October 25, 2017

VIA WWW.REGULATIONS.GOV

Edward Gresser
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508

Re: Comments Regarding Foreign Trade Barriers To U.S. Exports for 2018 Reporting, Docket No. USTR-2017-0013

Dear Mr. Gresser:

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. member companies, hereby submits comments to the interagency Trade Policy Staff Committee (“TPSC”) regarding USTR’s 2018 National Trade Estimate Report on Foreign Trade Barriers (“NTE Report”). The foreign government laws, policies, and practices identified below severely distort global trade and are of particular concern to AISI and its members.

I. INTRODUCTION

Foreign trade barriers distort international trade and are extremely harmful to U.S. companies. Such restrictions act as barriers to U.S. exports and investment, restrict U.S. producers’ access to raw materials, and create an unlevel playing field in international competition by unfairly advantaging certain countries’ manufacturers to the detriment of U.S. producers. In its annual NTE Report, USTR identifies a variety of foreign trade barriers, including export restrictions, import barriers, investment barriers, subsidies, anticompetitive conduct of state-enterprises (“SEs”),2 and barriers in government procurement policies. The


discussion below identifies trade restrictions in these categories for USTR’s inclusion in its 2018 NTE Report, including those that are among the most concerning to AISI’s member companies.

Many of these barriers are at the heart of the crisis currently facing the U.S. steel industry, including massive excess steelmaking capacity and a sustained surge of imports that threatens the domestic industry’s sustainability. Around the world, governments intervene in steel markets to bestow unfair competitive advantages on their domestic industries. This has created intractable overcapacity and persistently high volumes of unfairly traded imports that threaten the sustainability of U.S. producers. According to the most recent statements made by the OECD Steel Committee, “excess capacity remains at alarmingly high levels.” According to the OECD, global excess capacity in 2017 remains more than 650 million metric tons. The Trump Administration recognized these and other challenges facing the U.S. steel industry when it initiated an investigation into the national security effects of steel imports under Section 232 of the Trade Expansion Act of 1962. President Trump’s Memorandum to the Secretary of Commerce noted that “the United States and global markets for steel products are distorted by large volumes of excess capacity – much of which results from government subsidies and other unfair practices.”

This year’s National Trade Estimate Report on Foreign Trade Barriers presents an important opportunity to identify harmful trade practices and chart a course for a trade agenda that ensures vital domestic industries like steel are not wiped out by the unfair trade policies and practices of foreign governments.

II. EXPORT RESTRICTIONS

Many countries have enacted substantial barriers to raw material exports in order to ensure an abundant domestic supply, at low prices, for their manufacturers. These export barriers include export quotas, taxes, and licensing requirements. Foreign governments use such restrictions to discourage exports of raw materials, promote the development of domestic industries, and subsidize domestic downstream industries.

Many of these trade barriers violate World Trade Organization (“WTO”) agreements, and all of them adversely impact U.S. manufacturers and the entire global economy. Manufacturing industries in the countries that engage in this market manipulation are granted an unfair competitive advantage, while manufacturers in other countries, like the United States, face limited supplies and higher prices for strategic raw materials. The result is an increase in costs

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3 Organization for Economic Cooperation and Development, 83rd Session of the OECD Steel Committee – Chair’s Statement (Sept. 29, 2017).
throughout the production chain, from intermediate to finished goods, as well as other distortions throughout the global economy. Alarming, the use of export restrictions has grown in recent years, with steelmaking raw materials and metal waste and scrap being two industries “where restrictive export policies flourish.” The Organization for Economic Cooperation and Development (“OECD”) estimates that as of 2014 there were 209 incidences of export restrictions on ferrous waste and scrap. Some of the most restrictive global export barriers, which negatively affect the U.S. and global steel industries, are described below.

A. China

For many years, the Government of China has imposed export quotas, export taxes, and other measures to limit the export of raw materials, for the benefit of its domestic industries. These restraints have caused a global scarcity of certain raw materials and have driven up prices of raw materials in global markets.

1. Export Restrictions on Rare Earths and Other Critical Materials

In the recent China-Rare Earths dispute, the WTO’s dispute settlement panel and Appellate Body found that the Chinese government’s restrictions on exports of critical raw materials, including rare earth elements, molybdenum and tungsten, violate its WTO commitments. The WTO made a similar finding in China – Raw Materials. In 2015, China reformed its regulatory regime for rare earths, tungsten, and molybdenum to implement the Dispute Settlement Body’s recommendations following the Rare Earths dispute. Specifically, China removed the export quotas on these raw materials in January 2015 and ended export duties in May 2015.

OECD, Export Restrictions in Raw Materials: Facts, fallacies and better practices (2014) (“OECD, Export Restrictions in Raw Materials”) at 23 (of the measures in place in 2012, more than half were introduced after 2009 and almost a quarter were introduced in 2012). See also OECD, Export Restrictions on Steelmaking Raw Materials: Examining Changes in the Stance of Policies Since 2009, DSTI/SU/SC(2014)7 (June 2014) at 2.

OECD, Export Restrictions in Raw Materials at 31.

OECD, Developments in Markets for Steelmaking Raw Materials 2016 at 3.


Chuin-Wei Yap, China Ends Rare-Earth Minerals Export Quotas, Wall Street Journal (Jan. 5, 2015); Lucy Hornby and Henry Sanderson, China Ends Export Tax on Rare Earths and Other Metals, Financial Times (Apr. 23, 2015).
Despite these steps towards technical implementation of the Dispute Settlement Body’s recommendations, China has moved to strengthen state control over the rare earths industry in a manner that may result in de facto restraints on exports of these raw materials. At the beginning of 2015, the Ministry of Industry and Information Technology (“MIIT”) convened a meeting of major rare earths producing provinces and enterprises and set a goal for the rare earths industry to be consolidated under six major SEs by the end of 2015.\textsuperscript{13} The six SEs are (i) Northern Rare Earths Group, organized under Baosteel, (ii) China Minmetals Group, (iii) Aluminum Corp. of China, (iv) Guangdong Rare Earth Industry Group, (v) China Southern Rare Earths Group, and (vi) Xiamen Tungsten.\textsuperscript{14} As of 2017, extraction and production quotas have been granted exclusively to these six enterprises and their subsidiaries.\textsuperscript{15}

Although consolidating the industry in this manner may further regulatory objectives such as resource conservation and environmental protection, officials have also referenced industrial policy objectives in the wake of the WTO’s findings that export quotas and taxes could not be used. An MIIT Vice Minister explained at a recent rare earths industry conference that rare earths are “an indispensable key factor in developing emerging industries and restructuring traditional industries,” and that they “will receive new momentum and large development space in the process of implementing strategies like strategic emerging industries, Made in China 2025, and sustainable development.”\textsuperscript{16} In late 2016, MIIT also issued a \textit{Rare Earths Industry Development Plan (2016-2020)}, which calls for continuing development of downstream application industries pursuant to Made in China 2025, and for reducing exports of primary rare earth materials 27 percent by 2020.\textsuperscript{17} While the plan does identify formal measures to achieve this, it also seeks to “establish a social responsibility report system and credit blacklist system for rare earth exporting enterprises,”\textsuperscript{18} which could be used to exert political pressure or otherwise coerce potential exporters to reduce exports and channel rare earth resources to domestic strategic industries. It is thus likely that the six SE rare earth groups will not operate on a purely commercial basis and will channel rare earth supplies to favored domestic industries or enterprises to further industrial policy objectives.

\textsuperscript{13} Yang Meng, \textit{Six Major Rare Earths Groups Already Making Moves, Reorganization Must Show Concrete Progress by Year’s End} (六大稀土集团已有动作 年底前重组须有实质进展), Securities Daily (Jan. 28, 2015).

\textsuperscript{14} Important Arrangements of the Path to Consolidation of Six Major Rare Earths Groups (6大稀土集团整合之路大梳理), China Mining (August 12, 2016).

\textsuperscript{15} \textit{Notice of the Ministry of Industry and Information Technology Regarding Promulgation of the First 2017 Rare Earths Production Control Plan} (工业和信息化部关于下达2017年第一批稀士生产总量控制计划的通知), Gong Xin Bu Yuan [2017] No. 55;

\textsuperscript{16} \textit{2016 Rare Earths Industry Conference Held in Beijing} (2016年稀土行业座谈会议在京召开), Ministry of Industry and Information Technology (Jan. 29, 2016).

\textsuperscript{17} \textit{Notice of the Ministry of Industry and Information Technology Regarding Publication of the Rare Earths Industry Development Plan (2016-2020)} (工业和信息化部关于印发稀土行业发展规划（2016—2020年）的通知), Gong Xin Bu Gui [2016] No. 319 (Sept. 29, 2016) at 11-12.

\textsuperscript{18} \textit{Id.} at 27.
USTR should closely monitor these developments to ensure that China fully complies with both the letter and the spirit of the WTO ruling and that de facto export restrictions are not retained through discriminatory action by the six SE rare earth industry groups.

2. Export Restrictions on Other Steelmaking Raw Materials

AISI welcomes the United States’ WTO case filed in July 2016, challenging Chinese export restraints on antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum, and tin. In addition, and as noted below, China imposes a 40 percent duty on exports of steel scrap, and a 10 percent duty on exports of coking coal.

B. India

India ranks among the world’s leading producers of many critical raw materials, including coal, iron ore, manganese ore, chromite, zinc, bauxite, and aluminum. Despite substantial reserves of such materials, India restricts their export to manage the price of certain raw materials and other economic inputs and benefit its own consuming industries. Such measures include export tariffs, export quotas, and an opaque and confusing export licensing scheme, each of which significantly reduces India’s contribution to the world’s supply of raw materials.

1. Export Taxes and Other Restrictions

Since 2008, India has imposed restrictions on certain critical raw materials, including iron ore, in the form of ad valorem export taxes. Indian iron ore exports peaked at 127 million metric tons (MT) in 2011, causing the government to increase its export duty on iron ore lumps and fines to 30 percent to “conserv[e] iron ore for domestic steel units.” In February 2016, the government eliminated export duties on iron ore (less than 58 grade), iron ore lumps (less

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23 See Unmesh Wagh, Department of Revenue, Government of India Ministry of Finance, Notification No. 79/2008 and No. 66/2008 – Customs (June 13, 2008).
than 58 grade), chromium ores and concentrates, and bauxite. However, three months later, the
government reinstated the 30 percent duty on chromium ores and concentrates following
complaints from steel producers and India’s mines ministry. Further, the 30 percent export
duty on higher-grade iron ore was preserved, due in part to “a strong protest from steel…
makers” regarding the potential removal of the duty. Earlier this year, the Indian government
increased the export duty on zinc from 5 percent to 7.5 percent, as Indian galvanized steel
producers are “planning to make additions to their existing [8 million tons] of capacity.”

The Indian government continues to signal that export restraints are critical for the
development of the Indian steel industry. The government is implementing plans set forth in its
National Steel Policy 2017 to develop additional steel capacity to reach 300 million MT by
2030. To achieve this goal, the government will “ensure availability of raw materials like iron
ore, coking coal and non-coking coal, natural gas[,] etc. at competitive rates.”

These restrictions have a significant and troubling effect on exports. Between 2012 and
2015, “India’s exports of iron ore plunged by over 80%.” This drastic decline caused India, the
fourth-largest global producer of iron ore, and previously the world’s third-largest iron ore
exporter, to become a net importer of iron ore. “Having shipped just 4 million [MT] in 2015,

26 See Indian Union Budget 2016-2017 (Feb. 29, 2016).
27 See Subhash Narayan, Mines ministry demands 30% export duty on chrome ore, Financial Chronicle (May
25, 2016); S Bhattacharya, Abolishing export duty on Chrome ore to hurt domestic industry, The Economic Times
(Apr. 14, 2016).
28 Jayajit Dash, Export duty on high-grade iron ore to remain unchanged, Business Standard (May 13, 2016);
Mines Min does not see a case for lower iron ore export duty, The Times of India (Oct. 3, 2016); Steel Min not in
favour of lowering iron ore export duty, The Times of India (Sept. 21, 2016).
29 See Metals and Mining, India Brand Equity Foundation, https://www.ibef.org/industry/metals-and-
30 Galvanized Steel Products Catching Pace in India, Steel360 (Dec. 17, 2016).
31 India National Steel Policy 2017 at 8. See also Platts, Steel Raw Materials Monthly, Issue 23 (Jan. 2015) at
2 (stating its goal “that India will treble its steelmaking capacity to 300 million mt/year by 2025 have been revived.
State-owned companies, such as Steel Authority of India and iron ore miner NMDC are making the right noises
about growing their respective production capacities in line with the ramp-up to 300 million mt/year”).
32 See New Steel Policy to boost domestic products use, invest Rs 10 lakh cr to up capacity to 300 mn t by
2030, First Post (May 4, 2017).
33 See OECD, Export Restrictions on Steelmaking Raw Materials: Examining Changes in the Stance of
34 Rakhi Mazumdar, Railways slashes iron ore freight rates to boost exports, The Economic Times (Sept. 3,
2015).
also Ajoy K Das, Indian iron-ore miners’ woes persist as govt disregards pleas to slash 30% export tax, Mining
Weekly (Apr. 10, 2015); Kunal Bose, How India lost the plot in global iron ore trade, Business Standard (Jan. 27,
2016).
India’s 2016 iron ore exports [sky]rocketed to 22 million [MT]” when export duties were removed on low grade ore.37 This confirms that India’s trade distortive policies are limiting its supply of raw materials to world markets.

India also maintains an export tax on bauxite to benefit Indian manufacturers.38 India has the fifth largest bauxite reserves in the world. While reports indicate that the export duty on bauxite was reduced from 20 percent to 15 percent, a recent report by Indian government think tank NITI Aayog (the National Institution for Transforming India) recommended increasing the export duty to 30 percent.39

2. Export Licensing Regime

The Indian government retains additional control over trade in raw materials like iron ore by requiring that most exports pass through State Trading Enterprises (“STEs”).40 India’s current policy gives STEs the exclusive right to import and export certain minerals,41 such as iron ore, manganese ore, and chrome ore.42 For example, iron ore exports containing more than 64 percent iron, along with some manganese ores, must be channeled through the Minerals and Metals Trading Corporation (“MMTC”), an STE and the largest Indian trading company.43 MMTC was responsible for a significant percentage of India’s total iron ore exports between 2015 and 2016.44

Ensuring that exports are channeled through STEs allows the Indian government to control the price and supply of raw materials in domestic and global markets. The close relationship between MMTC and the state-owned National Mineral Development Corporation (“NMDC”) demonstrates the magnitude of state involvement in the mining sector. The NMDC

38 See Dilip Kumar Jha, Bauxite miners seek to abolish export duty, Business Standard (Apr. 2, 2016).
is India’s largest iron ore miner, and state-owned MMTC is its single largest exporter of minerals. MMTC collects ore from other SEs, such as NMDC, as well as from smaller, private miners and offers it to world markets.

C. Other Global Export Restrictions

The OECD has identified a significant number of export restrictions on raw materials used in steelmaking by various countries. For example:

- Argentina imposes a 5 percent export duty on iron and steel scrap.

- China, Vietnam, and Indonesia all impose taxes on exports of coking coal, at the rate of 10 percent, 15 percent, and 5 percent, respectively. China has an export quota on coking coal.

- Indonesia imposes significant export taxes of up to 10 percent on metals and raw materials, including nickel ore, iron ore, lead and bauxite, as well as on concentrates of lead, iron, zinc, ilmenite, titanium and manganese. In 2014, Indonesia imposed a complete ban on the export of unprocessed mineral ore exports. Indonesia was expected to completely ban mineral ore concentrates in 2017; however, instead of doing so, the government issued a set of rules allowing companies that meet certain stringent requirements to export mineral concentrates, and certain amounts of low-grade nickel ore

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45 See, e.g., Swansy Afonso, Iron Ore Has Surged Yet Top Miner in India Is Cutting Prices, Bloomberg (Sept. 5, 2016); NMDC slashes iron ore prices, The Economic Times (Dec. 4, 2014).
46 This section identifies certain raw material export restrictions of particular concern to AISI. A more complete list of such restrictions can be found in Annexes 1 and 2 of OECD, Steelmaking Raw Materials.
49 MoF refuses to cut tax rates for coal industry, Viet Nam News (July 31, 2017); OECD, Steelmaking Raw Materials 2012 at 65. See also WTO Trade Policy Review Body, Trade Policy Review Report by the Secretariat: Viet Nam, WT/TPR/S/287 (Aug. 13, 2013) (“2013 WTO Trade Policy Review Report: Vietnam”) at 60, 173. Reports from late 2014 indicated that China was planning to reduce its coking coal export tax to three percent; it is unclear whether or not this reduction has occurred. See China likely to cut coal export duty from 10% to 3% from Jan 1, Platts (Nov. 13, 2014).
51 See, e.g., Indonesia sets new tax rates for mineral exports, Reuters (Feb. 13, 2017); PwC Indonesia, Mining in Indonesia: Investment and Taxation Guide (May 2017) at 45; USTR 2017 NTE Report at 227.
52 See PwC Indonesia, Mining in Indonesia: Investment and Taxation Guide at 9.
53 See, e.g., Why Indonesia Keeps Putting off Its Export Ban, Stratfor Worldview (Oct. 12, 2016).
and washed bauxite. Specifically, in order to export these mineral concentrates, Indonesia requires that exporters satisfy the following requirements: convert their permit status from a “contract of work” (CoW) to a “special mining license” (IUPK), build a smelter within five years; and divest up to 51 percent of their company to local investors. The Indonesian Minister of Energy and Mineral Resources has indicated that permits will be reviewed every six months and companies with “insufficient” progress in smelter construction will have their permits revoked. Indonesia also has an export licensing requirement for coking coal, implemented in part to “ensure the fulfillment of [the] domestic need for coal.” However, licenses are difficult to obtain, with “[v]arious Indonesian mining companies [having] said that they had difficulty to secure the new export permits.”

- Malaysia imposes a non-automatic export licensing requirement on exports of minerals and ores. In addition, Malaysia frequently imposes periodic bans on bauxite mining, most recently doing so in January 2016. During these periods, no new export permits are granted. In June 2017, the Malaysian government extended its current bauxite mining moratorium for an additional six months, until the end of the year.

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54 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, Oilprice.com (Jan. 16, 2017); Fedina S. Sundaryani, Govt issues eagerly awaited rules on mineral export ban relaxation, The Jakarta Post (Jan. 12, 2017).
55 See Sundaryani, Govt issues eagerly awaited rules on mineral export ban relaxation; Forest, Indonesia Just Rocked The Mining World With This Unexpected Move.
56 See Sundaryani, Govt issues eagerly awaited rules on mineral export ban relaxation; Forest, Indonesia Just Rocked The Mining World With This Unexpected Move.
57 See Indonesia ushers in 2017 with changes to Mining Law, Ashurst (Feb. 8, 2017).
60 See Coal Mining in Indonesia: Coal Production & Export Update, Indonesia-Investments (Nov. 27, 2014).
62 See Malaysia extends bauxite mining ban until mid-2017, Reuters (Mar. 27, 2017); Cecilia Jamasmie, Malaysia imposes three-month ban on bauxite exports to fight pollution, Mining.com (Jan. 6, 2016).
63 See Emily Chow (E. Hardcastle, D. Evans, ed.), Malaysia extends bauxite mining moratorium for six months, Reuters (June 29, 2017).
Vietnam currently imposes a 40 percent export tax on iron ore and concentrates, and a 22 percent export tax on nickel, cobalt, aluminum, lead, and zinc ores and concentrates. Further, Vietnam imposes a 10 to 15 percent export tariff on coal, which the government has refused to lower. Even if the Vietnamese government lowers its export tax for processed iron ore to 20 percent next year, as it is attempting to do, the tax remains significant.

Russia imposes a 30 percent export tax on natural gas.

Iran imposes export duties of 35 percent on iron ore concentrates.

D. Global Export Restrictions on Steel Scrap

Steel scrap, a raw material in which few countries are self-sufficient despite worldwide production, is subject to more export restrictions than any other raw material. The global steel industry depends on trade in scrap and other key raw materials such as iron ore, coke, coal, and ferroalloys. Approximately 30 countries restrict scrap exports, which has resulted in market distortions, severe shortages and increased prices.

1. Effects of Scrap Export Restrictions

Export restrictions on steel scrap have a drastic effect on the world market. Reduced international supply can lead to higher global prices. Limits on scrap availability impact all consumers of scrap and negatively impact important manufacturing sectors in the U.S. economy. Because the vast majority of steel scrap is used to make new steel, government restrictions on global scrap supply have adverse effects on the U.S. steel industry, which relies primarily on EAF production with scrap as the main input. Other key U.S. industries affected include foundries, construction, automotive manufacturing, and appliances. The problem impacts

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65 See MoF refuses to cut tax rates for coal industry, Viet Nam News (July 31, 2017).


