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Edward Gresser
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

RE: Comments Regarding Foreign Trade Barriers to U.S. Exports for 2021 Reporting [Docket Number USTR—2020—0034]

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. producer member companies, hereby submits comments to the interagency Trade Policy Staff Committee regarding USTR's 2021 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.

AISI serves as the voice of the American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

I. INTRODUCTION

Foreign trade barriers distort international trade and are extremely harmful to U.S. companies, especially those in the U.S. iron and steel industry. 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 and suppliers. In its annual NTE Report, USTR identifies various foreign trade barriers, including export restrictions, import barriers, investment barriers, subsidies, anticompetitive conduct of

[1] *Request for Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers*, 85 Fed. Reg. 55,925 (Office of the U.S. Trade Rep. Sept. 10, 2020).

state enterprises (SEs),[2] and other forms of government intervention. The discussion below identifies trade restrictions in these categories for USTR's inclusion in its 2021 NTE Report, including those that are among the most concerning to AISI's member companies.

Many of these barriers have been very harmful to domestic steelmakers. Around the world, governments regularly intervene in steel markets to bestow unfair competitive advantages on their domestic industries. In addition to the numerous export restrictions, import barriers, investment barriers, subsidies, and other forms of government intervention that benefit foreign producers at the expense of the American steel industry, AISI encourages USTR to monitor specifically the conferral of transnational subsidies that can have restrictive and distortive effects in global steel markets. Such subsidies and policies have become increasingly prevalent in recent years, and it is critical that the U.S. government closely monitor their effect on the competitiveness of the U.S. steel industry. AISI also notes that the ongoing COVID-19 pandemic has caused many countries to impose trade barriers and other measures to combat the health crisis and ensuing economic impacts. As highlighted below, several of these policies may impact the ability of the U.S. steel industry to compete fairly and freely in global markets. As USTR monitors these and other issues, it should pay special attention to the barriers erected and advantages conferred in countries such Brazil, China, Korea, India, Indonesia, Russia, and Turkey. As detailed at length in this submission, the barriers imposed in these markets and the subsidies conferred to domestic producers in these countries are particularly problematic for the U.S. steel industry.

Additionally, taken together, market distorting interventions, such as those described above, have created a serious global overcapacity crisis. As USTR commented following a 2018 meeting of the Global Forum on Steel Excess Capacity, this crisis "imperil[s] our companies and workers and threaten[s] to impair our essential security interests."[3] According to the Organization for Economic Cooperation and Development (OECD) Steel Committee, global excess steel capacity remains substantial, increasing to an estimated 700 million MT in 2020.[4] Overcapacity at such significant levels has encouraged unfair foreign trade practices and subsidized imports that harm U.S.

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2 As noted in a recent OECD paper on *International Trade and Investment by State Enterprises*, the term "state enterprises" includes "state-owned, state-controlled and otherwise state influenced enterprises." Przemyslaw Kowalski and K. Perepechay, *International Trade and Investment by State Enterprises*, OECD Trade Policy Papers, at 7 (Sept. 29, 2015) , *available at* http://dx.doi.org/10.1787/5jrtcr9x6c48-en.

3 USTR, *USTR Statement on Meeting of the Global Forum on Steel Excess Capacity* (Sept. 20, 2018). In a similar statement following the 2019 meeting of the Global Forum on Steel Excess Capacity, USTR noted that the United States "will continue to take necessary action to address the harmful impact of this ongoing crisis on U.S. companies and workers as well as our essential security interests." USTR, *USTR Statement on Meeting of the Global Forum on Steel Excess Capacity* (Oct. 26, 2019).

4 OECD, *88th Session of the OECD Steel Committee – Chair's Statement* (Sept. 2020), *available at https://www.oecd.org/industry/ind/88-oecd-steel-chair-statement.htm.*

steelmakers. AISI appreciates that the U.S. government continues to recognize the challenges the domestic steel industry faces with the global steel excess capacity crisis by maintaining the remedy put in place under Section 232 of the Trade Expansion Act of 1962 (Section 232) on foreign steel to help defend national security. In this respect, the U.S. steel industry strongly supports the U.S. government's swift actions to defend vital domestic industries from unfair trade policies and practices by foreign governments.

