threatening domestic stainless steel producers

Indonesia's market distorting policies on nickel have also fueled the rise in Indonesia stainless steel and nickel pig iron exports to world markets since 2017, as seen below.

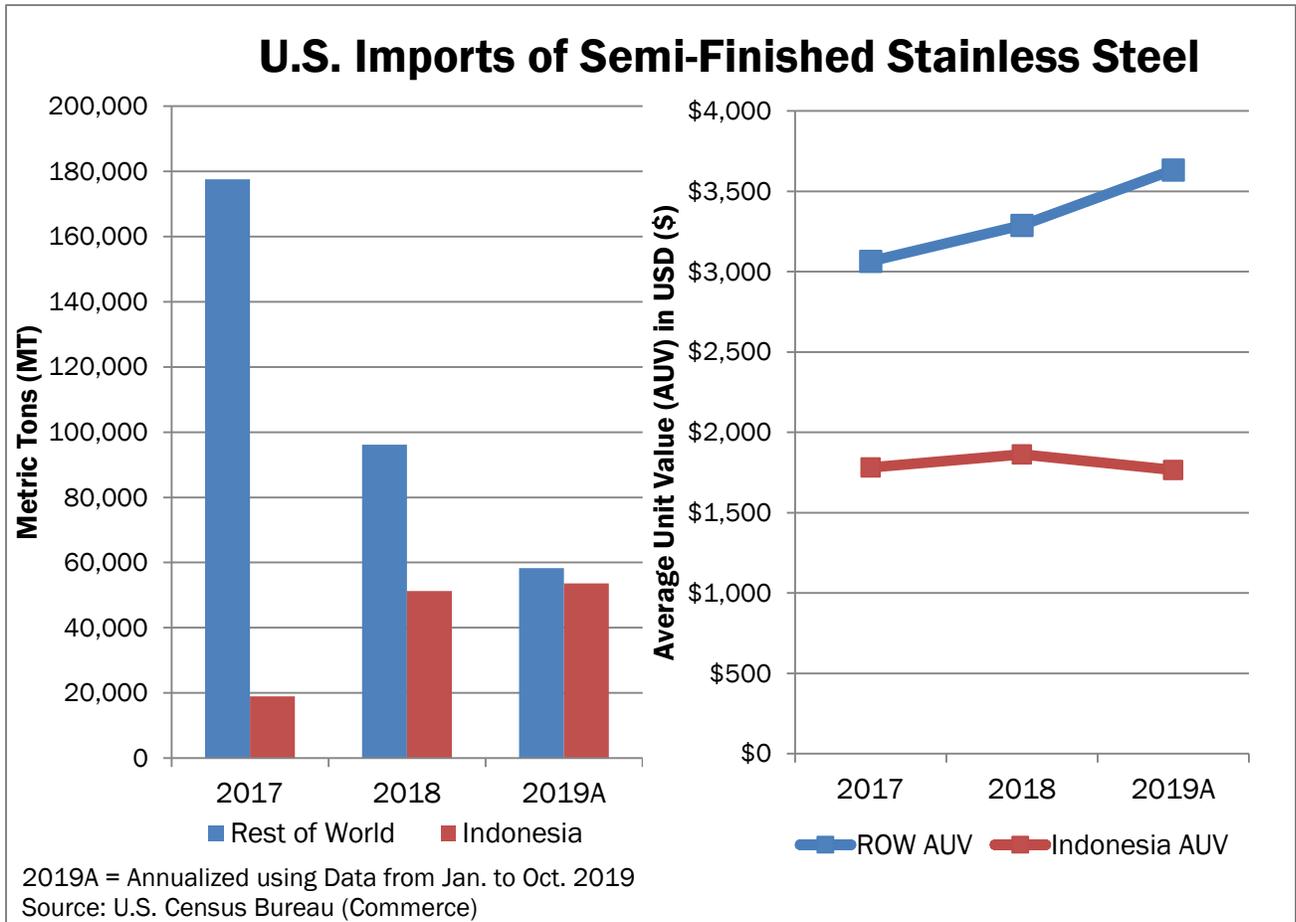
¹⁹ "METALS-Nickel jumps as Indonesia expedites ore export ban," Reuters (Sept. 2, 2019), available at <https://www.reuters.com/article/global-metals/metals-nickel-jumps-as-indonesia-expedites-ore-export-ban-idUSL3N25T0G5>.

²⁰ Alfred Cang and Mark Burton, "China's Tsingshan Helped Drive Record Drop in Nickel Inventories," *Bloomberg*, Oct. 8, 2019, available at <https://www.bloomberg.com/news/articles/2019-10-08/china-s-tsingshan-helped-drive-record-drop-in-nickel-inventories>.



One major export market for Tsingshan’s stainless steel production is the United States. As detailed below, imports of semi-finished stainless steel from Indonesia have increased dramatically over the last three years, even as imports from all other sources have declined significantly. This is likely due to the fact that Indonesian semi-finished stainless steel import average unit values (AUVs) have been consistently more than \$1,000/metric ton below AUVs for imports from the rest of the world, an indication that Indonesian stainless steel imports are being dumped in the U.S. market. The rapid growth in Indonesian stainless steel imports is precipitated by a joint venture entered into by Allegheny Technologies Incorporated (ATI), an American company, and Tsingshan, and comes despite the imposition of the 25 percent Section 232 tariffs in 2018. ATI permanently closed its Midland, Pennsylvania melt shop in 2016,²¹ and has since then relied exclusively on imported Indonesian stainless steel from Tsingshan, which ATI further processes in the United States.

²¹ Len Boselovic, “Allegheny Technologies posts larger loss than expected; permanently closing Midland, Bagdad plants,” Pittsburgh Post-Gazette (Oct. 25, 2016), available at <https://www.post-gazette.com/business/pittsburgh-company-news/2016/10/25/Allegheny-Technologies-posts-loss-pittsburgh-ATI/stories/201610310054>.



As noted above, in a market driven by prices and by the cost of raw materials, Tsingshan’s Chinese-backed Indonesian imports are immune to normal market fluctuations and pressures. If left unchecked, these imports will put further pressure on the U.S. domestic industry’s production, prices and profitability and the U.S. stainless steel industry will be unable to sustain current investment and production levels. Under such circumstances, domestic stainless steel producers could be forced to shut down their melt-and-pour facilities and lay off American workers.

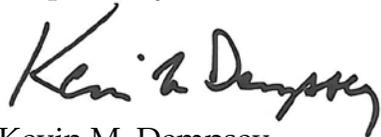
V. Conclusion

U.S. stainless steel producers are extremely concerned that without intervention by the U.S. government, Indonesia’s market-distorting behavior will ultimately force the shutdown of critical domestic stainless steelmaking operations and leave the United States reliant on foreign sources for producing stainless steel vital for the U.S. industrial and defense industries. As USTR reviews Indonesia’s market access compliance with

Mr. Herfindahl
Deputy Assistant USTR for the Generalized System of Preferences
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its GSP commitments, AISI urges it to take into account the manipulation of the nickel market by the Indonesian government as it considers the continued eligibility of Indonesia under the Generalized System of Preferences. Given in particular the Indonesian government's direct actions to limit market access to its nickel ore, a basic commodity resource, AISI is of the view that Indonesia no longer meets a key statutory criterion for GSP beneficiary country status.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin M. Dempsey". The signature is written in a cursive, slightly slanted style.

Kevin M. Dempsey
Senior Vice President, Public Policy
and General Counsel