68 See Iran Mulls 10% Export Duty on Unprocessed Iron Ore, Financial Tribune (Jan. 15, 2017); Iran leaves steel import, iron ore export duties unchanged despite pledges, Platts (Apr. 12, 2017).

69 OECD, Steelmaking Raw Materials 2012 at 56; Presentation of Eric Harris, OECD/South Africa Workshop on Steelmaking Raw Materials (Dec. 11, 2014) at 9.
companies of all sizes, from national manufacturers to small family-owned businesses, and jeopardizes tens of thousands of jobs in manufacturing and consuming industries.

While export restrictions depress global steel scrap availability, often causing prices to increase, countries imposing the restrictions can maintain higher stocks of the material at lower prices within their countries, thus subsidizing their downstream industries and giving local producers an unfair competitive advantage. Furthermore, frequent changes to these restrictions, coupled with a general lack of transparency, create significant uncertainty over scrap supply and availability, rendering scrap prices highly volatile.

2. Scrap Export Restrictions Imposed Globally

As noted above, approximately 30 countries impose restrictions on exports of steel scrap. The following countries impose a complete ban on scrap exports: Angola, Argentina, Azerbaijan; Burundi; Ghana; Guyana; Indonesia; Kazakhstan; Kenya; Mauritius; Nigeria; Rwanda; Sri Lanka; Tanzania; Uganda; Uruguay; Zambia; and Zimbabwe. Many other countries currently impose trade-restrictive export tariffs on scrap, including: Armenia; Belarus; Egypt; Guinea; India; Iran; Jordan; Pakistan; Russia; Ukraine; and Vietnam. Notably,

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71 Ban on the Exportation of Scrap Metal in Place Until December 31, 2016, Enhesa (May, 27, 2016) (“As of 22 April 2016, companies operating in Angola are prohibited from exporting metal scrap according to Order 159/16 of the Ministry of Industry. The restriction is valid until 31 December 2016 and applies only to scrap exporters”).

72 Argentina re-imposed a complete ban on steel scrap exports in 2014. Argentina bans ferrous scrap exports in bid to boost steel industry growth, SteelFirst (Apr. 4, 2014). Another ban was imposed this year. Latin America Trade Bulletin: Auto Trade, Tax Reductions, Customs, Container Weights, STTAS (July 8, 2016) (“The Argentinean government has banned for 360 days the exportation of iron, steel, copper and aluminum waste and scrap…”).

73 In February 2017, the Guyana government temporarily resumed scrap trade for “for a limited period of three months.” See Scrap metal trade opens for 3 months, Guyana Times Inc. (Feb. 6, 2017).

74 To prevent a scrap shortage in its domestic market, Kazakhstan introduced a temporary ban on exports of ferrous scrap from April 21, 2014 to June 30, 2014, and extended the ban in August 2016 for an additional six months. See Kazakhstan extends scrap export ban to 2016, Steel First (Aug, 25, 2015); Kazakhstan reinstates scrap export ban for six months, Metal Bulletin (Aug. 30, 2016); Kazakhstan turns again to scrap export ban, Recycling International (Sept. 2, 2016).

75 In March 2014, Kenya enacted the Scrap Metal Act 2014, which prohibits the export of any form of scrap metal absent authorization from the Cabinet Secretary. Christabel Ligami, Scrap metal export ban good for local manufacturers, The East African (Feb. 21, 2015).

76 Trade obstacle report, Trade Obstacles Alert (Aug. 16, 2016) (“The Cabinet of ministers of Mauritius has brought about a ban on the export of all scrap metals from Mauritius”).

China imposes a 40 percent export tax on scrap, severely restricting its exports of the raw material and benefiting its domestic manufacturers. Depending on global scrap prices, this export tax is at times high enough to amount to a *de facto* export ban. China now produces more steel scrap than any other country, and its scrap reservoir is projected to continue growing rapidly for at least another decade. Restrictions on access to this reservoir of scrap is a major competitive disadvantage for U.S. steel producers and an unfair competitive advantage for Chinese steel producers. Additional countries, such as Algeria, Guyana, and South Africa, enforce licensing requirements on scrap exports, which have the effect of restricting trade.

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78 In addition, in June 2015, Russia added scrap metal to the list of “commodities essential for the domestic market . . . for which temporary export restrictions or prohibitions may be set in exceptional cases.” *Russia threatens scrap export ban*, Argus (June 8, 2015). See also *Russia: Primorye to limit scrap exports*, The Ukrainian Metal (Apr. 10, 2017).

79 *See Rada extends increased export duty for scrap metal by one year with president’s remarks*, Kyiv Post (July 19, 2017). Notably, in May 2012, Ukraine also imposed a quota on scrap exports, limiting exports to 900,000 tons in 2012, likely violating Ukraine’s WTO commitments. Reports indicate that Ukraine further restricted scrap exports in 2013 by failing to distribute the annual quota, resulting in “an unofficial ban on steel scrap exports.” *BIR Ferrous Metals World Mirror February 2013*, Recycling International (Feb. 5, 2013). In Ukraine, the export duty on ferrous metal scrap through at least the middle of 2018 is more than $35 per metric ton. *See Rada extends increased export duty for scrap metal by one year with president’s remarks; The export duty on scrap metal prolonged in Ukraine*, Front News International (August 4, 2017).


82 *See Ilaria Espe, Export Restrictions on Critical Minerals and Metals: Testing the Adequacy of WTO Disciplines*, Cambridge University Press (Nov 30, 2015) at 95 (“Scrap and waste metals are frequently subject to export licensing requirements. . . . A number of developing countries as well as LDCs [i.e., least developed countries] systematically subject a wide range of critical metals to export licensing schemes in their waste and scrap forms, including Afghanistan, Algeria, Guyana, Jamaica, Mauritius, Morocco, Sri Lanka, Tajikistan, Trinidad and Tobago, Turkmenistan and Zambia.”); OECD, *Steelmaking Raw Materials 2012* at 68.

83 *Espa, supra, at 95.

III. **IMPORT BARRIERS**

Import-restricting policies, such as tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers, can distort trade by protecting a country’s domestic producers from import competition, to the detriment of foreign producers. Import tariffs accomplish this by giving a price advantage to locally-produced goods over similar imported goods (while raising revenue for the foreign government). Restrictive and opaque or unpredictable import licensing systems can also be used as an obstacle to trade. Some of the most trade-distortive global import barriers are discussed below.

A. **Algeria**

In January 2016, the Algerian government began to impose import quotas on certain steel products, including rebar and steel wire rod.\(^{85}\) According to government sources, “The government is trying to save time to allow local producers to meet domestic demand . . . In the best-case scenario, the quotas will be very low.”\(^{86}\) In 2016, the quota had the effect of reducing rebar imports by approximately 700,000 metric tons from 2015 volumes.\(^{87}\) In the first half of 2017, the Algerian government issued no import licenses for rebar, resulting in total loss of Algerian demand for European rebar producers.\(^{88}\) Import licenses were not issued until July, with a second round in September, permitting a total import volume of one million metric tons, compared to two million tons permitted in 2016.\(^{89}\) Algeria is an important market for European rebar producers, especially Italian producers. The import quotas force these producers to shift exports to alternative markets, including the United States, resulting in harm to U.S. rebar producers.

B. **China**

The Chinese market continues to be effectively closed to steel imports. Rather than formal import barriers, this results primarily from the Chinese government’s creation of subsidized overcapacity and its support for developing domestic sources of the few steel products that China does import. Through policies such as these, China has implemented a long-standing, *de facto* import substitution scheme that denies foreign producers access to the world’s largest steel market. China’s Steel and Iron Industry Development Policy, issued in July 2005 (“2005 Steel Policy”), for example, discriminated against imports of foreign steel and foreign-produced equipment, in contravention of China’s WTO commitments.\(^{90}\) Specifically, the 2005

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86 Id.
87 Id.
89 Id.
90 Upon accession to the WTO, China committed to eliminate all subsidies prohibited under Article 3 of the SCM Agreement, which include “subsidies contingent… upon the use of domestic over imported goods.” China
Steel Policy encouraged the use of Chinese content by providing a variety of government subsidies for steel projects utilizing newly developed domestic equipment.91

China’s 12th Five-Year Plan for the Iron and Steel Industry established “specific market share targets to be met by domestic steel producers, implying that imports of certain steel products are a problem to be addressed.”92 Similar policies have been carried forward into the 13th Five-Year Plan period. In 2015, for example, China introduced a new industrial policy plan called “Made in China 2025,” the goal of which is to “achieve technological catch-up and import substitution.”93 While this plan is typically associated with high-tech industries like information and communications technology, it applies to traditional industries like steel as well. In October 2016, the Ministry of Industry and Information Technology also issued a “Steel Industry Adjustment and Upgrading Plan” to “thoroughly implement the {13th Five-Year Plan}, Made in China 2025, and the Several Opinions of the State Council Regarding Resolving Excess Capacity in the Steel Industry and Developing Through Difficulties.”94 The Plan identifies “low indigenous innovation levels” as one of the Chinese steel industry’s “primary problems” and bases this conclusion in part on the fact that China “still needs to rely on imports for certain high-end steel products.”95 The Chinese government thus states explicitly, in steel and in other sectors, that imports are a “problem” to be resolved through state support of domestic production, i.e., import substitution.

C. Argentina

Many U.S. exporters are concerned about Argentina’s overly broad use of non-automatic import licensing96 and trade balancing requirements. USTR has recognized that “[i]n recent years, Argentina has imposed a number of customs and licensing procedures and requirements, which make importing U.S. products difficult.”97 This continues to be a problem. As the 2017 NTE Report notes, “[t]he list of products subject to non-automatic licensing has been modified further agreed not to condition importation rights on whether competing domestic suppliers of such products exist. See China’s Protocol of Accession at 10.3, 7.3.

92 Id.
95 Id.
several times, with a net increase since the beginning of the [Comprehensive Import Monitoring System] (“SIMI”) system,"98 which Argentina implemented in response to dispute settlement proceedings at the WTO.99

In December 2015, Argentina replaced its former import system, the Advanced Sworn Import Declaration procedure, which required pre-registration, review, and approval of every import transaction,100 with its new regime, SIMI.101 Under SIMI, imports are subject to automatic or non-automatic licenses and importers must submit detailed electronic information about their imports for approval prior to importation.102 Relevant Argentine government agencies must then review the application. However, the government has not yet established a timeline for issuing such determinations, resulting in extensive delays. As a result, many importers have filed “injunctions asking judges to require the government to release their imports.”103 As of April 2017, Argentina “maintains non-automatic import licenses requirements on more than 12,000 12-digit tariff lines, including sectors and products that the government deemed import sensitive” such as “iron and steel” and “automobiles.”104 As USTR has remarked, it is unclear whether the adoption of the SIMI system actually brings Argentina’s import licensing measures into compliance with the country’s WTO obligations.105 As a result, AISI requests that USTR continue to monitor Argentina’s new import system to ensure WTO compliance.

Additionally, Argentina often requires importers of goods to undertake certain commitments, including limiting their imports to balance them with exports, making or increasing investments in production facilities in Argentina, increasing the local content of products manufactured in Argentina (and thereby discriminating against imported products), refraining from transferring revenue or other funds abroad, and/or controlling the price of

102 USTR 2016 NTE Report at 29.
103 See Eliana Raszewski, Argentina’s Macri faces rising complaints over import policies, Reuters (Mar. 30, 2017).
104 U.S. Department of State, 2017 Investment Climate Statements: Argentina (June 29, 2017).
105 See U.S. Department of State, 2017 Investment Climate Statements: Argentina (June 29, 2017); USTR 2017 NTE Report at 25.
imported goods. Argentina has also increased import tariffs on other products. In January 2014, Argentina introduced a new two-tier import tax on automobiles, increasing the rate from the previous 10 percent to 50 percent on cars whose dealer-invoice price is more than $26,500 and 30 percent on models invoiced at more than $21,500. In December 2014, the scale was modified so that cars priced above approximately $18,600 and $15,000 were subject to a tax of 50 percent and 30 percent, respectively. In January 2016, Argentina eliminated taxes on cars priced below $26,900, but the government maintains a 10-percent tax on cars priced between $26,900 and $61,500 and a 20-percent tax on cars priced over $61,500.

D. Brazil

Brazil imposes barriers on imports of steel and other products. Its manufacturing sector continues to benefit from the highest tariff protection of all of Brazil’s sectors, with a steady average tariff rate applying since 2012. Due in part to these protectionist barriers, Brazil was one of the top five net exporters of steel in 2016, with 11.5 million MT in net exports.

1. Increased Tariffs on Steel Products

In September 2012, the Brazilian government significantly increased import duties on steel products in order to protect its local manufacturing sector, despite U.S. concerns. Although the Brazilian government reduced the import tariffs on certain steel products in 2014, some of these reductions may be temporary, due to domestic supply shortages in Brazil. As a member of the MERCOSUR customs union between Argentina, Brazil, Paraguay, and Uruguay, a Common External Tariff (CET) schedule is maintained between member states with both bound and applied tariff rates. Given the large disparities between these rates, which the Brazilian government frequently increases and decreases to protect its manufacturing sector, U.S. exporters face great uncertainty in the Brazilian market, making it difficult for U.S. exporters to forecast the costs of doing business in Brazil. On July 16, 2015, the MERCOSUR Common

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108 USTR 2016 NTE Report at 27.

109 Id.


112 Brazil’s foreign trade body, Câmara de Comércio Exterior (“Camex”), approved the tariff hike on 100 products, including many steel items, from 12 percent to 25 percent. Brazil seeks higher import duties on steel, CRU Steel News Weekly (Sept. 7, 2012).

113 See, e.g., Brazil cuts heavy plate import tariff on supply scarcity, SteelFirst (Oct. 17, 2014); Raul Lee, Brazil to reduce import tax on thick hot rolled carbon steel plate, yieh.com (Oct. 17, 2014).

114 USTR 2017 NTE Report at 48-49.
Market Council permitted Brazil to maintain 100 exceptions to the CET until December 31, 2021, one of which permits Brazil to impose higher tariffs on steel than its MERCOSUR partners.\footnote{Id. at 49.}

While these measures appear to be WTO consistent (Brazil has “bound” tariff rates of 35 percent on most steel products), they nonetheless distort trade by further impeding imports into Brazil.

2. Local Content Requirements

Brazil imposes stringent local content requirements applicable to various industry sectors, which further hinder imports (including imports of steel products) into Brazil. The Buy Brazil Act (Law 12.349/10 of December 15, 2010) imposes domestic preference requirements at the federal, state and municipal levels.\footnote{Business Software Alliance, Country Report: Brazil at 4. See also Clinton Carter, Brazil: Why Executives Should Care Who Wins, Latin Business Chronicle (Oct. 25, 2010) (“With recent legislation such as the ‘Buy Brazil Act’ (Provisional Measure (PM) Nr. 495), the government is mandating preference for Brazilian firms or goods produced in Brazil in government procurement”).} For example, Brazil’s national development bank, Banco Nacional de Desenvolvimento Econômico e Social (“BNDES”), will not give Brazilian producers full access to its funding unless at least 50 percent of a project’s equipment, by weight, is produced in Brazil.\footnote{Brief-Brazil BNDES cuts local content requirements on financing, Reuters (Sept. 30, 2016); Department of Commerce, U.S. Commercial Service, 2014 Country Commercial Guide for U.S. Companies: Doing Business in Brazil (Sept. 9, 2014). See also U.S. Department of State, Bureau of Economic and Business Affairs, 2014 Investment Climate Statement – Brazil (June 24, 2014) (“2014 Investment Climate Report: Brazil”) (“To promote Brazilian industry, the Special Agency for Industrial Financing (FINAME) of BNDES provides financing for Brazilian firms to purchase Brazilian-made machinery and equipment and capital goods with a high level of domestic content”).} In certain industries, such as the Brazilian automotive industry, the local content requirement is even higher,\footnote{A minimum local content of 65 percent (including from MERCOSUR countries or Mexico) is required for Brazilian manufacturers in the automotive sector. U.S. Department of State Executive Summary - Brazil, https://www.state.gov/documents/organization/227130.pdf at 7; Rothmann, Sperling, Padovan, Local Content Requirements in Brazil: Overview of Current Policy and Regulations (Feb. 26, 2013); Gabriela Castro, Local content requirements in Argentina and Brazil - and what they mean to your business, Strong & Herd LLP (Nov. 14, 2013).} and the Brazilian government imposes a 30 percent increase on the base price of vehicles that do not meet the requirements.\footnote{U.S. Department of State Executive Summary - Brazil, https://www.state.gov/documents/organization/227130.pdf at 7; McKinsey Global Institute, Connecting Brazil to the world: A path to inclusive growth (May 2014) at 43.}

In 2016, BNDES’ local content requirements for wind tower manufacturers, which were already strict, further intensified, as producers are now required to source all wind turbine components locally in order to qualify for funding.\footnote{See 2016 Top Markets Report Renewable Energy: A Market Assessment Tool for U.S. Exporters (Apr. 2016) at 24. See also Alexandre Spatuzza, IN DEPTH: Brazil’s local discontent, Recharge (Aug. 4, 2014);} As the U.S. Commercial Service
explained to exporters, “[b]y 2016, BNDES aims to complete an entire Brazilian wind manufacturing value chain in-country – severely limiting the potential for wind product exports from the United States.”121 Indeed, overall imports of wind tower components into Brazil have decreased since 2011, with “the U.S. share of those shrinking exports dropp[ing] dramatically in 2015.”122 There are also strict rules in Brazil imposing local content restrictions in activities related to offshore oil and gas exploration activities.123 Specifically, between 37 and 85 percent of goods and services in exploration phase activities are required to be local, and between 55 and 80 percent of development phase activities are required to use local content.124 Further, BNDES does not consider foreign steel rolled in Brazil to be produced in Brazil, “meaning that [some] companies are generally unable to import [steel] from abroad.”125 The imposition of these requirements is harmful to U.S. steel producers, as they will undoubtedly further hinder U.S. steel exports to Brazil.

In addition, Brazil’s Senate Resolution 13/2012, which took effect on January 1, 2013, imposes a four percent interstate VAT tax on all products, including steel products, imported from abroad or containing more than 40 percent foreign content.126

E. Mexico

On January 27, 2014, Mexico implemented a new import licensing system targeted at 113 specific steel products.127 The system was established in an effort to combat fraud and circumvention of trade remedy measures and to improve statistical monitoring.128 In July 2015, Mexico added 25 tariff lines to its automatic import licensing regime for iron and steel products and added 86 tariff lines for steel goods to its list of sensitive products, which requires that temporary imports of such goods comply with additional requirements.
As initially implemented, the import licensing regime resulted in delays, demurrages, and other complications at the U.S.-Mexico border. In 2016, in response to concerns expressed by NAFTA government and steel industry representatives, Mexico implemented an “alternative scheme” that streamlines import licensing for NAFTA steel producers and their Mexican customers who have registered to participate in the program. To date, complications and delays associated with the import licensing system have largely been alleviated for users of this new scheme. However, U.S. producers and their Mexican customers who have not registered for the alternative scheme must continue to utilize the “regular” import licensing system.

AISI appreciates the efforts by the Mexican government to implement the alternative scheme, and recommends that the U.S. Government continue to work with its Mexican counterparts to make further refinements to the import licensing system in an effort to make the regular import licensing system fully automatic for all North American producers and their customers.

In order to promote customs enforcement and combat fraudulent imports, Mexico also imposes additional requirements that have raised concerns among U.S. steel exporters. For example, since January 2017, Mexican customers have been required to register with the Mexican government in order to import steel. AISI is aware of certain customers in Mexico who have been temporarily unable to import steel from the United States as a result of this program. In addition, some U.S. producers have experienced delays and other complications in exporting steel to Mexico that may be an unintended result of efforts by the Mexican government and Mexican steel industry to establish new customs-related processes aimed at combatting unfair trade practices. AISI urges the U.S. government to continue to work with the Mexican government to ensure that these measures do not create barriers to legitimate NAFTA trade.

F. Russia

As part of its WTO accession agreement, Russia agreed to reduce or eliminate tariffs on many products. However, while the United States generally imposes zero tariffs on steel, Russia has retained its tariffs on steel products. Russia only agreed to reduce its tariff rates for products categorized under Chapters 72 and 73 of the Harmonized Tariff Schedule to 5.7 percent and 11.8 percent, respectively. Russia agreed to decrease its tariffs on industrial goods very modestly from 9.5 percent to 7.3 percent, and on capital goods and equipment to about 5 percent.