II. 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. Critically, several of the largest steel producing countries continue to maintain import tariffs on steel products.[5] Even when these tariffs are consistent with World Trade Organization (WTO) obligations, they constitute significant barriers to trade and limit the ability of U.S. companies to compete in major steel markets. 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. China

The Chinese market continues to be effectively closed to steel imports from the United States, despite a commitment in the phase one deal with China to increase purchases of U.S.-produced steel.[6] Since China acceded to the WTO in 2001, its demand for finished steel has increased 440 percent, to 907.5 million MT in 2019.[7] If U.S. steel mills had been able to partake in even just one percent of this increased demand for steel, 2019 U.S. steel exports to China would have been 7.4 million MT.[8] Instead, last year U.S. mills exported just 56,420 MT of steel to China, down substantially from the export volumes seen in the mid-2000s and a decline of 31 percent from 2018 levels.[9] Through August 2020, U.S. exports of steel products to China were down an additional 62 percent from the same period in 2019.[10]

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[5] *See* World Trade Organization, Tariff Download Facility, *available at* http://tariffdata.wto.org/Default.aspx?culture=en-US.

[6] *Factbox: What's in the U.S.-China Phase 1 trade deal*, Reuters (Jan. 15, 2020), *available at* https://reut.rs/3nTGWUo.

[7] 2020 World Steel in Figures, World Steel Association at 9, *available at* https://bit.ly/2SVG4Aa.

[8] (907 – 168) x 1% = 7.39 million MT.

[9] International Trade Administration, Global Steel Trade Monitor, *available at* https://beta.trade.gov/gstm.

[10] *Id.*

According to the U.S. Department of Commerce (Commerce Department), between 2009 and 2019, as China's steel exports increased by approximately 167 percent, its steel imports decreased by approximately 31 percent.[11] China's closed steel market is the result of the Chinese government's creation of subsidized overcapacity—China produced 996 million MT of crude steel in 2019, 885 million MT more than India, the world's second largest producer of crude steel, produced that year—and its support for developing domestic sources for the few steel products that China does import.[12] Significant overcapacity poses a national security risk to the United States, "as cheap Chinese steel and finished aluminum product imports threaten to hollow out the domestic industries and weaken the national defense industrial base."[13] China's national steel policy is striking because of the extent to which it attempts to dictate industry outcomes and involve the government in making decisions that should be made by the marketplace.[14] Using these policies, China has implemented a long-standing, *de facto* import substitution scheme that denies foreign producers access to the world's largest steel market.

Similar policies have been carried forward into China's 13th Five-Year Plan period. Made in China 2025 is typically associated with high-tech industries, such as information and communications technologies, but it applies to traditional industries like steel as well. In October 2016, the Chinese Ministry of Industry and Information Technology 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."[15] The Steel Industry Adjustment and Upgrading 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."[16] 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.

Unfortunately, promises of resolving excess capacity issues are not new, and any sincere efforts over the past decade to close outdated and excess steel plants have been politically difficult to accomplish.[17] Instead of tackling the causes of growing debt and

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11 U.S. Int'l Trade Administration, *Global Steel Trade Monitor, Steel Exports Report: China* (May 2020).

12 2020 World Steel in Figures, World Steel Association at 9, *available at* https://bit.ly/2SVG4Aa.

13 U.S.-China Economic and Security Review Commission Annual Report, Ch. 1, Sec. 2, p. 91, (Nov. 2017), *available at* https://bit.ly/2ITb5QV.

14 USTR, *2017 Report to Congress on China's WTO Compliance* (Jan. 2018) at 90.

15 *Notice of the Ministry of Industry and Information Technology Regarding Publication of the Steel Industry Adjustment and Upgrading Plan (2016-2020)* (2016-2020), Gong Xin Bu Gui [2016] No. 358 (Oct. 28, 2016).