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130 See, e.g., WTO members discuss how to step up notifications on import licensing, WTO News (Apr. 23, 2015) (regarding Mexico’s automatic licensing procedures on certain steel products, “the U.S. asked whether receipt of an import license is a condition of entry and what the duration of the licensing requirement is, while Canada encouraged Mexico to automate its system”).
132 See id. See also Louis Chan, Russia: Market Profile, HKTDC Research (Apr. 30, 2016); Lyudmila Alexandrova, Russia Finally Joins World Trade Organization, ITAR-TASS News Agency (Nov. 11, 2011).
133 USTR, United States, Russia Sign Bilateral WTO Market Access Agreement: Negotiations on WTO Membership Now Move to the Multilateral Phase (Nov. 19, 2006).
Although Russia has reduced its tariffs on certain steel products,\(^{134}\) AISI is concerned that the relatively minor reductions in steel product tariffs will not provide greater levels of market access for the U.S. steel industry. USTR should continue to closely monitor Russia’s tariffs to ensure that Russia keeps its commitment to reduce its steel import tariffs.

Russia also maintains and has expanded local content requirements in various sectors, including investment incentive regimes that allow for the duty-free entry of parts used to manufacture vehicles that have a certain specified level of Russian-origin content – currently 60 percent.\(^{135}\) Although Russia has agreed to eliminate local content restrictions in the automobile industry by July 1, 2018,\(^{136}\) it appears that the government has plans to further reduce the level of foreign-made car components used in Russia and replace them with domestic components by 2020.\(^{137}\) Such measures are having a chilling effect in the global automotive market, as foreign automakers’ percentage of the Russian market fell in 2015 for the first time in over a decade.\(^{138}\) These numbers continued to decrease in 2016.\(^{139}\) In fact, the Russian government recently used its localization requirements to incentivize foreign automakers to move production facilities to Russia, stating that “[i]t will make more business sense for global automakers to establish assembly plants in Russia and export cars assembled here . . . [as] [t]he Ministry of Economic Development of Russia has drafted a new production localization formula to promote it.”\(^{140}\)

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136 See 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments at 46-47; Russia at the Crossroads: Russian Automotive Market Study 2014, Roland Berger Strategy Consultants (May 2014) at 27; Nick Gibbs, Suppliers enter, expand in Russia ahead of forecast sales surge, Automotive News Europe (Jan. 20, 2014) (“Carmakers are looking to source more parts from Russia to cut costs and to meet a government-mandated target of having 60 percent local content to qualify for reduced import tariffs”).

137 Dr. Thomas Heidemann, Import substitution in Russia - Automotive Industry, Lexology (June 30, 2016).


139 See PwC, Russian passenger car and commercial vehicle market: 2016 results and outlook (Feb. 2017) at 5.

Russia also imposes local content requirements for wind energy projects.\textsuperscript{141} The level of local content required of wind turbine equipment is currently 40 percent; it will increase to 55 percent in 2018 and to 65 percent thereafter.\textsuperscript{142} In January 2017, the Russian government expanded its list of goods for national defense and services that must be locally sourced.\textsuperscript{143} The government’s list grew from 11 items to 132, and includes stainless steel pipes and tubes.\textsuperscript{144}

Russia also recently expanded its Russian-origin government procurement requirements beyond branches of the Russian government itself.\textsuperscript{145} It now prohibits even some SEs from purchasing certain imported products, many of which are steel-containing goods like automobiles, metal products and heavy machinery.\textsuperscript{146} These “import substitution” policies were expanded through the June 2015 Law on Russian Industrial Policy.\textsuperscript{147} In August 2016, Russia informed members of the WTO Agreement on Government Procurement (“GPA”) of its intent to initiate negotiations to join the GPA.\textsuperscript{148} As a result, AISI urges USTR to fully inquire into Russia’s use of domestic preferences in government procurement projects during negotiations.\textsuperscript{149}

\textsuperscript{141} See Stefan Gsanger and Roman Denisov, Perspectives of the wind energy market in Russia, Freidrich Ebert Stiftung Russische Föderation and World Wind Energy Association (Mar. 2017) at 9; see also Eugene Gerden, Russia eases local content rules, Wind Power Monthly (July 20, 2015).

\textsuperscript{142} See Perspectives of the wind energy market in Russia, Freidrich Ebert Stiftung Russische Föderation and World Wind Energy Association at 9.


\textsuperscript{144} Id.


\textsuperscript{146} See, e.g., id.; Import substitution in Russia - Mechanical and electrical engineering and metal industries, CMS (June 16, 2016); World Trade Organization, Report on G20 Trade Measures (Mid-October 2015 to Mid-May 2016) (June 21, 2016) at 80 (“For state corporations, state and business companies with Russian Federation ownership capital of more than 50%, or other government-supported legal entities (with investment-intended funds of no less than Rub 10 billion) the Russian Government has adopted a list of 139 types of industrial products to be procured abroad only with prior approval by the Import Substitution Commission. The products covered are: finished metal products (e.g. tankers and cisterns); computer, electronic and optical equipment (e.g. tomography scans); electric equipment (e.g. electric accumulators and components); plant and equipment (e.g. cranes and earthmovers); motor vehicles, trailers and semitrailers (e.g. auto cranes); transport vehicles and equipment (e.g. railway locomotives)").

\textsuperscript{147} See, e.g., 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments at 30; Import substitution in Russia, Swedish Chamber of Commerce for Russia & CIS (Apr. 14, 2016) at 5-7.


G. Japan

In its 2017 NTE Report, USTR expressed concern about a variety of non-tariff barriers that have traditionally impeded access to Japan’s automotive market. These barriers include: issues relating to standards and certification; insufficient opportunities for imported U.S. vehicles to benefit from financial incentives on the same terms as Japanese models under the preferential handling procedure; insufficient opportunities to provide input in the developments of standards and regulations; and barriers that hinder the development of distribution and service networks. USTR also found that “[o]verall sales of U.S.-made vehicles and automotive parts in Japan remain low,” and that certain U.S. automotive manufacturers have left the Japanese market due to weak sales. Given that domestic steel producers are major suppliers to the U.S. auto industry, barriers that limit U.S. auto shipments to Japan hurt American steel producers as well. AISI therefore urges the U.S. government to continue pressing Japan to address the full range of barriers currently facing the U.S. auto industry.

As in the automotive sector, the Japanese steel market has long been distorted by non-tariff barriers that have significantly limited Japanese imports of steel and many steel-containing goods, thus leading to gross disparities in Japan’s steel trade. Japan maintains an effective duopoly in the steel industry, consisting of Nippon Steel and JFE Steel, which together account for more than 75 percent of Japanese steel production. Their dominance of the domestic market allows these companies to control Japanese standards, certifications, and channels of distribution in a manner that restricts foreign suppliers’ access to the market. Recent data show that this continues. According to the Japan Iron and Steel Federation, in 2016 Japan exported 41,205,695 MT of iron and steel products, exceeding 40 million MT for the seventh year in a row. But in the same year, Japan imported only 8,102,038 MT of such products. Total Japanese imports from the United States – home to the world’s fourth-largest steel industry – were only 4,403 MT. For decades, Japan’s market barriers have contributed to numerous instances of dumping by Japanese steel producers into other countries – a direct result of the fact that high prices at home make it easier for Japanese mills to dump their remaining production elsewhere.

150 USTR 2017 NTE Report at 255.
151 Id.
152 Id.
156 Id.
157 See, e.g., Certain Carbon and Alloy Steel Cut-To Length Plate From Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan, 82 Fed. Reg. 24,096 (Dep’t Commerce May 25, 2017) (amended final affirmative antidumping determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders); Certain Hot-Rolled Steel Flat Products From
H. Indonesia

Indonesia has implemented various import policies that serve to protect its domestic steel industry. In its 2017 NTE Report, USTR explained that “Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia’s market.”158 Additionally, in 2015, Indonesia increased its import duties on a number of products, including “on foreign steel products to protect local steel producers from cheaper imports.”159 The duties, previously ranging from 0 to 5 percent, were increased to 15 to 40 percent.160

Like Japan, Indonesia has enacted barriers to shield its auto industry from foreign competition,161 thereby limiting the export of U.S. vehicles to the country. In 2015, Indonesia increased its tariff on cars to 50 percent, up from 10 to 40 percent.162 As a result, several U.S. auto manufacturers, including Ford and GM, have stopped selling cars in the Indonesian market.163 Most recently, the Indonesian government announced plans to “raise the local content requirement for cars to 90 percent by 2019 from 60 percent at present to strengthen the national automotive industry…. ”164 Each of these measures have had a negative impact on the U.S. steel industry.

Indonesia is also in the process of developing mandatory “use national” standards for steel products and increasing the amount of Indonesian steel required under local content rules for government funded construction.165 For instance, state institutions are required to use a

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158 USTR 2017 NTE Report at 223.
159 Linda Yulisman, Govt ups import duties to protect struggling domestic industry, The Jakarta Post (May 5, 2015).
160 Id.
161 Matthew DeBord, Ford is shutting down operations in Japan and Indonesia, Reuters, Business Insider U.S. (Jan. 25, 2016).
162 UPDATE 2-Indonesia raises import duties on consumer goods, denies protectionist, Reuters (July 23, 2015).
163 Matthew DeBord and Reuters, Ford is shutting down operations in Japan and Indonesia, Business Insider (Jan. 25, 2016).
164 Stefani Ribka, Local content requirement for cars to hit 90% by 2019; Industry Ministry, Jakarta Post (Feb. 10, 2017).
165 Viriya P. Singgih, PLN seeks to boost local content to 40 percent, The Jakarta Post (June 20, 2017); see also Stefani Ribka, Local content requirement for cars to hit 90% by 2019; Industry Ministry, Jakarta Post (Feb. 10, 2017); Sushim Banerjee, Fresh challenges for steel industry, The Financial Express (June 2, 2015).
certain proportion of local content under Presidential Instruction No. 2/2009. Beginning this year, state-owned electric company PLN plans to construct several power plants that will generate 10,000 MW of electricity using 40 percent local content. PLN announced that it “will team up with several state-owned enterprises to develop the plants, including … steel maker Krakatau Steel.” Krakatau Steel’s $460 million hot strip mill in Banten province will add another 1.5 million tons to its current annual production of 3.15 million tons, furthering the government’s “ambition to push local content higher.” The government has indicated that it will be prioritizing Indonesian steel – and reducing steel imports – for other projects as well.

Additionally, Indonesia imposes safeguard duties on a number of steel products, including bars, rods, H and I sections, flat-rolled steel products, and finished casing and tubing, and recently extended import duties on flat-rolled iron and non-alloy steel products for an additional two years “to protect its domestic producers.” In 2015, Vietnam and Taiwan submitted requests for consultations at the WTO, asserting that Indonesia’s safeguard duties on flat-rolled iron and steel products are WTO inconsistent. While the panel found that the measures did not violate the Agreement on Safeguards, it concluded that the measures were inconsistent with the MFN provisions of the GATT. On September 28, 2017, Indonesia appealed the panel’s ruling. AISI urges USTR to continue to participate as a third party in this dispute.

I. Other Recently Imposed Import Barriers

• Earlier this year, South Africa modified its government procurement rules to require 100 percent local content for steel products, including fabricated structural steel, frames, wire

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166 See Stefani Ribka, Steel industry growth hindered by imports, Jakarta Post (Sep. 8, 2016); see also Grace D. Amianti, Steel industry demands levies on imports, The Jakarta Post (June 24, 2015).
167 See Viriya P. Singgih, PLN seeks to boost local content to 40 percent, The Jakarta Post (June 20, 2017);
168 Id.
169 See Astra Daihatsu to produce local cars by 2019, The Jakarta Post (Aug. 25, 2016); Stephani Ribka, Krakatau Steel to finally start construction of hot strip mill (July 26, 2016).
170 Government to Reduce Steel Imports, Tempo.co (Sept. 19, 2015).
171 See U.S. Department of Commerce, Active Foreign Safeguard Activity (last changes made September 13, 2017).
172 Stefani Ribka, Indonesia extends protection of non-alloy steel iron to 2019, The Jakarta Post (Sep. 29, 2017).
174 Id.
products, steel pipe, and flat and long products.\textsuperscript{176} South Africa also raised several steel tariff rates in 2017, including on flat-rolled stainless steel products (from 0 to 5 percent),\textsuperscript{177} as well as on wire rod, rebar, and structural steel (from 0 percent to 10 percent).\textsuperscript{178}

- Ukraine introduced import quotas on certain steel pipes in 2008, which were extended through at least September 2016.\textsuperscript{179} It is unclear whether these quotas have been eliminated.\textsuperscript{180}

- In June 2015, Pakistan revised its import tariffs on several steel products, with new or modified rates ranging from 5 percent to 20 percent.\textsuperscript{181} In March 2016, Pakistan announced that it was increasing its duties on iron and steel finished products to 30 percent, “in a bid to protect the local industry.”\textsuperscript{182} Most recently, in July 2016, the Pakistani government removed regulatory duty exemptions on imports of certain iron and alloy steel products,\textsuperscript{183} replacing them with tariffs. Thus, semi-finished iron and steel


\textsuperscript{179} Ukraine extends restrictions on steel pipe imports until September 2016, UNIAN (Apr. 8, 2015).

\textsuperscript{180} See, e.g., Meeting with Stepan Kubiv, First Vice Prime Minister of Ukraine – Minister of Economic Development and Trade, American Chamber of Commerce in Ukraine (June 10, 2016), available at http://www.chamber.ua/Events/Event/6087 (last visited Oct. 23, 2017).

\textsuperscript{181} Govt revises rates of regulatory duty on imported goods, Pakistan Ports & Customs (June 30, 2015).

\textsuperscript{182} Govt doubles regulatory duty on iron, steel imports to 30pc, The News International (Mar. 23, 2016).

products imported to Pakistan are now subject to regulatory duties of 30 percent for iron and non-alloy steel products, including steel beams, hollow drill bars and rods; 25 percent for semi-finished products of high-speed steel; and 15 percent for alloy steel in inputs and other primary forms.184

- In March 2015, Iran increased its import duties on certain steel products “in line with Iran’s ambitious 2025 vision plan to quadruple its steel output.”185 In March 2016, the Iranian government increased its import duties on all flat-rolled steel products by an additional 10 to 11 percent.186 As a result of this increase, the “import of steel products by Iran shrunk by over 7 percent [year-over-year] (in volume terms) in H1 2016.”187 Import duties in Iran are 20 percent for hot-rolled and cold-rolled flat products, and 26 percent for hot-dipped galvanized (“HDG”) steel.188 In addition, Iran imposes a 9 percent VAT.189 In its recently released five-year development plan (2017 to 2023), the Iranian government announced an additional duty on steel imports of approximately $25/ton on billet, beam, strips, tubes, pipes, stainless steel, and scrap.190

- The Dominican Republic applies a number of non-tariff trade barriers that have significantly hindered U.S. exports of rebar.191 These barriers include those set forth in Dominican Quality Norm RTD 458.192 As a result of these barriers, AISI understands that Dominican authorities have unreasonably detained U.S. rebar shipments at the port on several different occasions. AISI requests that USTR monitor and urge the removal of any trade barriers by the Dominican Republic that unreasonably restrict the export of U.S.-produced rebar.

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184 See Govt withdraws regulatory duty exemption on cotton yarn; Government withdraws RD exemption on cocoa powder, cotton yarn, iron & steel.

185 Maytaal Angel, Iran boosts steel import duties as protectionism gathers pace, Reuters (Mar. 11, 2015).

186 Puneet Paliwal, Iranian steel sheet market: local producers poised to expand market share, CRU (July 14, 2016).

187 Puneet Paliwal, Iranian steel sheet market: local producers poised to expand market share, CRU (July 14, 2016).

188 See Flat Steel Import Market Cools as Domestic Prices Drop, Financial Tribune (Sept. 23, 2017); see also Iranian Gov’t Cuts Flat Steel Import Duties by 50%, Financial Tribune (Feb. 8, 2017); Iran to impose new duty on steel imports from September: report, Platt (Jan. 13, 2017).

189 Flat Steel Import Market Cools as Domestic Prices Drop.

190 Iran to impose new duty on steel imports from September: report; New Duty on Steel Imports from Sept., Financial Tribune (Jan. 15, 2017).

191 See USTR 2017 NTE Report at 111-112 (“Multiple U.S. exporters of steel rebar used for construction have complained that a Dominican technical regulation (RTD) 458 administered by the Ministry of Industry and Commerce’s (MIC) Dominican Institute for Quality (INDOCAL) constitutes a barrier to trade”).

192 See USTR 2017 NTE Report at 111.
In July 2016, Colombia removed certain tariff exemptions on imports of iron and steel products, including on cold-rolled steel, and pipe and tube, resulting in import duties ranging from 5 percent to 15 percent on these products.\textsuperscript{193}

Egypt has tariffs of at least 8 percent on rebar imports, which will likely remain in effect until at least 2018.\textsuperscript{194} In addition, in March 2016, Egypt implemented a new system for rebar imports, requiring foreign suppliers and Egyptian importers to register at the General Organization for Export & Import Control in order to obtain the status of an approved supplier before foreign produced rebar can enter the Egyptian market. This measure will reportedly “help reduce imports markedly.”\textsuperscript{195}

The Government of India maintains import tariffs of 12.5 percent across base metals, articles of base metals, and iron and steel products listed under Chapters 72 and 73 of the harmonized tariff schedule.\textsuperscript{196} Additionally, in November 2016, India imposed safeguard duties on certain hot-rolled flat sheet and steel plate imports, with imports priced below $504/MT required to pay a 10 percent safeguard duty.\textsuperscript{197} These duties are expected to decrease to 8 percent by 2018 and to 6 percent by 2019.\textsuperscript{198} In May 2017, the Indian


\textsuperscript{195} Square Billet in Focus, Metal Expert (Apr. 2016) at 16.


\textsuperscript{197} See Notification No. 3/2016-Customs (SG), Government of India, Ministry of Finance (Department of Revenue) (Nov. 23, 2016); PTI, Government slaps safeguard duty on certain steel imports, The Indian Express (Nov. 24, 2016); K.R. Srivats, Safeguard duty impose on hot rolled flat sheets and plates of steel, The Hindu Business Line (Nov. 24, 2016); India imposes safeguard duties on some steel imports, Reuters (Nov. 24, 2016).

\textsuperscript{198} See Notification No. 3/2016-Customs (SG); India imposes safeguard duties on some steel imports.
government implemented a policy that grants a preference to domestically produced iron and steel products for government procurement projects\(^{199}\) that meet its 15 percent “domestic minimum value-addition” requirement (\(i.e.,\) the difference between the price and landed cost of any imported inputs).\(^{200}\) The iron and steel products covered by this policy include wire rod, bar, structural steel, hot-rolled steel, cold-rolled coils and strips, and pipe and tube.\(^{201}\)

- Malaysia institutes non-automatic import licensing requirements on eight tariff lines of alloy steel products.\(^{202}\) The Malaysian government has also consistently sought to boost its economy through policies that discourage imports. In January 2015, Malaysia’s Prime Minister announced policy measures to strengthen the economy by intensifying the promotion of Buy Malaysia products.\(^{203}\) In September 2016, Malaysia imposed safeguard measures on imported steel, implementing a 13.9 percent safeguard duty on steel coil imports and a 13.4 percent safeguard duty on rebar.\(^{204}\)

- Qatar imposes a 20 percent import tariff on steel products, including on iron bars and rods, non-alloy hot-rolled steel, and 12-millimeter steel bars.\(^{205}\) According to the WTO, Qatar’s “steel tariffs currently exceed the WTO bindings.”\(^{206}\)

- Turkey maintains significant import tariffs of up to 40 percent on steel products, including on flat-rolled steel coils, cold-rolled products of stainless steel, and certain bar

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200 Policy for Providing Preference to Domestically Manufactured Iron & Steel Products in Government Procurement at 6, 8.

201 Policy for Providing Preference to Domestically Manufactured Iron & Steel Products in Government Procurement at 9-10 (Appendix A).


203 See Hanif Adnan, Putting the steel back in steel industry, The Star Online (Oct. 1, 2016).


and wire rod.\textsuperscript{207} Turkey also imposes “additional customs duties” on several steel products.\textsuperscript{208} For instance, in January 2017, Turkey issued additional customs duties of 30 percent on certain steel pipe and tube.\textsuperscript{209}

- Vietnam imposes a number of import restrictions on steel products in order to “afford higher protection” to its domestic steel industry.\textsuperscript{210} In 2014, Vietnam’s Ministry of Industry and Trade, in conjunction with its Ministry of Science and Technology, imposed strict import certification and licensing rules on a variety of steel products, ranging from flat and long carbon steel products to alloy and stainless steel goods.\textsuperscript{211} These requirements are largely aimed at curbing steel imports into Vietnam by making them more costly and burdensome. Vietnam’s Finance Ministry has also been involved in this effort, “ask[ing] Commerce to keep a tight grip on the imports of steel products.”\textsuperscript{212} Vietnam continues to tighten its restrictions on steel imports, imposing new import duties of 23.3 percent for steel billets and 14.2 percent for steel rods in March 2016.\textsuperscript{213} Earlier this year, Vietnam applied a 21.3 percent border tax on steel ingots and long steel products, with a \textit{de minimis} exclusion for imports entering Vietnam at minimal volumes.\textsuperscript{214} The 21.3 percent border tax applies until March 22, 2018, at which point the tax drops to 19.3 until March 22, 2019.\textsuperscript{215}

IV. \hspace{1cm} \textbf{INVESTMENT BARRIERS}

Restrictions on foreign investment and ownership often unfairly distort global trade and prevent U.S. businesses from taking advantage of potentially lucrative investment opportunities. While the United States maintains an open environment for foreign investors, many other countries continue to impose restrictions on foreign investment within their borders, to the disadvantage of U.S. companies.

\textsuperscript{209} See Orçun Çetinaya, \textit{Turkey: Turkish Trade Remedies – January 2017}, Mondaq.com (Feb. 8, 2017); \textit{Turkey imposes additional customs duty on certain pipe imports}, SteelOrbis (Jan. 19, 2017); Global Trade Alert, \textit{Turkey: The government increased the import tariffs on pipes, profiles, engines, pumps, generators, tractors and gearboxes} (Jan. 18, 2017).
\textsuperscript{211} \textit{Vietnam’s Rush to Import Steel Ahead of New Regulation}, Steel First (Sept. 28, 2014).
\textsuperscript{212} \textit{Viet Nam imports more steel as consumption rises}, Viet Nam News (Apr. 21, 2014).
\textsuperscript{213} \textit{Vietnam slaps new tariffs on steel imports to protect local industry}, Thanh Nien News (Mar. 9, 2016).
\textsuperscript{214} See China upset at high Vietnam tariffs on steel imports, Retail News Asia (Mar. 17, 2017).
\textsuperscript{215} \textit{Id.}
A. China

The Chinese government strictly regulates investment by foreign firms within China. Foreign investment must comply with the Foreign Investment Industries Guiding Catalogue (the “Catalogue”) and other relevant laws related to foreign investment.216

1. Restrictions on Foreign Investment in China’s Steel Sector

A foreign investment project in China’s steel industry must be approved by the Ministry of Commerce (“MOC”), the National Development and Reform Commission (“NDRC”), the State-Owned Assets Supervision and Administration Commission (“SASAC”) (if it involves state-owned assets), and/or the China Securities Regulatory Commission (“CSRC”) (if it involves a PRC-listed company), and must be registered with other relevant authorities.

In a March 2015 revision to the Catalogue, China removed the steel industry from its list of “restricted” foreign investment industries, thereby opening the door to majority foreign ownership of Chinese steel enterprises.217 The 2016 Adjustment and Upgrading Policy also calls for “fully utilizing both domestic and foreign markets and capital . . . actively attracting foreign investment and capital, and comprehensively promoting international steel capacity cooperation.”218 Despite this apparent willingness to attract foreign investment in the steel industry, as a practical matter it has not occurred. Foreign investments in the steel industry will also continue to be subject to administrative approvals, including national security reviews, despite any revisions to the Catalogue. This approval process could be used to coerce foreign steel firms to transfer industrial know-how or other trade secrets into Chinese control, as in other sectors of the Chinese economy where foreign investment is more common.219

China’s national security review system allows the Chinese government to review transactions where a foreign company invests in, and obtains actual control over, any Chinese enterprise that is related to national security, or is involved in important agricultural products, important energy and resource products, critical infrastructure, or other key areas.220 Thus, the scope of activities subject to review is quite broad. Indeed, under the new system, “national security” could include the impact on economic stability, social stability, or the research and development (“R&D”) capabilities of key national security technologies. Transactions found to have a significant impact on national security will be denied or approved only subject to certain conditions. Given the breadth of the scope of review, foreign investment in China’s steel industry could be subject to enhanced scrutiny under this new system.


To date, AISI is unaware of any foreign attempts to acquire a controlling stake in a Chinese steel enterprise since the March 2015 revision to the Catalogue. While the revision is a welcome step towards liberalizing the Chinese steel market, barriers to such investments appear to remain in place as a practical matter. USTR should continue to monitor this situation to ensure that the removal of the steel industry from the list of industries restricted to foreign investment in fact results in foreign investors being permitted to own controlling stakes in Chinese steel enterprises.

2. Indigenous Innovation and Technology Transfer Policies

China also imposes restrictions on foreign investment in China through indirect means. Upon accession to the WTO, China committed to eliminate all subsidies prohibited under Article 3 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”)

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which include “subsidies contingent… upon the use of domestic over imported goods.”

\[222\] China further agreed not to condition importation rights on “whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of [R&D] in China.”

\[223\] China has largely not lived up to these commitments and continues to impose policies that act as barriers to foreign investment.

While China has largely eliminated explicit requirements related to technology transfer and local content, “foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise transfer technology, conduct research and development in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions.”

\[224\] An analysis of China’s policies under the Made in China 2025 plan expresses similar concerns that “responsible ministries and state-owned policy institutes use internal or semi-official documents to communicate local content targets to Chinese enterprises . . .”

\[225\] It thus appears that foreign investments will continue to be utilized as a means of enhancing the competitive strength of Chinese enterprises, rather than being permitted to compete autonomously in the Chinese market. It is unlikely that the revision to the Catalogue will alleviate these concerns.

B. Russia

The U.S. Department of State describes Russia’s investment climate as having “fundamental structural problems in governance of the economy” that “continue to stifle foreign

\[221\] See China’s Protocol of Accession at 10.3.

\[222\] Agreement on Subsidies and Countervailing Measures, WTO (Apr. 15, 1994) (“SCM Agreement”) at Art. 3.1(b).

\[223\] China’s Protocol of Accession at 7.3.

\[224\] U.S. Trade Representative, 2016 Report to Congress on China’s WTO Compliance (Jan. 2017) at 16.

direct investment throughout the country.” 226 The State Department explains that the Russian judicial system “remains heavily biased in favor of the state,” and suffers from “[h]igh levels of corruption among government officials,” which compounds the risk that investors face in Russia. 227 Among other foreign investment restrictions, the Russian government restricts trade in raw materials by exercising control over investments in mining. Russia’s management of its mining system and onerous licensing requirements allow the government to control the availability of strategic natural resources for use in Russia and for export.

1. Mining Investment Restrictions

Russia implements a number of barriers to foreign investment in its mining sector. 228 While amendments to Russia’s Strategic Sectors Law went into effect in December 2011, easing some legislative restrictions on foreign investment in strategic sectors of the Russian economy, Russia continues to limit foreign investment in domestic mining companies to less than 25 percent ownership. 229 According to one analyst, “[t]his regulation de facto requires the [Russian] president’s personal permission for any deal involving foreign partners.” 230

Moreover, the government may deem significant discoveries by foreign mining groups as “strategic” and require the foreign mining group to sell 50 percent of its ownership interest in the project to a Russian partner. 231 In addition, mining in areas located or partially located on the Russian continental shelf must be done by Russian companies with more than 50 percent of their voting shares owned or otherwise controlled by the Russian Federation. 232 “In practice, this means that these licenses are granted only to state-owned oil and gas companies (such as Gazprom and Rosneft) or, in some cases, to joint ventures with these companies.” 233 Although


227 See id.

228 See 2017 USTR NTE Report at 375, 381; Alan Kartashkin, Recent Developments in Russian Mining Regulation: Opportunities and Challenges (Dec. 2, 2013); Stephane Godin, An Opportunity Lost in Russia Mining, (July 9, 2013); Anna Putsykina and Julia Zasukhina, Russia: Calling for Change, Mining Journal Online (June 7, 2013).

229 See Steffen Kaufmann, Russia amends foreign investments regulations, DLA Piper (Aug. 3, 2017); Eugene Gerden, Russian government to ease resource investment access for foreign investors, InvestorIntel.com (Nov. 12, 2015) (explaining that foreign investors may “acquire a 25% stake in the country’s strategic mineral deposits without special permits and up to 49% – after the approval of the governmental commission”). Prior to December 2011, foreign investment was limited to 10 percent. Alan Kartashkin, Recent Developments in Russian Mining Regulation: Opportunities and Challenges (Dec. 2, 2013) at 7, 11. See also Natalya Morozova and Rob Patterson, Russia, The Oil and Gas Law Review (Nov. 2013) at 210.


231 Id. See also Baker McKenzie, Doing Business in Russia (2017) at 352, 354-355.

232 Natalya Morozova and Rob Patterson, Russia, The Oil and Gas Law Review (Nov. 2013) at 211.
Russia has committed to applying its Subsoil Law in accordance with its WTO obligations, and USTR should monitor Russia’s decisions under this law to ensure that Russia is not impermissibly restricting foreign investment in this sector.

Such barriers to foreign investment effectively reserve much of Russia’s mineral resources for domestic companies that intend to mine these resources for their own domestic processes. Domestic steelmakers and other domestic manufacturers in Russia take advantage of these policies to ensure that their raw material needs are met. Such policies may also serve to restrict exports, as the raw materials are mined and used by the same domestic enterprises.

2. Mineral Extraction Licensing Requirements

Russia operates a burdensome and opaque licensing system, which allows its government to control access to the country’s mineral resources, among other economic sectors. In fact, under Russia’s Subsoil Law, mineral resources in Russian territory are defined as state property. Subsoil use rights may only be sold or transferred when expressly permitted by Russian law, and such transfers are strictly limited under the law. The government is charged with designing and implementing policies governing subsoil rights, creating a federal subsoil

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234 Russia Working Party Report at ¶ 52 (“The representative of the Russian Federation further explained that all legal acts taken pursuant to Federal Law No. 57 FZ, including decisions resulting from the screening process, must be in compliance with this Law and, as described above, with the international obligations of the Russian Federation”).

235 See, e.g., The Business of Mining, Russia: Silent Mining Giant (June 16, 2011); TEXT-Fitch: Russian Steel Companies Have More Flexibility Than Peers, Reuters (Nov. 28, 2011). See also Laplace Conseil, The Determinants of Profitability of large Steel Companies (Feb. 7, 2014) at 13.

236 See 2017 USTR NTE Report at 375, 381.


239 Natalya Morozova and Rob Patterson, Russia, The Oil and Gas Law Review (Nov. 2013) at 206 (“The Subsoil Law imposes very harsh limitations on any transfers of the rights to use subsoil”).
reserve, and imposing restrictions for “national security and environmental protection.”\textsuperscript{240} Local governments may administer the use of the subsoil for purposes unrelated to mineral production and for the production of “common types of minerals.”\textsuperscript{241}

Russia generally awards licenses to mining companies following auctions, based on certain criteria,\textsuperscript{242} including, among other things, contribution to social and economic development and national security interests.\textsuperscript{243} The government reserves the right to invalidate bids for a number of reasons.\textsuperscript{244} Licenses may be terminated by expiry, relinquishment, material violation of terms, repeated violations, emergency situations, immediate danger to the health of people working or living nearby, failure to commence operations in the term provided by the license, liquidation of the enterprise holding the license, and/or failure to file required reports.\textsuperscript{245} According to reports, Russia’s licensing system suffers from corruption, as well as a lack of stability and transparency.\textsuperscript{246}

V. \textbf{SUBSIDIES}

Many foreign governments provide their domestic industries with various forms of subsidies, including prohibited export subsidies, giving those industries an unfair advantage in international competition and creating a significant trade barrier for U.S. companies operating globally. Indeed, many subsidies have the consequence of protecting domestic products from foreign competition or artificially stimulating exports of a particular domestic product, thereby displacing U.S. exports in global markets. In addition, heavily subsidized producers introduce market-distorting behavior and other trade and investment imbalances to the global economy. For example, subsidized producers can more easily retain and grow market share in their home markets, making it more difficult for U.S. exporters to compete in those markets. Subsidies also allow producers to sell at below-market prices, allowing these producers to gain market share in the United States and third-country markets at the expense of U.S. producers. The government

\textsuperscript{240} 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil] at section 1, art. 3.
\textsuperscript{241} \textit{Id.}, section 1, art. 5.
\textsuperscript{242} Alexei Druzhinin/TASS, \textit{The Kremlin found an investor for the last major oil field} (Jun. 6, 2016); \textit{Legislative Overview at a Glance: Russian Mining Regulations} at 3 (“Production and combined licenses are awarded by tender or auction conducted by the Federal Agency for Subsoil Use (‘Rosnedra’)’); Alan Kartashkin, \textit{Recent Developments in Russian Mining Regulation: Opportunities and Challenges} (Dec. 2, 2013) at 6.
\textsuperscript{243} 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil], section 1, art. 13.1.
\textsuperscript{244} \textit{See id.}, section 1, art. 14.
\textsuperscript{245} \textit{See id.}, section 1, art. 21; \textit{See also} Maria Pettersson, Anniina Oksanen, Tatiana Mingsaleva, Victor Petrov, and Vladimir Masloboev, \textit{License to Mine: A Comparison of the Scope of the Environmental Assessment in Sweden, Finland and Russia}, Natural Resources (Apr. 13, 2015) at 249; \textit{Legislative Overview at a Glance: Russian Mining Regulations} at 4.
subsidies identified below advantage foreign producers to the detriment of U.S. industry, including U.S. steel producers.

A. China

The Chinese government at all levels (central, provincial, and local) provides massive government subsidies to Chinese manufacturers, including steel producers. Subsidies have historically accounted for as much as four-fifths of the profits reported by the Chinese steel industry. These subsidies include billions of dollars through preferential loans and directed credit, equity infusions, debt-to-equity swaps, land-use discounts, government-mandated mergers, tax exemptions and rebates, and direct cash grants. A number of these subsidies are explicitly prohibited by the WTO. As a result of such subsidies, China’s steel industry has increased production far beyond domestic demand and now accounts for nearly half of world production. Subsidies that the Department of Commerce has recently deemed to be countervailable include the provision of inputs for less than adequate remuneration, preferential lending through state-owned commercial and policy banks, and preferential tax treatment for export-oriented and foreign-invested enterprises.

These subsidies are mandated by China’s industrial policies. For example, China’s 2005 Steel Policy mandates direct government subsidization of the steel industry in the form of discounted interest rates, tax refunds, funds for research, and other policy support for major iron

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247 Fayen Wong, Steel industry on subsidy life-support as China economy slows, Reuters (Sept. 18, 2014) (“For the first half of 2013, subsidies accounted for 22 percent of total profits posted by China’s listed steel mills, and reached 47 percent in the full year. In the first six months of 2014, the figure jumped to 80 percent”).

248 See, e.g., Alan H. Price, Timothy C. Brightbill, Christopher B. Weld, and D. Scott Nance, Money for Metal: A Detailed Examination of Chinese Government Subsidies to its Steel Industry (July 2007); Fayen Wong, Steel industry on subsidy life-support as China economy slows, Reuters (Sept. 18, 2014) (“A total of 2,235 firms, or 88 percent of Chinese listed companies, received government subsidies totaling 32.2 billion yuan ($5.24 billion) in the first half of 2014…. Most of the subsidies - largely from local governments - were channeled to the steel, cement and property sector in the form of cash, tax rebates or support for loan repayments”).

249 See China Working Party Report at ¶¶ 166-68, 171, 174; China Protocol of Accession at ¶ 10.3; SCM Agreement.

250 See, e.g., World Steel Association, World Steel in Figures 2017 (May 29, 2017) at 9, 16..


252 See 2014 WTO Trade Policy Review Report: China at 12-13 (“Credit policy continues to be of major importance in China. Efforts continue to be made to enhance the coordination between credit policy and industrial policies… Financial institutions were also guided to extend credit support for… steel, and were encouraged to use credit products flexibly to support profitable export-oriented enterprises”). See also id. at 20.
and steel projects utilizing newly developed domestic equipment. Subsequent industrial policies – including the 2009 Steel Adjustment and Revitalization Plan, the June 2010 State Council Policy, the 12th Five Year Plan for the Iron and Steel Industry, and the 2016 Adjustment and Upgrading Plan – have provided for additional subsidies and state support to the steel industry. The 2016 Adjustment and Upgrading Plan, for example, calls for “fully utilizing existing funding channels, encouraging local governments to identify various types of complementary measures, and guiding financial institutions and private capital to support the Plan’s primary responsibilities.”

In 2015, China also introduced a new strategic plan to enhance China’s manufacturing strength. The plan, called “Made in China 2025,” aims to “transform China from a manufacturing giant into a world manufacturing power.” Some analysts have described the plan as an updated version of the Medium- and Long-Term Plan on the Development of Science and Technology, which provided massive state support for “strategic and emerging industries” during the previous Hu Jintao administration. While Made in China 2025 singles out ten specific industries for state support, it is intended to upgrade the entire manufacturing sector, including the steel industry. Moreover, several of the enumerated industries (machine tools, aerospace, maritime transport, rail transport, new-energy vehicles, power equipment, and agricultural equipment) are large consumers of steel products. The 2016 Steel Industry Adjustment and Upgrading Plan, moreover, is drafted explicitly to implement the Made in China 2025 plan’s objectives. AISI is concerned that state subsidization of upgraded manufacturing facilities could bestow further unfair competitive advantages on Chinese steel producers vis-à-vis global competitors.

1. Subsidized Financing & Debt Restructuring

The most important channel for Chinese subsidization is the state-controlled financial system. It is the lynchpin of the Chinese government’s efforts to sustain, expand, and upgrade industrial enterprises and is the primary driver of industrial overcapacity in an array of sectors, including steel. The government uses state banks, the bond markets, and other channels in lieu of official budgetary measures to disguise an unprecedented level of government financial support for Chinese industry. AISI urges USTR to make subsidized financing in China a focus of its efforts in 2018 and to take any and all necessary action to address these highly-distortive subsidies.

The Brookings Institution has explained that “China’s national, regional, and local governments play a much bigger role in directing the activities of banks and other financial intermediaries than in America or Europe” and that “[t]o some extent, the banks make loans as a

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253 Made in China 2025 Plan Unveiled to Boost Manufacturing, Xinhua (May 19, 2015).
254 Scott Kennedy, Made in China 2025, Center for Strategic and Int’l Studies (June 1, 2015).
255 Id.
256 Id.
substitute for fiscal actions that would otherwise need to be taken.” The World Bank and the Development Research Center of China’s State Council have likewise concluded that:

Banks have been used as instruments of the government’s macroeconomic and sectoral policy goals and have not always been in a position to lend prudently. While this approach may have helped achieve policy goals, it has also exposed banks to a greater risk of deteriorating loan portfolios, increasing the ultimate costs of such public policies. . . . The current financial system, characterized by bank dominance and strong state intervention, served to mobilize savings and allocate capital to strategic sectors during the economic take-off, but benefits are increasingly outweighed by the costs of the accompanying distortions and the resulting buildup of imbalances and risks.

This type of state intervention and the build-up in Chinese corporate debt “extend[s] beyond just traditional bank loans,” as authorities have supported enterprises in the issuance of stocks and bonds and have intervened on a massive scale to support the value of financial assets. China’s corporate bond market has gone from “[e]ssentially nonexistent fifteen years ago” to the world’s third largest. Recent scholarship characterizes China’s bond market as one of “state-centricity,” formed by a “complex web of relationships . . . that overwhelmingly revolve around the state.”

The Chinese government, in other words, uses the country’s financial system as a proxy for state spending to support industrial policy goals. As a result, China has seen an unprecedented explosion in debt nation-wide, much of it concentrated in the corporate sector, especially in labor-intensive industries plagued by overcapacity and uncompetitive enterprises that would go bankrupt in any reasonably competitive commercial environment. Over the past decade, the country’s total debt-to-GDP ratio has increased from 150 percent to more than 260 percent, despite rapid GDP growth over the same period. The IMF conservatively estimates that there is approximately $1.3 trillion in at-risk corporate debt on the balance sheets of Chinese banks, defined as loans to companies with insufficient earnings before interest, taxes, depreciation, and amortization to cover reported interest expenses. This is approximately 15.5 percent of total commercial loans to the corporate sector.

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258 *Id.* at 116.
260 *Id.* at 3.
262 International Monetary Fund, Global Financial Stability Report (April 2016), at 49. The IMF’s analysis uses an interest coverage ratio of < 1 for “explanatory simplicity” but notes that a ratio of < 1.5 to < 2 is a more accurate measure. It thus “acknowledged that this approach is narrow and may understate debt at risk.” *Id.* at 48.
263 *Id.* at 16.
The surge in lending to support industrial policy objectives is a primary driver of the Chinese overcapacity problem. According to a recent analysis of the Chinese banking sector by the U.S. Department of Commerce, “Credit allocation [in China] has also been driven in large part by continued financing to non-viable companies in industries with over-capacity.”\(^{264}\) Comparatively inefficient state-owned enterprises receive a disproportionate share of state-directed financing in China. According to the IMF, Chinese SEs account for only 16 percent of value added but receive about half of total bank credit.\(^{265}\) It is believed that enterprises in the overcapacity sectors of steel, non-ferrous metals, coal, and cement alone owed a total of $1.56 trillion as of 2016.\(^{266}\) Approximately 40 percent of new debt economy-wide is now used to service existing obligations by firms that lack the independent financial capability to repay their existing loans.\(^{267}\) This rampant misallocation of capital results from the persistent dominance of government ownership and control, which is “the fundamental distinguishing feature of China’s financial sector.”\(^{268}\) This “fundamental distinguishing feature” creates “banks that are not solely motivated by profit and commercial considerations and big borrowers that enjoy implicit guarantees and soft budget constraints.”\(^{269}\)

With the debt burdens of strategically important enterprises becoming unmanageable, the Chinese government in 2016 initiated multiple bailout programs using state-directed “creditors’ committees,” as well as debt-to-equity swaps and mergers akin to the restructurings of the late 1990s. In April 2016, China’s central financial regulators issued the Opinion Regarding Supporting the Steel and Coal Industries in Resolving Overcapacity and Realizing Development Out of Difficulties, which explained that “banking industry financial institutions should fully recognize the pillar and strategic status of the steel and coal industries” and instructed them to “continue providing credit support” to enterprises in these sectors.\(^{270}\) The measure also called on banks to support favored steel and coal enterprises in issuing bond products and other direct financing tools, while using other “marketized methods” to increase enterprises’ creditworthiness and direct financing capabilities.\(^{271}\) Finally, the measure explained that, with regard to existing liabilities, banks should “implement debt restructuring measures such as adjusted loan repayment


\(^{266}\) David Stanway, Mounting Debts Could Derail China Plans to Cut Steel, Coal Glut, Reuters (Mar. 22, 2016).

\(^{267}\) DOC China Financial System Memo at 9.

\(^{268}\) Id. at 5.

\(^{269}\) Id. at 8.

\(^{270}\) Opinion Regarding Supporting the Steel and Coal Industries in Resolving Overcapacity and Realizing Development Out of Difficulties (关于支持钢铁煤炭行业化解产能过剩困难的意见), Yin Fa [2016] No. 118 (Apr. 18, 2016).

\(^{271}\) Id.
periods and repayment methods to assist enterprises in weathering the crisis.”

In September 2016, the China Banking Regulatory Commission (“CBRC”) issued instructions to Chinese banks to form creditors’ committees to restructure corporate debt with the explicit objective of keeping heavily indebted industrial enterprises in business. CBRC’s notice instructs the creditors’ committees to “support the development of the real economy” and “guarantee the normal operations of enterprises.”

Also in September 2016, the State Council issued the *Opinions of the State Council Regarding Actively Stabilizing and Reducing the Enterprise Leverage Rate*, which was accompanied by the *Guiding Opinion Regarding Marketized Bank Debt-to-Equity Swaps*. Among other debt-relief measures, the State Council *Opinions* called on banks to implement debt-to-equity swaps with enterprises “in accordance with national policy direction.”

These measures have triggered a wave of debt-to-equity bailouts, sometimes in combination with state-directed mergers, to rescue heavily indebted industrial enterprises that would otherwise be forced to sell off assets or go bankrupt entirely. By the end of 2016, there were nearly 13,000 creditors’ committees nationwide examining more than $2 trillion worth of borrowings. In Henan province alone, authorities had set up creditors’ committees for more than 1,300 companies accounting for more than half of total provincial debt. In Shandong province, a creditors’ committee directed by provincial authorities extended a mining company’s loans by eight years at an interest rate below the central bank’s benchmark interest rate. Despite rampant overcapacity and weak market conditions in the steel and coal sectors, over half of the $150 billion in debt-to-equity swap deals concluded as of August 2017 were with steel and coal enterprises.

As the policy documents noted above suggest, these are not market transactions among purely commercial enterprises. One banker involved in the bailout process recently explained that “there would be no deal if this were left to market forces to decide.” A typical transaction in the steel industry was the late-2016 merger of two state-owned enterprises, Wuhan Iron & Steel Company (“WISCO”) and Baoshan Iron & Steel Company (“Baoshan”), to form the world’s

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272 *Id.*
273 Han Yi et al., *Debt Defaults Prompt Call for Creditor Committees*, Caixin (Sept. 12, 2016).
274 *CBRC Promulgates the Notice Regarding Carrying Out Banking Industry Financial Institution Creditors’ Committees Work* (中国银监会发布《关于做好银行业金融机构债权人委员会有关工作的通知》), CBRC Website (Sept. 9, 2016).
275 *Opinions of the State Council Regarding Actively Stabilizing and Reducing the Enterprise Leverage Rate* (国务院关于积极稳妥降低企业杠杆率的意见), Guo Fa [2016] No. 54 (Sept. 22, 2016).
277 *Id.*
278 *Id.*
second largest steelmaker by capacity.280 After Baoshan Iron & Steel announced its intention to acquire WISCO’s shares, state-owned China Construction Bank formed a subsidiary fund to absorb RMB 24 billion of WISCO’s debts in a debt-to-equity swap.281 The deal was then completed in December 2016 after the debt-to-equity swaps cleaned up WISCO’s balance sheet.282

AISI is concerned about the Chinese government’s continued direction of Chinese financial institutions to support industrial enterprises in overcapacity sectors, especially steel. These interventions frequently take the form of opaque “marketized methods,” characterized by broad policy guidance and behind-the-scenes interference in the operations of allegedly commercial firms, to create the appearance of compliance with subsidy rules. Even though these transactions do not show up directly on the government’s balance sheet, they support uncompetitive production capacity and bestow unfair competitive advantages on an enormous scale at the behest of the state. USTR should urge China to reveal the nature and extent of state intervention in Chinese financial markets and should impress upon Chinese authorities that such conduct is a clear violation of WTO subsidy rules.

2. Export Finance Support

China has furthered its export promotion strategy in part through “the most aggressive export credit financing campaign in history.”283 As part of this campaign, the Chinese government has provided an enormous amount of export financing support to its companies, in part through the official Export-Import Bank of China (“CEXIM”) and the China Export and Credit Insurance Corporation (“SINOSURE”).284 In addition to China’s official government system of export financing, commercial banks that are owned or otherwise controlled by the government also lend extensively to Chinese exporters.285 In particular, the China Development Bank extends loans that are consistent with the goals of China’s economic plans, including

producing “national champions” to compete on a global scale. While it is difficult to estimate the extent of CEXIM and SINOSURE support because of transparency issues, the U.S. Export-Import Bank estimated in its most recent report to Congress that CEXIM had issued $118 billion in concessional loans as of 2014, at interest rates as low as 1-2 percent, and that SINOSURE made new commitments of more than $360 billion in 2015.

SINOSURE, in particular, is a major source of unfair competitive advantage for Chinese exporters. Sinosure offers a variety of short-term, medium-term, and long-term credit insurance programs for Chinese exporters, including a “buyer’s credit insurance program,” which “underwrite[s] the default of payment by the borrower or guarantor for the loan bank. Under buyer’s credit insurance program, the loan bank is insured and the insurance policy holders can be an exporter, or a lending bank.” This type of insurance “is designed to encourage Chinese exporters to participate actively in international competition, especially those involving exports of mechanical and electronic products featuring high-tech and high added value . . . .” As “a state-funded” and “policy-oriented insurance company,” SINOSURE “is mandated, in accordance with the Chinese government’s diplomatic, international trade, industrial, fiscal and financial policies, to promote Chinese exports of goods, technologies and service . . . by means of export credit insurance against non-payment risks.” Given its specific policy orientation, SINOSURE provides policies at artificially low rates that allow Chinese firms to make sales, and Chinese banks to finance sales, that otherwise would not occur. In the case of default or non-payment, SINOSURE’s policies guarantee payment by a Chinese government entity.

In March 2015, the NDRC released a plan for the implementation of President Xi Jinping’s “One Belt, One Road” initiative, which aims to use Chinese infrastructure investment and construction throughout Asia to draw the region into China’s economic sphere of influence. The plan is remarkably vague, does not involve the implementation of a trade agreement with binding and transparent rules, and has been linked to state efforts to use foreign markets to relieve pressures from industrial overcapacity. The plan will be financed primarily through China’s state policy banks and new China-led international financial institutions like the Asian Infrastructure Investment Bank and the New Silk Road Fund. According to the U.S. Export Assistance and the China Challenge at 4. See also Amos Irwin and Kevin P. Gallagher, Exporting National Champions: China’s OFDI Finance in Comparative Perspective, Global Economic Governance Initiative Working Paper 6 (Jun. 2014).


Scott Kennedy, Building China’s One Belt, One Road, Center for Strategic and Int’l Studies (Apr. 3, 2015); Charles Clover and Lucy Hornby, China’s Great Game: Road to a New Empire, Financial Times (Oct. 12, 2015).

Building China’s One Belt, One Road.
Export-Import Bank, CEXIM is likely to account for up to 75 percent of infrastructure investment in Africa and other regions under OBOR and other initiatives. Under this plan, China’s steel industry could receive significant benefits through preferential state export financing and exclusive access to supply major infrastructure projects at the expense of foreign producers.

3. Currency Manipulation

The Chinese government continues to manipulate the value of its currency, the RMB, for political and strategic reasons, including enhancing export competitiveness and promoting use of the RMB as an international reserve currency. For years, the Government of China maintained an exchange rate policy that pegged the value of the RMB to a basket of foreign currencies heavily weighed by the U.S. dollar, after which China adopted a “managed float” system that allows the RMB’s exchange rate to fluctuate within a narrow band during each trading day. This practice has ensured that the RMB exchange rate vis-à-vis the U.S. dollar remains at a level that the government deems advantageous, either for the country’s exporters or for other policy objectives.

Despite statements in July 2015 that the Chinese government would widen the RMB’s daily trading band to three percent in either direction, it has yet to do so, and subsequent events demonstrate that the government remains unwilling to allow market forces to play a greater role in determining the RMB’s value against foreign currencies. Other reforms in 2015, including setting the daily central parity rate purportedly with reference to the previous day’s closing exchange rate and publishing the RMB’s movements against baskets of currencies other than the dollar have little effect on the RMB’s flexibility in practice. According to the U.S. Treasury Department, “market participants remain highly sensitive to signals from the Chinese authorities on the exchange rate,” instead of market-based indicators.

Lack of transparency and politically motivated interventions thus remain a serious concern. According to the Treasury Department, the credibility of the RMB exchange rate depends on “greater transparency of China’s exchange rate and reserve management and goals,” as well as “China adhering to its G-20 commitments to refrain from competitive devaluation and not to target exchange rates for competitive purposes . . . .” China’s currency manipulation has directly contributed to the increasing U.S. trade deficit, and is a leading cause of the

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294 Ex-Im Bank, 2016 Annual Report at 22.
movement of U.S. jobs overseas. Over the last decade, the United States has lost millions of manufacturing jobs—more than half of which have been attributed to the trade deficit with China and China’s currency manipulation.\textsuperscript{300} Research by the Economic Policy Institute indicates that an end to Chinese currency manipulation would reduce the U.S. trade deficit and increase annual U.S. GDP, resulting in the creation of 2.3 million to 5.8 million jobs, 40 percent of which would be in manufacturing.\textsuperscript{301}

As long as Chinese authorities persist with extensive, daily interventions in exchange markets, the threat of competitive devaluation remains, and it will be difficult to determine whether movements are market-determined or politically motivated. AISI urges USTR to closely monitor the situation to ensure that China abides by its commitments to allow the market to play a greater role in determining the RMB’s exchange rate. USTR should also consider addressing currency manipulation under Section 301 of the Trade Act of 1974.

B. Japan

Like China, Japan undervalues its currency, the yen,\textsuperscript{302} in a manner that encourages exports and discourages imports.\textsuperscript{303} As demonstrated by the American Automotive Policy Council and others, Japanese companies have used this manipulation to gain a competitive advantage.\textsuperscript{304} In recent years, the Japanese yen has weakened dramatically, falling from 78 yen/dollar at the beginning of October 2012 to about 111 yen/dollar today.\textsuperscript{305} This policy aids Japanese automakers and encourages increased exports of Japanese steel.\textsuperscript{306}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{301} Id at 3-4.
\item \textsuperscript{302} See, e.g., Elaine Kurtenbach, \textit{Trump comments on Japan, China currencies rattle markets}, U.S. News (Feb. 1, 2017) (“The yen’s value fell steadily after Japan’s central bank implemented massive monetary easing four years ago, hoping to counter deflation and get people and businesses to spend more money. Injecting massive amounts of cash into the economy through the same sorts of asset purchases used by the Federal Reserve for ‘quantitative easing’ caused the yen’s value to fall from about 80 yen to the dollar to a low of about 125 yen to the dollar in mid-2015.”); Chikako Mogi and Hiroko Komiya, \textit{Japan’s Three Biggest Banks Declare Yen’s Depreciation Is Over}, Bloomberg (Mar. 1, 2016) (“the yen is the second-most undervalued major currency by a purchasing-power measure”); Bryan Rich, \textit{Why Japan Should Crush The Yen}, Forbes (June 30, 2016).
\item \textsuperscript{303} See Silvia Amaro, \textit{Trump does have a point on the Japanese yen Being undervalued: Strategist} (Feb. 8, 2017).
\item \textsuperscript{304} American Automotive Policy Council, \textit{U.S. Trade Agreements & Currency Manipulation}, at 7 (last visited Oct. 19, 2014) (“Japan has used direct intervention in currency markets — and the threat of intervention — to gain a competitive export advantage”).
\item \textsuperscript{305} See Treasury Reporting Rates of Exchange as of Sept. 30, 2012; Treasury Reporting Rates of Exchange as of June 30, 2017.
\item \textsuperscript{306} See Silvia Amaro, \textit{Trump does have a point on the Japanese yen Being undervalued: Strategist} (Feb. 8, 2017); Bradford Wernle, \textit{Ford’s Hinrichs: Toyota, Japanese unfairly aided by currency manipulation}, www.autonews.com (Feb. 6, 2014); Yuka Obayashi, \textit{In glum steel market, Abenomics-inspired Nippon Steel is upbeat}, Reuters (Sept. 30, 2013).
\end{itemize}
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C. India

The Indian government also heavily subsidizes its domestic industries, including its steel industry. The Indian steel industry has developed in a highly protected and controlled environment characterized by high tariffs on steel imports, substantial subsidies, government control over prices, and state allocation of resources. Through its Ministry of Steel, the Indian government has developed a series of National Steel Policies to coordinate government assistance to its steel industry and dramatically increase steel production in the country.

Reflecting the ambitious goals of its National Steel Policies, India’s support for its steel industry is direct and massive. Financial support is provided through a number of channels, including state-owned suppliers and various subsidy programs. The government owns the largest steel producer in India, the Steel Authority of India (“SAIL”) as well as India’s largest iron ore mining company, NMDC, and a host of other suppliers of key inputs in the steelmaking process, including coal. These state-owned suppliers not only derive significant subsidies from their relationship with the government but also – in conformance with India’s steel policies – provide key inputs (such as hot-rolled steel and iron ore) to Indian steelmakers for less than adequate remuneration.

The Indian government also provides benefits to Indian steel producers through a number of subsidy programs, including export incentives, debt forgiveness, preferential loans, captive mining rights and controls over raw material prices. Among the more significant of these export subsidies are:

- **The Advance Authorization Program (“AAP”).** The AAP provides exemptions from import duties for various input products used in the production of goods for export from India. The AAP provides benefits well beyond a normal duty drawback system as it lacks a reliable system to determine the type of inputs (and amount) that are consumed in

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310 See OCTG from India I&D Memo at 18-19; Issues and Decisions Memorandum accompanying Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel 82 Fed. Reg. 44,558 (Dep’t Commerce Sep. 25, 2017) (preliminary affirmative countervailing duty deter.); See also Report of the Comptroller and Auditor General of India for the year ended March 2015, Union Government (Department of Revenue – Customs) (2016) at 79 (“The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfill prescribed export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable”).
the production of the exported product. While the Indian government recently imposed an 18 percent integrated goods and services tax (“GST”) on the domestic consumption of raw materials, the GST Council is considering eliminating the tax “to soften the blow to exporters.”

- **Duty Drawback Rebate Program (“DDB”).** The DDB provides duty rebates for any imported materials and input services consumed in the production of exported goods. Similar to the AAP, the Indian government has not implemented a dependable system to accurately confirm the imported inputs that are consumed in the production of the exported goods.

- **Duty Free Import Authorization Scheme (“DFIA Scheme”).** In effect since May 1, 2006, the DFIA Scheme likewise exempts companies from paying import duties for inputs used in steel production. Like the AAP, the DFIA Scheme lacks a reliable system to determine the type of inputs (and amount) that are consumed in the production of the exported product.

- **Export Oriented Unit Scheme (“EOU Scheme”).** The Indian government provides a number of separate subsidies that are contingent upon export under the umbrella of the EOU Scheme. These include (i) the duty-free importation of capital goods and raw materials; (ii) reimbursement of Central Sales Tax paid on goods manufactured in India; (iii) duty drawback on imported fuel procured through Indian oil companies; and (iv) exceptions from the payment of Central Excise Duty on goods manufactured in India.

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311. See, e.g., OCTG from India I&D Memo at 18-19; Issues and Decision Memorandum accompanying Welded Stainless Pressure Pipe from India, 81 Fed. Reg. 66,925 (Dep’t Commerce Sept. 29, 2016) (final affirmative deter. countervailing duty investigation) at 14-17.


314. Id.


• **Export Promotion of Capital Goods Scheme (“EPCGS”).** The EPCGS provides reductions or exemptions of customs duties and excise taxes for imports of capital goods to companies that agree to meet certain export targets. In April 2015, the export obligation under the EPCGS was reduced for capital goods procured from indigenous manufacturers. Steel firms in India have benefited from the EPCGS and have recently sought an extension in the export obligations under the program.

• **Preferential Export Financing.** India’s Department of Banking Operations & Development, Directives Division of the Reserve Bank of India (“RBI”) provides short-term pre-shipment export financing, or “packing credits,” to exporters through commercial banks. Credit line limits for these credits are established by commercial banks, which must, by law, charge interest at rates capped by the RBI.

• **Merchandise Exports from India Scheme (“MEIS”).** The MEIS was introduced in India’s most recent Foreign Trade Policy (“FTP”) as a “reward[] to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field.” Under the MEIS, duty credits are granted for use to pay duties on imports of inputs or goods, excise duties on domestic procurement of inputs or goods, or service taxes on the procurement of services. Export items with a higher level of domestic content can receive a higher reward, and entities that have “excelled in international trade and have successfully contributed to country’s foreign trade” can...

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318 Issues and Decision Memorandum accompanying Steel Threaded Rod from India, 79 Fed. Reg. 40,712 (Dep’t Commerce July 14, 2014) (final affirmative countervailing duty deter. and partial final affirmative deter. of critical circumstances) at 14; OCTG from India I&D Memo at 23-25; Duty-free capital goods’ imports banned for power projects to push Make in India, The Economic Times (Feb. 3, 2016).


320 Suresh P. Iyengar, Steel companies set to miss export obligations under EPCG scheme, seek relaxation in norms, The Hindu Business Line (July 24, 2016).


323 Government of India, Ministry of Commerce and Industry, Department of Commerce, Foreign Trade Policy [1st April, 2014-31st March, 2020] at §§ 3.00 & 3.03. Previously, there were five schemes that provided exporters with duty scrips; these programs have been merged into the MEIS as a single scheme. Government of India, Ministry of Commerce and Industry, Department of Commerce, Highlights of the Foreign Trade Policy 2015-2020 at 1.


receive special treatment and privileges to facilitate their trade. The subsidies provided through the MEIS this year are expected to cost the Indian government Rs 22,000 – 23,500 crore (or $3.4 – $3.6 billion).

In April 2015, India’s Commerce Ministry announced the country’s new FTP (2015-2020), which continues to include subsidies for Indian manufacturers, including those specifically targeted at boosting exports. The FTP seeks to increase India’s exports to $900 billion by 2019-2020, and to increase India’s share of world exports from 2 percent to 3.5 percent. The government is currently conducting its mid-term review of the FTP, with Indian officials indicating that “more [subsidy] schemes have to be devised to accelerate exports.”

Indian steel producers also receive significant subsidies at the subnational level. Individual Indian states, including Maharashtra, Gujarat, Haryana, Karnataka, Jharkhand, Orissa, Andhra Pradesh, and Chhattisgarh, have ambitious plans to leverage government support into an enormously expanded steel industry. These include state-level “industrial policies” that provide packages of incentives, including tax reductions and rebates, grants, preferential loans and goods and services for less than adequate remuneration. Many of these policies explicitly call for Indian state governments to provide customized subsidies to certain sectors or large companies (including in the steel industry) at the discretion of state officials. With the implementation of the new GST, local governments are quickly revising their incentive plans to ensure that “beneficiaries from various sectors, including automobile, steel, [and] cement” continue to receive “interest and power tariff subsidies apart from the exemption in stamp duty, octroi duty and electricity duty.”

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327 See Banikinkar Pattanayak, *Foreign trade policy: Exporters may be allowed use scrip to pay GST*, Financial Express (Oct. 2, 2017).
328 See, *e.g.*, OCTG from India I&D Memo at 21 (“Programs by State Government of Maharashtra”).
D. **Turkey**

In recent years, the steel industry in Turkey has grown exponentially with the aid of government subsidies, jumping from the 17th largest crude steel-producing country in the world in 2000 to the 8th largest steel producer in 2016.\(^{335}\) Turkey exported 15.3 million MT of steel products in 2016,\(^{336}\) approximately half of its production.\(^{337}\) This massive increase in Turkish steel production and exports is largely a result of significant government subsidies.

Government-sponsored growth in Turkish steel production has led to an explosion in U.S. steel imports from Turkey, injuring the U.S. steel industry. Indeed, since 2014, Commerce has issued affirmative final determinations in six countervailing duty investigations on steel products from Turkey.\(^{338}\) Some of the major Turkish government subsidies that contributed to its steel industry’s growth are described below.

- **Turkish Development Bank Loans:** The Turkish Development Bank (“TDB”), a direct extension of the Government of Turkey,\(^{339}\) provides strategic and preferential loans based on state policies and national interests, which are used by Turkish steel producers to expand production and capacity. For example, the CEO of Kardemir, a Turkish long and flat-rolled steel products producer, has stated in the past that the TDB “supported Kardemir in its effort to overcome desperate straits” and “still today continues to provide the financing for the Company’s planned investments and hence contribute to its healthy growth.”\(^{340}\) In 2016, TBD increased its funding support by 38.7 percent from 2015, for a total loan volume of TL 5,425.7 million in 2016 as compared to TL 3,912.9 million in 2015.\(^{341}\)

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\(^{335}\) *World Steel in Figures 2017* at 9-10.

\(^{336}\) Id. at 27.

\(^{337}\) Id. at 10.


\(^{340}\) TDB 2010 Annual Report at 40.

Turk Eximbank Subsidies: The Export Credit Bank of Turkey ("Turk Eximbank") is a "fully state-owned bank acting as the Turkish government’s major export incentive instrument in Turkey’s sustainable export strategy."\textsuperscript{342} The bank is a significant player in encouraging Turkish exports, providing $22 billion in loans in 2016, up from $20.2 billion in loans in 2015.\textsuperscript{343}

Turk Eximbank provides short-term pre-shipment export loans through intermediary commercial banks. The U.S. Department of Commerce has found this program to constitute a countervailable subsidy, as receipt of these loans is contingent upon export, and the interest paid is less than what the recipient would pay on comparable commercial loans.\textsuperscript{344} Of the short-term credits granted by Turk Eximbank in 2015, 15 percent were directed to the iron and steel sector and 12 percent to the mining and metal products sector; in contrast, the iron and steel and mining and metal products sectors each accounted for only 9 percent of short-term credits in 2008.\textsuperscript{345} In 2016, 24 percent were directed to the machinery/electrical devices/metal goods sector, and 3 percent to the mining sector.\textsuperscript{346}

Turk Eximbank also offers short-, medium-, and long-term export insurance for Turkish companies,\textsuperscript{347} which is aimed at further subsidizing costs for domestic producers by reducing the financial uncertainty involved with doing business in foreign countries. Turk Eximbank provided $11 billion in 2016 in insurance and guarantees, up from $9.4 billion in 2015.\textsuperscript{348}

Turk Eximbank’s Foreign Trade Company loan program was implemented to assist large trading companies with their export financing needs.\textsuperscript{349} The program benefits Foreign Trade Corporate Companies ("FTCC")\textsuperscript{350} and Sectoral Foreign Trade


\textsuperscript{344} \textit{See, e.g.}, Issues and Decision Memorandum accompanying \textit{Steel Concrete Reinforcing Bar from Turkey}, 79 Fed. Reg. 54,963 at 17-18; \textit{Certain Welded Carbon Steel Pipes and Tubes from Turkey}, 65 Fed. Reg. 18,070, 18,072 (Dep’t Commerce Apr. 6, 2000).


\textsuperscript{346} Turk Eximbank, Annual Report 2016 at 45.


\textsuperscript{349} \textit{Welded Carbon Steel Pipe and Tube from Turkey}, 76 Fed. Reg. 64,900 (Dep’t Commerce Oct. 19, 2011).

\textsuperscript{350} An FTCC is a company whose export performance was at least $75 million in the previous year.
Companies. The U.S. Department of Commerce has also found this program to constitute a countervailable subsidy. Similar credits are available for smaller companies.

- **Regional Development Subsidies:** Turkey’s government has established special zoning programs, including Organized Industrial Zones (“OIZ”), Free Zones, and Technology Development Zones. These programs have been used to subsidize and improve the performance of export companies in Turkey. The Technology Development Zones program alone provided TL 27.7 million in loans and nearly TL 800 million in tax exemptions to recipient companies in 2014.

- **Tax Incentives for R&D Activities:** The Turkish government provides a wide range of R&D subsidies to support new technological developments. Pursuant to Law No. 5746, Turkish steel producers are eligible to receive corporate tax breaks for R&D expenses; income tax exemptions for R&D researchers; 50 percent of R&D employee insurance premiums; and tax-free revenue accounts for R&D expenses.

- **The Purchase of Electricity for More Than Adequate Remuneration:** Turkish steel producers with power generation facilities receive subsidies from the Turkish government in the form of purchases of electricity for more than adequate remuneration. Turkey’s steel industry relies largely on electric arc furnaces, which consume vast amounts of power. Some major Turkish steel producers operate their own cross-owned cogeneration power plants. While these producers consume much of the power they generate, they also sell excess power to the government, which dominates the Turkish power

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352 Carbon Steel Pipe from Turkey I&D Memo at 6-7; Wire Rod from Turkey I&D Memo at 7-8.

353 Laws No. 4737 and 3218 establish benefits for companies operating within specific areas. Investors in OIZs benefit from: an exemption from VAT for land acquisitions; an exemption from real estate duty; low water, natural gas and telecommunication costs; an exemption from the tax for unification and/or separation of plots; and an exemption from municipality taxes for construction and usage of a plant and on solid waste. Various Turkish steel producers are eligible to receive benefits under these programs. Republic of Turkey Prime Ministry, Investment Support and Promotion Agency, *Special Investment Zones*, [http://www.invest.gov.tr/en-US/investmentguide/investorsguide/Pages/SpecialInvestmentZones.aspx](http://www.invest.gov.tr/en-US/investmentguide/investorsguide/Pages/SpecialInvestmentZones.aspx) (last visited Oct. 5, 2017). *See also* WTO, *Trade Policy Review Report: Turkey 2016* at 42.


356 *World Steel in Figures 2017* at 10.

sector, for above-market prices. Thus, the power producers, and by extension their cross-owned steel producers, receive a significant government subsidy through these purchases of electricity at above-market prices.

- **The Provision of Natural Gas for Less than Adequate Remuneration:** Turkish steel producers also generate power with natural gas, which is subsidized by the Turkish government in the form of discounted natural gas prices. As the WTO Secretariat has explained, natural gas prices in Turkey are not determined by the market, but rather by Turkey’s Energy Market Regulatory Authority. In addition, the Turkish government has full ownership of petroleum pipeline corporation BOTAS and petroleum corporation TPAO. Significantly, BOTAS controls more than 75 percent of Turkey’s entire gas import market. In a recent subsidy investigation of Turkish rebar, the U.S. Department of Commerce found that the Turkish government has “overwhelming involvement in the Turkish natural gas market,” and that Turkey’s provision of natural gas for less than adequate remuneration constitutes a countervailable subsidy.

- **Inward Processing/Duty Drawback:** The Turkish government provides import duty rebates or duty drawback assistance to Turkish manufacturers under the country’s Inward Processing Regime. According to the Turkish government, the purpose of this subsidy is “boosting exports by providing raw materials on world markets, bringing exporting products in a competitive edge in the international markets, improving and diversify export markets.” The Inward Processing Regime encourages Turkish steel producers to export their products rather than selling them domestically. In recent years, unfairly traded U.S. steel imports from Turkey have been one of the major causes of harm to the U.S. steel industry.

### E. Brazil

The Brazilian government also grants significant subsidies to its domestic industries, including its steel industry, which boost Brazilian exports, give Brazilian producers an unfair advantage in global trade competition and make it more difficult for U.S. producers to compete in Brazil and in third country markets.

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363 See Issues and Decision Memorandum accompanying *Steel Concrete Reinforcing Bar From the Republic of Turkey*, 82 Fed. Reg. 23,188 (Dep’t Commerce May 22, 2017) (final affir. countervailing duty deter.) at 9, 12.
For example, BNDES, “one of the largest development banks in the world,”\(^{365}\) provides long-term financing to Brazilian industries.\(^{366}\) BNDES disbursed R$ 135.9 billion in 2015, R$ 88.3 billion in 2016, and R$ 33.5 billion between January and June of 2017; in 2016, 34.2 percent, or approximately R$ 15.4 billion, was disbursed to the “industry” sector.\(^{367}\) Historically, much of this support has been directed at the Brazilian steel sector. USTR has noted that FINAME loans are used “to finance capacity expansions and equipment purchases” in Brazil’s steel industry\(^{368}\). Indeed, “[b]etween 2007 and 2014, [BNDES] provided support to projects which corresponded to an increase in the production capacity of raw steel of 6.7 million tons/year.”\(^{369}\)

As USTR has recognized, a significant portion of BNDES funding is provided at rates that are “substantially lower than the prevailing market interest rates for commercial financing.”\(^{370}\) Much of these funds are specifically devoted to increasing Brazilian exports.\(^{371}\) BNDES FINAME loans also provide capital financing to companies in Brazil for the acquisition of Brazilian machinery or equipment.\(^{372}\) Funds are available for non-Brazilian equipment only when domestic machinery is unavailable. Brazilian automotive manufacturers must use at least 65 percent local content in order to be eligible for FINAME loans.\(^{373}\) This level is expected to increase in the future, as the government aims “to reach close to 100 [percent] of local content in the automotive industry.”\(^{374}\) Further, as noted above, Brazilian wind turbine suppliers who received such “low-cost” loans were required by the bank to build their towers using at least 70


\(^{366}\) McKinsey Global Institute, Connecting Brazil to the world: A path to inclusive growth (May 2014) at 18-19.


\(^{368}\) See USTR 2016 NTE Report at 55.


\(^{370}\) USTR 2015 NTE Report at 43.


\(^{372}\) The Department of Commerce has found BNDES-FINAME loans to constitute a countervailable subsidy in recent cases. See, e.g., Issues and Decision Memorandum accompanying Certain Hot-Rolled Steel Flat Products from Brazil, 81 Fed. Reg. 53,416 (Dep’t Commerce Aug. 12, 2016) (final affirmative deter., and final deter. of critical circumstances, in part) at 6; Issues and Decision Memorandum accompanying Certain Cold-Rolled Steel Flat Products from Brazil, 81 Fed. Reg. 49,940 (Dep’t Commerce July 29, 2016) (final affirmative deter. of the countervailing duty investigation) at 5.

\(^{373}\) Rothmann, Sperling, Padovan, Local Content Requirements in Brazil: Overview of Current Policy and Regulations (Feb. 26, 2013); Gabriela Castro, Local content requirements in Argentina and Brazil - and what they mean to your business, Strong & Herd LLP (Nov. 14, 2013).

percent Brazilian produced steel by 2016.\(^{375}\) A number of wind turbine producers have recently had their financing revoked by BNDES for not complying with local content rules.\(^{376}\)

The Brazilian government also subsidizes its exporting industries through the Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (“RECAP”), which suspends taxes on new machines, instruments and equipment imported by companies that commit for at least two years to export goods and services accounting for 50 percent of their overall gross income for the previous year.\(^{377}\) In December 2013, the EU requested dispute settlement consultations with Brazil, in part over its use of the RECAP program, which the EU alleges to be “inconsistent with Article 3.1(a) of the SCM Agreement because it is a subsidy programme contingent in law upon export performance.”\(^{378}\) The United States and Japan have since requested to join the consultations. A panel was composed in September 2015 and on August 30, 2017 a panel report was circulated to WTO members rejecting Brazil’s argument that the tax benefits were simply preventing accumulation of tax credits by exporting countries. Instead, the Panel concluded that the programs do constitute subsidies contingent upon export performance, which are inconsistent with Article 3.1(a) of the SCM Agreement.\(^{379}\)

On June 18, 2014, the Brazilian government announced the enactment of its Microeconomic Competition Reforms Package, which “aims to strengthen manufacturing industrial sectors in the new cycle of development of manufactured goods.”\(^{380}\) The subsidies provided under this industrial policy include the exemption of payroll taxes in 56 sectors, one of which is the steel sector, and the reenactment of the Special Regime for the Reinstatement of Taxes for Exporters (“Reintegra”) through Decree No. 8304.\(^{381}\) Under Reintegra, exporters of products representing R$ 80 billion of exports receive a subsidy of three percent of the value of

\(^{375}\) Office of the United States Trade Representative, 2017 National Trade Estimate Report on Foreign Trade Barriers, https://ustr.gov/sites/default/files/files/reports/2017/NTE/2017%20NTE.pdf, at 51; Sónia Araújo and Dorothee Flaig, Quantifying the Effects of Trade Liberalisation in Brazil: A CGE Model Simulation, OECD Economic Department Working Papers No. 1295 (Apr. 12, 2016) at 12 (“Manufacturers of wind turbines with step-up gear box are expected to meet at least three of four criteria demanded to comply with the LCR, one of which implies that at least 70% of steel plates used to manufacture towers are manufactured in Brazil or apply domestically-reinforced concrete”). Moreover, pursuant to these local content rules, the blades must be manufactured in Brazil, and both the nacelle and hub must be assembled in Brazil. Brian Greene and Guillermo Sandoval Coustasse, Brazil Enacts New Local Content Rules for Wind Projects Financed BNDES (April 10, 2013).

\(^{376}\) Alexandre Spatuzza, GE’s Alstom unit to regain Brazil local-content status, says BNDES, Recharge (Jan. 18, 2016).

\(^{377}\) See Brazil – Certain Measures Concerning Taxation and Charges: Request for Consultations by the European Union, WT/DS472/1, G/L/1061, G/SCM/D100/1, G/TRIMS/D/39 (Jan. 8, 2014) at 6. See also Ricardo Barretto Ferreira, Establishing a business in Brazil, Practical Law (Feb. 2, 2016).

\(^{378}\) Id.

\(^{379}\) Id.; Brazil appealed the Panel’s report on September 28, 2017. www.wto.org/english/tratop_e/dispu_e/cases_e/ds497_e.htm (last visited on October 23, 2017).


their exports, to be used either as a credit against their income tax or as a cash payment.³⁸² To qualify, the imported content of the exported goods must not exceed 40 percent of the export price.³⁸³ A small number of qualifying products have a 65 percent maximum cost of imported content.³⁸⁴ Reintegra also exempts exporters from a number of indirect taxes on capital expenditures, including social contribution taxes and the IOF tax.³⁸⁵ Decree No. 8415, issued in February 2015, set forth new regulations for the Reintegra program, but the three percent subsidy is still in effect.³⁸⁶ Indeed, the U.S. Department of Commerce recently found this and a number of other Brazilian subsidy programs to be countervailable in its investigations of cold-rolled steel, hot-rolled steel, and silicon metal from Brazil.³⁸⁷ In September 2016, the Brazilian government announced that it plans to increase the Reintegra rebate rates in 2017 and again in 2018.³⁸⁸

F. Korea

The Korean government continues to provide subsidies to its steel industry. For example, the state-owned Korea Electric Power Corporation (“KEPCO”) controls all aspects of electricity generation, transmission, distribution and retail in Korea³⁸⁹ and provides energy at below-cost rates to domestic industries, including the steel industry.³⁹⁰ KEPCO’s current CEO has acknowledged that the Korean government has “been supporting [certain] industries with cheap power in order to make them a growth engine for the economy”³⁹¹ and “help them become more

³⁸² Id.
³⁸³ Id. In the case of high-tech goods, such as pharmaceuticals, electronics, and aircraft and parts, up to 65 percent of inputs can be imported.
³⁸⁴ USTR 2017 NTE Report, at 51.
³⁸⁵ U.S. Department of State, Bureau of Economic and Business Affairs, Investment Climate Statements for 2016: Brazil (2016).
³⁸⁶ Id.
³⁸⁷ See Issues and Decision Memorandum accompanying Silicon Metal from Brazil, 82 Fed. Reg. 37,841 (Dep’t Commerce Aug. 14, 2017) (preliminary affirmative countervailing duty deter., and alignment of final deter. with final antidumping duty deter.); Issues and Decision Memorandum accompanying Certain Hot-Rolled Steel Flat Products from Brazil, 81 Fed. Reg. 53,416 (Dep’t Commerce Aug. 12, 2016) (final affirmative deter., and final deter. of critical circumstances, in part); Issues and Decision Memorandum accompanying Certain Cold-Rolled Steel Flat Products from Brazil, 81 Fed. Reg. 49,940 (Dep’t Commerce July 29, 2016) (final affirmative deter. of the countervailing duty investigation).
³⁸⁸ Brazilian government will raise tax rebate for exporters, BrazilGovNews (Sept. 28, 2016).
³⁹⁰ See Jin Heo, Kepco found cutting chaebol huge power deals, Korea JoongAng Daily (June 13, 2013), http://bit.ly/1MriCnG. (“KEPCO sold the electricity used in industrial sites of the country’s largest conglomerates at about 85.8 percent lower than the production cost . . . in order to strengthen the competitiveness of those large conglomerates”); Petition for the Imposition of Countervailing Duties, Certain Corrosion-Resistant Steel Products from the Republic of Korea, vol. I at 295 (June 3, 2015).
competitive."\(^392\) According to the WTO’s 2016 Trade Policy Review of Korea, “there is a direct subsidy in place in the form of the sale of electricity at prices below costs,” and, because “the electricity price varies widely between sectors,” there are significant cross-subsidies between consumers.”\(^393\) The Korean government, through KEPCO, also purchases electricity from steel producers for more than adequate remuneration, only to sell it back to them at the subsidized prices noted above.

The WTO’s trade policy review of Korea notes that, in addition to provision of below-cost inputs to industrial consumers like the steel industry, “tax incentives are used extensively as an instrument of industrial policy to encourage investment,”\(^394\) “state-owned financial institutions have a major role in assisting Korea’s industrial development,”\(^395\) and that “grants, tax concessions or concessional loans continue to be used to assist a range of activities and industries.”\(^396\) Sector-specific support measures identified by the WTO “benefited shipbuilding, automotive, pharmaceutical, and steel-industry activities.”\(^397\) With respect to the steel industry,

The government has been providing funds to raise the competitiveness of the steel sector in producing high-end products: 30 steel products are selected over a period of 10 years (3 products per year). Financial support of W100 billion is to be provided until 2019, with the aim of manufacturing the world’s best eco-friendly smart steel plates under the World Premier Materials project. To establish a “green steel industry,” the Government is to provide W150 billion, representing 60% of the firm’s total R&D costs (possibly from 2012) for eight years, to develop CO2-free technologies for the iron and steel sector.\(^398\)

In September 2016, the Korean government issued a detailed industrial policy plan to support the domestic steel industry. The plan’s objectives include:

- “Early development and commercialization of high value-added steel products and lightweight materials;”
- “Chang[ing] to next generation environmentally friendly facilities {and} process innovation using IT;” and

\(^{393}\) Trade Policy Review Report by the Secretariat: Republic of Korea, WT/TPR/346 (October 6, 2016) at 93.
\(^{394}\) Id. at 89.
\(^{395}\) Id. at 90.
\(^{396}\) Id. at 92.
\(^{397}\) Id.
\(^{398}\) Id. at 131.
“Securing additional price competitiveness through securing materials {and} cost savings.”

To achieve these objectives, the plan calls on the government to provide capital to steel producers for R&D, acquisitions, and investment in new facilities for producing high value-added products, including through the Korea Development Bank and the Ministry of Trade, Industry, and Energy.

The Korean government also heavily subsidizes the domestic shipbuilding industry, one of the key demand drivers for steel. In October 2016, the Korean government issued a detailed industry policy plan for the domestic shipbuilding industry, similar to its plan for the domestic steel industry. The plan provides that the Korean government will place orders for ships, and financial benefits to companies that order ships, to aid its struggling shipbuilding industry. Specifically, the Korean government intends to spend 11 trillion won and place orders for more than 250 vessels by 2020. The Korean government will spend another 3.7 trillion won by 2020 to encourage shipowners to order an additional 75 ships. The plan discusses other measures to increase the competitiveness of the domestic shipbuilding industry. These include:

- “Offering various financial advantages … for companies opting to order small and mid-size vessels … which will help add 115 new orders for shipbuilders,”
- “Investing 750 billion won in public and private R&D, nurturing 6,600 skilled human resource, and expanding the range of financial and tax benefits,” to encourage shipping companies to “switch their focus to high value-added services,”
- “Developing the market for repairing and remodeling ships” to promote “the high value-added shipbuilding and shipping industry” and investing “2.7 trillion won” to “convert more than three shipbuilders into companies able to repair large ships …”

The government’s plan also discusses corporate restructuring efforts. To aid corporations in these efforts, the Korean government intends to provide institutional support through its “Special Act on Corporate Revitalization.” In January 2017, the Korean government followed up the plan with an announcement that it will “accelerate the restructuring of the shipbuilding, shipping,

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400 Id.
402 See id.
403 See id.
404 See id.
405 See id.
steel and petrochemical industries. The government further noted that it will be reforming the Korea Development Bank (KDB) and the Export-import Bank of Korea pursuant to its corporate restructuring policy.

In addition to these subsidies, the Korean government manipulates its currency, providing a benefit to domestic manufacturers. According to the Treasury Department’s most recent semi-annual report on exchange rate policies, the Korean government purchased approximately $2.4 billion in foreign exchange in order to control the value of its currency. According to estimates by the Peterson Institute, in late 2016, the Korean Won was undervalued by between five and 10 percent, and the Treasury Department concluded in 2017 that “{t}his undervaluation supports {Korea’s} large current account surplus and reflects continued underperformance of Korean domestic demand.” A comparison of the volatility of the Korean Won and other major currencies shows that the Won’s exchange rate in fact is among the most inflexible of major global currencies.

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407 See id.


409 Robin Harding, Donald Trump’s Anger at Asian Currency Manipulators Misses Target, Financial Times (Feb. 12, 2017).

This persistent undervaluation of Korea’s currency creates an artificial price advantage over U.S. producers. AISI urges USTR to monitor the situation closely and to take appropriate action if the Korean government continues to manipulate its currency.

G. Russia

1. Natural Gas Subsidies

Russia maintains the second largest proven reserves of natural gas in the world.\(^{411}\) Open Joint Stock Company Gazprom (“Gazprom”), a Russian state-owned company,\(^{412}\) currently has a monopoly on exports of pipeline natural gas produced in Russia.\(^{413}\) The Russian government also controls domestic pricing of natural gas to both industrial users and other consumers.\(^{414}\) Prior to joining the WTO, Russia implemented a trade-distortive dual pricing system for natural gas, requiring international purchasers to pay a premium for natural gas.\(^{415}\) President Putin declared that Russia would refuse to join the WTO if it were required to change this pricing system,\(^{416}\) and Russia was ultimately permitted to maintain the dual pricing system for natural gas under its WTO accession agreement.\(^{417}\) This dual pricing system acts as a trade-distortive energy subsidy to Russian industrial producers.\(^{418}\) In particular, this subsidy provides Russian

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\(^{411}\) BP Statistical Review of World Energy, 66th Edition (June 2017) at 26 (showing that at the end of 2016, Russia had natural gas proven reserves of 1139.6 trillion cubic feet, a close second to Iran’s 1183.0 trillion cubic feet of reserves).

\(^{412}\) Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?, Meeting of the OECD Council at Ministerial Level (May 6-7, 2014) at 4.

\(^{413}\) See Ilian Vassilev, The End of Gazprom’s export monopoly? Potential repercussions, Bulgaria Analytica (Aug. 11, 2017); Irina Slav, Russia May Break Gazprom Monopoly to Stimulate LNG, Oil Price (Aug. 7, 2017); 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments at 31 (“Gazprom retains a monopoly of pipeline gas exports”); Elena Mazneva and Dina Khrennikova, Russia Holds Onto Gazprom Export Monopoly to Prop Up Budget, Bloomberg (Oct. 21, 2015) (“Gazprom, the world’s biggest natural gas producer, has held a legal monopoly on Russia’s pipeline exports for the past nine years and supplies about 30 percent of Europe’s gas”); Lars Petter Lunden and Daniel Fjaertoft, Government Support to Upstream Oil & Gas in Russia, International Institute for Sustainable Development (July 2014) at 15.


\(^{415}\) Id. at ¶ 120 (expressing concern that State controls on the pricing of energy for domestic consumption has created trade distortions). The effect of these controls was to depress prices for domestic industrial users, which could lead to a very wide differential between the price paid by domestic industrial users and the price paid by export customers, as well as the world market price”); see also David G. Tarr, Export Restraints on Russian Natural Gas and Raw Timber: What are the Economic Impacts?, Centre for Energy Policy and Economics Working Paper No. 74 (Mar. 2010) at 2.


\(^{418}\) Id. at ¶ 120. See also Anton Orlov, An assessment of optimal gas pricing in Russia: A CGE approach (Apr. 29, 2015) (“Domestic gas prices in Russia are administratively regulated, and they are substantially lower than export netback prices. The administrative price regulation operates as an implicit subsidy on domestic gas consumption”).
steel producers with a low-priced source of energy, giving them an unfair competitive advantage in the international market. In fact, Russia has been recognized as one of the world’s top providers of subsidies for natural gas consumption, and the U.S. Department of Commerce recently determined that the Russian government provides natural gas to steel producers for less than adequate remuneration.

Moreover, while Russia’s WTO accession agreement generally allows it to maintain a dual pricing system, Russia did commit to alter its pricing system by basing natural gas prices for industrial users on “normal commercial considerations,” i.e., recovery of costs and profit. However, it appears that Russia has failed to comply with even this commitment thus far. A study concerning the feasibility of increasing Russian domestic natural gas prices noted that in 2012, “sixty percent of the [natural gas] production [was] sold domestically at prices below long term marginal cost, for households and for industrial producers.” Natural gas in Russia continues to be sold at below cost today. Russia’s largest natural gas producer, Gazprom, has admitted that domestic “prices remained below the economically viable level” to support Russia’s economy, including for its steel producers, which heavily consume natural gas.

While Russia is permitted to regulate prices to households and other non-commercial users, industry analysts recognize that a natural gas price based on “commercial considerations,” i.e., elimination of dual pricing for industrial users, should be equal to the price of gas on the European market. Yet, the Russian government continues to set natural gas prices in Russia.

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420 See Issues and Decisions Memorandum accompanying Cold-Rolled Steel Flat Products from the Russian Federation, 81 Fed. Reg. 49,935 (Dep’t Commerce July 29, 2016) (final affirmative countervailing duty determination and final negative critical circumstances determination) (“Cold-Rolled I&D Memo”) at cmt 1. Note that no countervailing duty order was imposed on Russian cold-rolled steel due to a negative final determination by the U.S. International Trade Commission. See Peg O’Laughlin, USITC Announces Determinations Concerning Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and the United Kingdom (Sep. 2, 2016).


422 See 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments at 32.

423 Christophe Heyndrickx, Victoria Alexeeva-Talebi and Natalia Toudryeva, Implications of an Increase in Domestic Prices of Gas in Russia, an Application of the Regional Economic Model SUSTRUS (2012) at 1.

424 See Setting fair gas prices in Russia to boost domestic economy, Gazprom (Apr. 22, 2014) (“Gazprom, the biggest gas supplier to the domestic market, sold gas at regulated prices that remained below the economically viable level, thereby supporting the domestic economy”). See also Murat Basboga, Russia Mulls Market Liberalisation, Natural Gas World (May 27, 2016).


426 See Christophe Heyndrickx, Victoria Alexeeva-Talebi, and Natalia Toudryeva, To Raise or Not to Raise? Impact Assessment of Russia’s Incremental Gas Price Reform, ZEW Discussion Paper No. 12-052 (2012) at 2 (noting that eliminating Russia’s dual pricing would equalize the European market and Russian market, once export taxes, transportation costs, and transit tariffs are adjusted).
substantially below European market prices. In fact, in September 2013, the Russian government issued a moratorium on natural gas price increases, and Gazprom reduced natural gas prices from 2014 to 2015. Russia has reportedly planned a mere two percent increase for industrial users by 2019. It is unclear whether even such minor planned increases will actually be implemented, as the Russian government continues to use cheap natural gas prices in an attempt to bolster its fragile economy. USTR should continue to monitor Russia’s actions and confirm whether Russia is complying with its commitment to base the price of natural gas for industrial users on “commercial considerations.”

In addition to its dual pricing scheme, Russia imposes a 30 percent export tax and licensing requirement on natural gas, further benefiting domestic users. AISI remains concerned with these trade-distortive policies, especially given Russia’s refusal to phase out the export tax. To remedy the trade distortions caused by these policies, USTR should work closely with the EU and the Russian government to obtain a reduction in or, preferably, the elimination of the natural gas export tax, liberalization of its licensing requirement, and an end to Russia’s dual pricing system for domestic natural gas users. USTR should also closely monitor

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427 See, e.g., US and Russia step up fight to supply Europe’s gas, Financial Times (Aug. 3, 2017) (quoting Platts as explaining that “Russia clearly does have the option to undercut the US LNG price to ensure it keeps its share of key European markets and could flood the market with cheap gas.”); Danila Bochkarev, Gazprom plays ball: the depoliticization of the European gas market, Energy Post (Jan. 25, 2017).

428 While Gazprom intended to raise prices for industrial users in 2014 and again in 2015, it appears that these increases never materialized. Setting fair gas prices in Russia to boost domestic economy, Gazprom (Apr. 22, 2014) (explaining that “the Russian Government made a decision to slow the process” of raising industrial natural gas prices).

429 Murat Basboga, Russia Mulls Market Liberalisation, Natural Gas World (May 27, 2016).

430 See Alexander Winning, Fragile economy stays Putin’s hand in stand-off with U.S., Reuters (Aug. 1, 2017); Pavel Koshkin, Why the Russian economic crisis is far from over, Russia Direct (Jan. 17, 2017); Global Daily: Russia GDP contracts 3.7 percent in 2015, World Bank (Jan. 27, 2016); Lydia Tomkiw, Russia Economy 2016 Update: Contraction of 1.9 Percent Predicted On Low Oil Prices, World Bank, IBT (Apr. 6, 2016); Setting fair gas prices in Russia to boost domestic economy, Gazprom (Apr. 22, 2014) (“Gazprom, the biggest gas supplier to the domestic market, sold gas at regulated prices that remained below the economically viable level, thereby supporting the domestic economy”). See also Cold-Rolled I&D Memo at 53 (“Gazprom, being the biggest gas supplier to the Russian market, sold the bulk of its gas supplies at regulated prices, which were set at below the sustainable level to bolster the national economy. However, the artificially low regulated prices prevent Gazprom from generating enough revenue to build its own funding sources to finance investments into new gas production, transportation and storage projects or maintaining the existing ones for the benefit of Russian consumers”).


433 See Russia Working Party Report at ¶ 635 (“[Russia] considered that the request of several Members that [it] establish a timetable to completely phase-out export duties was excessive”).
any future actions by the Russian government to prohibit some or all natural gas exports.434

2. Freight Transportation Subsidies

Russia also continues to apply different freight rates for domestic companies to promote the domestic production of finished goods and to discourage the export of raw materials.435 The primary rail carrier in Russia is Russian Railways, an SE.436 With control over much of the freight system, the Russian government affects transportation through an extensive system of tariff rates, which are segregated into three categories: final products, intermediate goods and raw materials.437 Because of tariff differences, transporting raw materials within Russia is cheaper than transporting products in the other two categories.438

Russia also places higher tariffs on freight for goods and raw materials intended for export, as opposed to domestic use.439 This is particularly concerning, as the elevated tariffs on goods destined for export act as another barrier to global trade in raw materials. Furthermore, Russian steelmakers can continue to exploit the transit system, while they increase steel production capacity.

Russia agreed to eliminate these discrepancies in its railway tariffs by July 1, 2013 as part of its WTO accession.440 With the exception of a September 2013 change to its railroad tariffs for grain transport,441 it is not apparent that Russia has made any other effort to comply with this

434 See, e.g. 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments at 31, 32; Maria Gallucci, Europe Unprepared If Russia Cuts Off Natural Gas Exports To EU This Summer, Analysts Say, International Business Times (July 30, 2014).

435 See 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments 31; Russia Working Party Report at ¶ 115 (“The representative of the Russian Federation to the WTO further confirmed that, over the period between the accession of the Russian Federation to the WTO and 1 July 2013, the Russian Federation would gradually reduce the existing differences between, on the one hand, rail transportation charges applicable to like, directly competing or substitutable products transported between domestic locations, as well as the existing differences in rail transportation charges for imported and exported products depending on whether they enter or exit the territory of the Russian Federation by land or through a port or depending on their origin or destination”); see also Working Party Seals the Deal on Russia’s Membership Negotiations, World Trade Organization (Nov. 10, 2011) http://www.wto.org/english/news_e/news11_e/acc_rus_10nov11_e.htm; Russia to Unify Railway Tariffs Under WTO Rules Two Yrs After Accession, ITAR-TASS (Nov. 16, 2011).


437 The tariffs are contained in Price List No. 10-01. Russell Pittman, Blame the Switchman? Russian Railways Restructuring After Ten Years, U.S. Dep’t of Justice, Antitrust Division Discussion Papers (Feb. 2011) at 12.


Russia also committed to publishing all changes that regulated railway tariffs for the transit of goods before their entry into force, but it does not appear to have done so. As a result, it appears that Russia has failed to comply with its obligation within the clearly specified deadline. USTR should confirm whether Russia has in fact failed to eliminate distortive freight transportation tariffs.

At the same time, while Russia utilizes its tariff system to discourage exports of certain goods and raw materials, it supports exports of other products by drastically reducing fuel rates for carriers fueling at Russian ports. Artificially cheap prices for shipping fuel facilitate Russian exports of steel products, including to the United States. Such subsidies are another means by which the Russian government provides certain Russian manufacturers with an unfair competitive advantage in the international market.

3. Preferential Loans

The Russian steel industry and related industries have historically received preferential loans from state-owned and -controlled banks such as VTB Bank, Vneshecomobank (“VEB”) and Sberbank, which have provided billions of dollars in loans to Russian steel producers. Many of these state loans have been granted to support the restructuring of foreign debt.

Although Russia committed to ensuring that subsidies provided at the federal and sub-federal level are consistent with its WTO obligations, state-controlled banks have made significant loans to Russian manufacturers despite their declining credit ratings. For example, since at least 2012, state-sponsored funds from Sberbank and other state-controlled banks have essentially kept Russian mining and metals company, Mechel, from defaulting on its loans by using state-sponsored funds to repeatedly restructure its short-term debt. After years of declining credit ratings, in March 2015, at the company’s request, Moody’s withdrew Mechel’s 

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443 See Russia Working Party Report at ¶ 117.
446 See 2017 Russia Investment Climate; see, e.g., BRIEF - Russia’s Mechel says Vnesheconombank agrees to restructure $190 mln loan, Reuters (Sept. 28, 2017); VTB has provided “daughter” of the “Eurasia” credit line in the amount of $300 million for a period of seven years, News For Traders (May 12, 2016); Yuliya Fedorinova and Anna Baraulina, Russian Banks Awash in Dollars Make Loans Company Debt of Choice, Bloomberg (Nov. 4, 2015) (“Steelmaker Novolipetsk Steel OJSC said Nov. 3 it borrowed $400 million of pre-export financing from banks”). See also Alexander Kolyandr, Russia Mulls Helping Refinance Debts of Metals, Mining Giants, The Wall Street Journal (Nov. 26, 2013).
447 See Russia Working Party Report at ¶ 686 (stating that “the subsidies provided both on Federal and Sub-Federal levels were consistent with the national legislation and international commitments of [Russia]” and referring to “the conformity of the subsidies, granted by the regional governments, with all Federal legislation and the obligations under international treaties of the Russian Federation”).
448 See, e.g., BRIEF - Russia’s Mechel says Vnesheconombank agrees to restructure $190 mln loan; Mechel Wins Sberbank Loans, GTR (Oct. 17, 2012).
credit rating of Caa3 and a probability of default rating of Ca-PD/LD. Despite the absence of an international credit rating, Sberbank restructured $446 million of Mechel’s debt on April 18, 2016. Moreover, state-owned banks, including Sberbank, Gazprombank and VTB, negotiated a $5.1 billion debt restructuring deal with Mechel in 2016. Most recently, Vnesheconombank agreed to restructure a loan for up to $190 million for Elagaugol, part of Mechel’s mining division.

In 2015, the Russian government created a list of 199 companies deemed to be strategic firms eligible for state assistance. The list included steelmaker Severstal, aluminum producer Rusal, and the mining company Norilsk Nickel. Russia’s Ministry of Economic Development indicated that it would provide state-backed guarantees for loans and bonds worth up to 200 billion rubles to companies on the list for investment projects and other purposes such as debt restructuring.

In September 2017, the Russian government announced that it was providing annual subsidies of no less than 134 billion rubles to its automotive industry between 2018 and 2020, allocating 138.051 billion rubles for the development of car production in 2018, 134.455 billion rubles in 2019, and 134.095 billion rubles in 2020. As with previous subsidies to the automotive industry, these subsidies likely include support for R&D, energy usage, warranty issuance and fulfillment, and maintenance of employment. At current exchange rates, 134 billion rubles equals approximately $2.3 billion. Notably, the Russia government in 2016

449 Moody’s withdraws Mechel’s ratings, Moody’s Investors Service (Mar. 24, 2015); Mechel PAO 2015 Form 20-F at 13 (“In March 2015, following Mechel’s request, Moody’s Investors Service withdrew our corporate family rating of Caa3, probability of default rating of Ca-PD/LD and long-term national scale rating of Caa2.ru”).

450 Mechel PAO 2015 Form 20-F at 13 (“Downgrade and further absence of international rating may reduce our opportunities to raise necessary debt financing (including by accessing the debt capital markets), as well as potentially negatively impact the terms of such financing”).

451 BRIEF - Russia’s Mechel signs debt restructuring deal with Sberbank, Reuters (Apr. 18, 2016); Yuliya Fedorinova, Mechel’s Foreign Lenders Seek Collateral for Restructuring, Bloomberg (July 21, 2016).

452 See Update1-Mechel signs debt restructuring deal with Sberbank, Reuters (Apr. 18, 2016); Yuliya Fedorinova, Mechel’s Foreign Lenders Seek Collateral for Restructuring, Bloomberg (July 21, 2016).

453 See also Gabriela Baczynska, Russia lists 199 firms eligible for state support amid crisis, Reuters (Feb. 8, 2015).

454 Id.

455 Paul Whitfield, Russia Offers Aid to ‘Strategic Companies’ to Ease Lender Jitters, The Street (Feb. 9, 2015).


457 Id.

458 The Russian car industry will receive 270 billion rubles of subsidies, Autostat (Jan. 21, 2014); Russian Ministry of Industry and Trade, On government subsidies to motor vehicle manufacturers under the Automotive Industry subprogramme, of the state programme Advancing Manufacturing Industries and Raising Their Competitiveness (Jan. 15, 2014).
granted subsidies of 50 billion rubles to the auto industry, including through its apparently extended “cash for clunkers” program.\footnote{Russia's car industry to get $50 bln roubles in subsidies in 2016 – PM, Reuters (Jan. 22, 2016). See also USTR, 2015 Report on the Implementation and Enforcement of Russia’s WTO Commitments (Dec. 2015) at 29.}

The Russian government’s provision of loans, on what appear to be preferential terms, to Russian manufacturers unfairly distorts international competition, especially when Russian producers use these funds to increase production capacity. USTR should urge Russia to end such government financial support for the expansion of steelmaking capacity and for steel-consuming industries.

VI. STATE ENTERPRISES AND GOVERNMENT INTERVENTION

Foreign governments are increasingly using SEs\footnote{As used in these comments, “state-owned enterprises” includes “state-supported enterprises” and other government-backed entities.} and other methods of government intervention to unfairly tilt the commercial playing field, both within a country’s borders and in global markets. China, in particular, has created massive state-owned and -controlled national champions that are designed to be competitive on the international stage, and other countries are following suit. The rise of SEs and other government intervention into industry represents a growing threat to fair trade and the ability of private steel producers to compete globally. SE investment at home and abroad forces companies to compete directly against foreign governments in markets around the world, creating significant imbalances that harm workers and private companies competing in those markets. These distortions impact U.S. and global steel markets and related upstream and downstream markets, as well as other global industries.

A. Trade Distortions and Anti-Competitive Effects Caused by SEs and Other Government Intervention in Commercial Activities


tax reductions and exemptions; preferential access to raw materials and other inputs; and preferential regulatory treatment.\textsuperscript{464}

Because SEs are frequently subsidized and otherwise advantaged by their home governments,\textsuperscript{465} they often do not operate based on market principles and therefore introduce market-distorting behavior and other trade and investment imbalances when they enter the commercial arena.\textsuperscript{466} These distortive effects essentially cause market-based U.S. steel companies to compete in global markets against foreign governments, rather than against similarly-situated foreign companies. The resulting effects create unfair conditions experienced by companies in markets around the globe.

As a result, SEs can act as a barrier to trade in a number of ways. First, government support for SEs protects a particular domestic producer and its product, and makes it more difficult for foreign companies to compete in that market. For example, subsidies and other benefits artificially lower SEs’ costs and enhance their ability to sell at lower prices than their private sector competitors. Additionally, some unprofitable SEs, which in a free market would be driven out of business, “may enjoy outright exemptions from bankruptcy rules.”\textsuperscript{467} The ability to sustain losses for longer periods of time and not having to earn a commercial rate of return provide SEs with a significant competitive advantage over their private sector counterparts. These advantages may prevent U.S. producers from exporting to a market dominated by SEs.

Second, government support for SEs can artificially stimulate exports of a particular domestic product, displacing U.S. exporters in global markets. The Chinese government, for example, selects specific SEs to receive subsidies and other assistance to be internationally competitive and to export products abroad. In addition, as a major purchaser of goods and services, the Chinese government could, for example, “encourage” its SEs to buy a given input from one country over another or to buy domestically. In any event, the rise of SE investment abroad, and government intervention more generally, represents a significant barrier to trade in home and third country markets.


\textsuperscript{465} See, e.g., Scott Cendrowski, \textit{China’s Global 500 companies are bigger than ever—and mostly state-owned}, Fortune (July 22, 2015) (“With the government as their largest shareholders, China’s [SOEs] enjoy massive state support, which fosters growth and insulates them from competition”).

\textsuperscript{466} OECD, \textit{SIEs in the Global Marketplace} at 13; OECD, \textit{SOEs: Trade Effects and Policy Implications} at 5. See also OECD, \textit{Broadening the Ownership of State-Owned Enterprises: A Comparison of Governance Practices} (Feb. 4, 2016) (“OECD, \textit{Broadening the Ownership of SOEs 2016}”) at 27 (referring to the “other social objectives” of OECD).

\textsuperscript{467} OECD, \textit{Competitive Neutrality} at 6. See also OECD, \textit{SIEs in the Global Marketplace} at 14.
B. SEs by Country

According to a recent OECD study, 282 of the 2000 largest global companies in the business year 2012-2013 were identified as state-owned or state-invested enterprises. Of the world’s 25 largest SEs, thirteen are domiciled in China (including Hong Kong), three are Russian, and two are Brazilian. The remaining SEs are located in Colombia, France, India, Italy, Norway, Saudi Arabia, and Thailand. Additional country-specific information on SEs is as follows.

- **China:** Nowhere is the rise of state capitalism more evident than in China, where the government continues to control the “commanding heights” of the Chinese economy, including through ownership of over 150,000 companies in major sectors such as banking, insurance, raw materials, and steel. SEs dominate the Chinese economy in terms of assets and resource allocation despite being relatively inefficient and accounting for a small share of industrial value added. According to recent estimates, “assets of both central and local SEs amount to about 94 trillion RMB,” and more than three-quarters of Chinese companies on the Fortune Global 500 list are state-owned. With respect to the steel industry, the Chinese government has ownership interests in 18 of the 20 largest steel producers in China. President Xi Jinping’s reform efforts, rather than loosening state control, have had the opposite effect. Despite calls for injecting more private capital into the state sector through a new wave of “mixed ownership” reforms, other plans reveal a desire to enhance state control over the economy by, for example, formalizing the Chinese Communist Party’s role in SE corporate governance and encouraging SEs to acquire private firms.

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468 OECD, SIEs in the Global Marketplace) at 8.  
469 Id. at 7.  
470 Id.  
472 See, e.g., OECD, *State-Owned Enterprises in the Development Process* (Apr. 23, 2015) at 137-163; Sara Hsu, *China’s Changing State-Owned Enterprise Landscape*, The Diplomat (June 25, 2014) (“SOEs at the central level include the largest and most important firms in China, concentrated in the energy, aviation, technology, steel, shipping, mining, telecom and financial sectors”).  
473 See, e.g., DOC China Financial System Memo at 9.  
474 Sara Hsu, *China’s Changing State-Owned Enterprise Landscape*, The Diplomat (June 25, 2014) (emphasis added).  
476 Scott Cendrowski, *China’s Global 500 companies are bigger than ever—and mostly state-owned*, Fortune (July 22, 2015).  
477 OECD State Ownership Report at 6-7.
in strategic industries. In 2016, the State-Owned Assets Supervision and Administration Commission emphasized that major decisions by SEs should first be approved by the firm’s party committee, and should only then proceed to approval by the board of directors. Any moves to relinquish certain formal levers of state control over SE operations are thus being replaced by less transparent political channels of control. A recent report quotes President Xi explaining that “party leadership and building the role of the party are the root and soul for state-owned enterprises. . . . The party’s leadership in state-owned enterprises is a major political principle, and that principle must be insisted on.”

“Mixed ownership” reforms, moreover, rarely involve the state relinquishing controlling ownership over SEs and increasingly involve SEs injecting state capital into the private sector. Rather than reducing state ownership and control in the Chinese economy, the government continues to “[blur] the boundary between SEs and privately owned firms, which permits the state to exercise significant influence over firms irrespective of its equity ownership stakes and where firms of all ownership types compete for state-generated rents.”

- **Russia:** The U.S. Department of Commerce notes that “burdensome regulations, weak intellectual property protection, the preponderance and strength of state-owned enterprises and a government focus on localization present challenges to U.S. exporters” in Russia. Indeed, Russia has “reasserted direct state control over ‘strategic’ industries,” including oil, gas, and transportation, which are important to the steel industry. SEs, which play a prominent role in the Russian economy, have grown dramatically in Russia, with more than 4,100 SEs reported in 2015, and more than 24,000 SEs reported in 2016. According to the U.S. State Department, SEs

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480 Emily Feng, Xi Jinping Reminds China’s State Companies of Who’s the Boss, New York Times (Oct. 13, 2016).

481 Reform of China’s Ailing State-Owned Firms is Emboldening Them, The Economist (July 22, 2017).


485 Compare 2017 Russia Investment Climate, with U.S. Department of State, Bureau of Economic and Business Affairs, Investment Climate Statement for 2016: Russia (2016) at 3.
accounted for more than 70 percent of Russia’s economy in October 2016.\footnote{See 2017 Russia Investment Climate.} While Russia appears to have made progress in its commitments to privatize SEs, investors are nevertheless warned by the State Department that “Russia has a history of indirectly expropriating companies through ‘creeping’ and informal means, often related to domestic political disputes,” which is what occurred with the privately owned oil company Bashneft.\footnote{Id.} Bashneft was nationalized and then “privatized” in 2016 “through its sale to the government-owned oil giant Rosneft without a public tender.”\footnote{Id.}

- **India:** The Indian government owns or “controls interests in key sectors with significant economic impact, including infrastructure, oil, gas, mining, and manufacturing,” including steel manufacturing.\footnote{See India – 7-State-Owned Enterprises, Dep’t Commerce, www.export.gov (Aug. 2, 2017).} The Heritage Foundation notes that “the state maintains an extensive presence in many areas through [SEs]” with public debt accounting for 67 percent of GDP.\footnote{2017 Index of Economic Freedom: India, The Heritage Foundation, http://www.heritage.org/index/country/india (last visited Oct. 24, 2017).} In fact, 65 percent of India’s investments in SE’s are concentrated in the manufacturing, energy, and mining sectors, which are critical for steel manufacturing and raw materials.\footnote{India – 7-State-Owned Enterprises, Dep’t Commerce, www.export.gov (Aug. 2, 2017); see also OECD, Broadening the Ownership of SOEs 2016 at 63; OECD Progress Report, SOEs: Trade Effects and Policy Implications at 6.} India estimates that SEs have accumulated losses worth Rs1.2 lakh crore (or $19 billion) as of 2015-16.\footnote{Report of the Comptroller and Auditor General of India for the year ended 31 March 2016: General Purpose Financial Reports of Central Public Sector Enterprises, Report No. 6 of 2017.} And India’s state-owned banks, which are saddled with bad loan debt from Indian steel producers,\footnote{Dev Chatterjee, PMO steps in to resolve steel companies’ bad debt woes, Business Standard (Mar. 24, 2017).} are responsible for more than 70 percent of all bank loans in the country.\footnote{India Needs to Fix State-Owned Banks, Then Sell Them, Bloomberg (Mar. 7, 2017); Most of India’s state-owned firms are ripe for sale or closure, The Economist (June 1, 2017).} The steel industry’s bad loans comprise 28 percent of non-performing assets at India’s state-owned banks. This figure will likely only increase. To this end, India’s National Steel Policy 2017 states that the steel industry will require capital investments of 10 lakh crore in order to reach the government’s production target of
300 million MT by 2030. This funding will likely be provided by India’s state-controlled banking system.

- **Indonesia**: Indonesia currently has at least 118 SEs, which operate in almost all sectors of the economy, including mining, energy, manufacturing, steel, and logistics. According to the State Department, twenty Indonesian SEs account for a quarter of the value of all listed shares on the Indonesian stock exchange. Additionally, “SEs receive strong preference for [Government of Indonesia] projects.” For example, Indonesian President Joko “Jokowi” Widodo has placed SEs at the center “of the government’s economic development plans” and “aims to expand the SE sector rather than make it lean.” In fact, in 2015, the Indonesian government injected $3 billion into various SEs. Recipients of the funds include Aneka Tambang, which plans to build an alumina refinery, and Krakatau Steel, which plans to modernize its plants. Between 2016 and 2019, Indonesian SE assets are expected to grow by 40 percent; their investments are projected to grow by 90 percent during this period.

- **Brazil**: The Brazilian government owns or controls a variety of SEs at both the federal and state levels. According to the Heritage Foundation, “[t]he state’s interference in the economy has been heavy.” SEs in Brazil account for 38 percent of stock market capitalization and are dominant in the mining, energy, and financial sectors.

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495 India National Steel Policy 2017 at 1 (explaining that after 2004, the “Indian steel sector witnessed a wave of investments…funded by banks.”).
496 Megha Manchanda, Jyoti Mukul, NPA’s in Sector Will Disappear: Steel Secy, Business Standard (May 6, 2017); India National Steel Policy 2017.
498 Id.
499 Id.
500 Kyunghoon Kim, Jokowi wakes up the leviathan, New Mandala (Dec. 2, 2016).
501 Id.
503 Kyunghoon Kim, Jokowi wakes up the leviathan, New Mandala (Dec. 2, 2016).
504 See U.S. Department of State, 2017 Investment Climate Statements: Brazil (June 29, 2017).
have been riddled with public corruption scandals,\textsuperscript{507} many stakeholders oppose such privatization efforts.\textsuperscript{508} Further, in 2015, the Brazilian government enacted Law No. 13,182 to ensure the long-term supply of cheap electricity from its energy SEs to industrial producers, including the steel industry, located in the Northeast, Southeast, and Midwest regions of the country.\textsuperscript{509}

- **Vietnam:** Vietnamese SEs operate in “several key economic sectors, such as energy (electricity, coal, petroleum)” as well as the finance, banking, and insurance industries.\textsuperscript{510} Indeed, SEs “account for about 40 percent of GDP.”\textsuperscript{511} In 2017, there were 2,000 SEs in Vietnam where the state retained a majority interest, and 781 SEs where the state retained 100 percent ownership.\textsuperscript{512} While Vietnam has made some effort to reform its SE sector, its restructuring programs “seem to have stopped at the superficial level” and “still remain unfinished.”\textsuperscript{513} In fact, just last year, Vietnam issued Decision 58/2016/QD-TTg (Decision 58), which identifies industries in which the government will maintain full or majority ownership, such as large-scale mineral mining and electricity distribution.\textsuperscript{514} State-owned or controlled banks account for 45 percent of total assets in Vietnam’s banking sector and continue to follow “state-directed lending” policies.\textsuperscript{515}

\textsuperscript{507} See e.g., Brazil sees possible Petrobras privatization in future, Reuters (Oct. 3, 2017); Brazil eyes privatization of Eletrobras, ENCA (Aug. 22, 2017); Jonathan Watts, Operation Car Wash: Is this the biggest corruption scandal in history?, The Guardian (June 1, 2017); Jeb Blount, Brazil police arrest 19 in Eletrobras nuke-plant bribe probe, Reuters (July 6, 2016).


\textsuperscript{510} SOEs play dominant role in national economy, Viet Nam News (Dec. 27, 2016).


\textsuperscript{512} U.S. Department of State, Bureau of Economic and Business Affairs, Vietnam Investment Climate Statement 2017 (June 29, 2017).

\textsuperscript{513} Phan Thu & Huyen Trang, Why is equitization slow? - 'Hugging' many 'large Corporations', Ministry of Industry and Trade suffers from debts, Customs News (July 21, 2017).

\textsuperscript{514} U.S. Department of State, Bureau of Economic and Business Affairs, Vietnam Investment Climate Statement 2017 (June 29, 2017).

\textsuperscript{515} U.S. Department of State, Bureau of Economic and Business Affairs, Investment Climate Statements for 2017: Vietnam (June 29, 2017); SOEs play dominant role in national economy, Viet Nam News (Dec. 27, 2016).
Many of these governments are pursuing ownership and control of their steel industries. For example, in India, the government owns 75 percent of SAIL, one of the country’s largest steel producers,\(^{516}\) while the Vietnamese government owns 65 percent of its largest steel producer, Vietnam Steel.\(^{517}\) In addition, the following governments own significant shares of the large (if not the largest) steel companies in their countries: Indonesia (PT Krakatau Steel); Libya (Libyan Iron and Steel Company); Venezuela (Siderúrgica del Orinoco and Siderúrgica del Turbio SA); Pakistan (Pakistan Steel Mills Corporation); Saudi Arabia (Saudi Basic Industries Corporation); the United Arab Emirates (Emirate Steel Industries PJSC); and Algeria (IMETAL); and Italy (ILVA).\(^{518}\) In fact, in 2016, four of the ten largest steel companies in the world were SEs.\(^{519}\) According to the OECD, that same year, “state enterprises accounted for at least 32 percent of global crude steel production.”\(^{520}\)

In addition to intervening in the market through ownership, many governments around the world have significantly subsidized the growth of their steel industries and prevented permanent capacity closures in the industry, leading to significant overcapacity in the industry.\(^{521}\) Governments often will prevent steel mill closures in order to maintain employment levels and for other non-commercial purposes.\(^{522}\) In a purely market-based system, “the power of the market alleviates excess capacity, by forcing inefficient producers that incur profit losses to


\(^{517}\) 406 SOEs under divestment: exciting opportunities for investors, Vietnam Net Bridge (Aug. 27, 2017).

\(^{518}\) Algeria: State-Owned IMETAL Takes over ArcelorMittal’s Shares in Three Companies, North Africa Post (Aug. 8, 2016); The changing face of Europe’s flat steel industry, Platts (Sept. 23, 2016); Italy takes full control of troubled Ilva steel plant, Reuters (Jan. 21, 2015) but see Matteo Meneghello, Italian government hands IlVA to AM Investco, Il Sole 24 Ore (June 6, 2017) (indicating that the Government of Italy will own Ilva for at least another 12 months).

\(^{519}\) See World Steel Association, Top steelmakers in 2016 (listing state-owned China Baowu Group, HBIS Group, Ansteel Group, and Shougang Group as top ten steel producers).

\(^{520}\) See Lieven Top, 83rd Session of the OECD Steel Committee – Chair’s Statement (Sep. 28-29, 2017).


\(^{522}\) See Bethany Allen-Ebrahimian, Chinese Steel Output Hits All-Time High, Foreign Policy (July 19, 2017) (“After the 2008 financial crisis, Chinese authorities feared widespread unemployment and slowed growth could create social instability, so they poured money into the faltering economy in the form of loans and subsidies, often to massive but moribund state-owned enterprises. These companies produce much of the country’s steel, and Chinese central and local governments view them essentially as jobs programs to keep their populace contented. The result of all this steel production is excess capacity, which China exports at bargain prices around the world.”); Zombie firms and China’s economic woes, East Asia Forum (Nov. 21, 2016) (“These zombie companies are heavily indebted, kept afloat only by continuous support from government and banks. The government does not want to see zombie companies wiped out because it worries about the messy results — rampant unemployment and a significant loss of tax revenue.”).
eventually exit the market.” However, government intervention artificially prevents the market from self-correcting in this manner. Thus, in the steel industry, government impediments to capacity closure, combined with legitimate market-based barriers to exit, have led to the accumulation of persistent and growing excess capacity.

China provides the most striking example of government intervention in the steel industry, which has resulted in its enormous growth in steel capacity. Many older, low-technology mills in China, which would likely close in a purely market-based environment, have been supported by local governments and continue to operate, intensifying global oversupply. The limited attempts at consolidation in the steel industry have been largely ineffective, as the government wants to protect so-called zombie companies, many of whom provide local economies with significant employment opportunities. Although the Chinese government claims to have reduced steel capacity in 2016, numerous reports indicate that much of the reported shuttered steel capacity was already idled and that Chinese steel capacity actually increased in 2016. Authorities have relied heavily on state-directed mergers among large steel conglomerates under central administration, a strategy that has little impact on capacity and frequently results only in larger, less efficient post-merger entities with even greater strategic significance to the state. According to the IMF, Chinese “SEs continue to account for 50 percent of zombie debt outstanding, suggesting that significant further progress is necessary.”

Even in countries with historically market-based economies, governments are intervening in the steel sector. Some European governments, such as the Italian government, have even intervened to delay or prevent plant shutdowns, in order to avoid potential social and economic consequences. In recent years, the governments of Italy, France and Belgium have each objected to mill closures within their borders and many expect them to continue to do so in the future. For example, while some European governments welcomed the recently announced Tata Steel-ThyssenKrupp Steel merger, Germany’s Labor Minister expressly stated that “sites in Germany

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523 OECD Excess Capacity Report at 2. See also Statement on Global Steel Excess Capacity by the Governments of Canada, Mexico and the United States, OECD Steel Committee Meeting (June 5-6, 2014).
524 Simon Denyer, Smog and mirrors? China’s steel capacity cuts were fake, report says, Washington Post (Feb. 13, 2017).
527 Morgan Stanley Global Steel Report at 15; Steelworkers strike against job cuts at Italy’s Terni plant, Reuters (July 28, 2014); Renzi ‘concerned’ after AST Terni talks collapse, ANSA (Oct. 9, 2014); Jeffrey Friedland, ArcelorMittal: Problems in Europe and Regaining Investment Grade Status, Seeking Alpha (Jan. 21, 2013); Ben Deighton, Belgium considers nationalization of ArcelorMittal plant, Reuters (May 30, 2013); Silvia Antonioli and Philip Blenkinsop, CORRECTED-UPDATE 2-EU unveils action plan for Europe’s ailing steel sector, Reuters (June 12, 2013); Charlotte Stubben, Will ArcelorMittal in Belgium be nationalised?, Metal Supply (Aug. 23, 2013); Caroline Bauman and James Fontanella-Khan, Steelmaker clashes with unions over job losses, The Financial Times (Nov. 7, 2013).
must be maintained and compulsory layoffs ruled out.\textsuperscript{528} As a result, state intervention in the steel sector remains a significant barrier to trade.

VII. CONCLUSION

The trade barriers described above distort global trade and international competition, and harm U.S. industries, including the U.S. steel industry. USTR should include the trade restrictions identified above in its 2018 National Trade Estimate Report on Foreign Trade Barriers, and continue to work toward the elimination of these and other trade barriers worldwide.

Sincerely,

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

\textsuperscript{528} Geir Moulson, \textit{Tata-Thyssenkrupp Steel Merger Could See 4,000 Jobs Axed}, India West (Sep. 20, 2017).