16 *Id.*

17 Katherine Koleski, *The 13th Five-Year Plan*, U.S.-China Economic and Security Review Commission (Feb. 14, 2017) at 18, *available at* https://bit.ly/3793SZJ.

depressed global prices, the Chinese Communist Party (CCP) has pursued a well-documented strategy of consolidation. For example, in 2016, China pushed a merger of Baosteel and its rival Wuhan Iron and Steel Group Co., almost doubling Baosteel's capacity.[18] Of note, the U.S.-China Economic and Security Review Commission has commented that "[g]lobally, China's continued support for its steel industry has created a worldwide glut in production, weakening international prices and forcing U.S. and other foreign firms to curtail production, shed capacity, cut employment, and reduce capital expenditures."[19] Importantly, the growth of China's steel industry over the past four decades is not just a *consequence* of its overall economic development—it is credited as one of the drivers of this economic transformation, and it would be a mistake to overlook the Chinese steel industry's role as an arsenal in the CCP toolkit.[20]

B. Argentina

Many U.S. exporters remain concerned about Argentina's overly broad use of non-automatic import licensing[21] and trade balancing requirements. USTR has recognized that "Argentina has imposed a number of customs and licensing procedures and requirements, which make importing U.S. products difficult."[22] This continues to be a problem. In December 2015, the National Tax Agency (AFIP) in Argentina established a Comprehensive Import Monitoring System (SIMI) to manage automatic or non-automatic licenses and in July 2017, it reorganized the licensing system.[23] 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, following by review of the application by the appropriate Argentine government agencies.[24] As of December 2018, Argentina "maintain[s] non-automatic import licensing requirements on 10,571 12-digit tariff lines, including on products the

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18 Chuin-Wei Yap, *How China Built a Steel Behemoth and Convulsed World Trade*, The Wall Street Journal (Dec. 24, 2018), *available at* https://on.wsj.com/2SUK9EM. The Baosteel Group has also recently announced plans to take a majority stake in Chinese stainless steel producer Taiyuan Iron & Steel, which will increase its combined crude steel capacity to 111 million MT per year. *China's Baowu buys stake in TISCO, making a steel giant even larger*, S&P Global (Aug. 21, 2020), *available at* https://www.spglobal.com/platts/en/market-insights/latest-news/metals/082120-chinas-baowu-buys-stake-in-tisco-making-a-steel-giant-even-larger.

19 Katherine Koleski, *The 13th Five-Year Plan*, U.S.-China Economic and Security Review Commission (Feb. 14, 2017) at 18, *available at* https://bit.ly/3793SZJ.

20 Chuin-Wei Yap, *How China Built a Steel Behemoth and Convulsed World Trade*, The Wall Street Journal (Dec. 24, 2018), *available at* https://on.wsj.com/2SUK9EM.

21 *See* U.S. Department of State, *2017 Investment Climate Statements: Argentina* (June 29, 2017) ("The private sector has complained of delays in getting some products that are subjected to non-automatic licenses into the country"); *see also* WTO Trade Policy Review Body, *Trade Policy Review Report by the Secretariat: Argentina*, WT/TPR/S/277 (Feb. 13, 2013) at ix, 122; *Exporting to Argentina*, export.gov (Apr. 7, 2015).

22 USTR, *2016 National Trade Estimate Report on Foreign Trade Barriers* at 26.

23 USTR, *2019 National Trade Estimate Report on Foreign Trade Barriers* at 23 ("USTR 2019 NTE Report").

24 *Id.*

government deems import sensitive, such as automobiles… iron and steel."[25] In January 2020, Argentina published Resolution 1/2020, which decreased the validity period of these licenses to 90 days and added additional covered HTS codes for numerous products, including HTS codes covering steel pipes and iron foundry products.[26]

Additionally, Argentina often requires importers of goods to undertake certain commitments, prohibits the import of many used capital goods, provides tax credits to automotive manufacturers for the purchase of locally-produced automotive parts and accessories incorporated into specific types of vehicle, maintains conformity assessment requirements that obligate foreign manufacturers and importers to obtain safety certifications from Argentine certification bodies, and arbitrarily enforces certificate of origin rules and requirements.[27]

C. 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.[28] Due in part to these protectionist barriers, Brazil was the sixth biggest net exporter of steel in 2019, with 11 million MT in net exports.[29]

1. Increased Tariffs on Steel Products

In 2012, the Brazilian government significantly increased import duties on steel products in order to protect its local manufacturing sector, despite U.S. concerns.[30] The Brazilian government later reduced but did not eliminate the import tariffs on certain steel products, due to domestic supply shortages in Brazil.[31] 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 adjusts to protect its manufacturing sector, U.S. exporters face great uncertainty in the Brazilian market, making it difficult for U.S.

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25 *Id.*

26 *Ministerio de Desarrollo Productivo Secretaria de Industria, Economia del Conocimiento y Gestion Comercial Externa*, Resolucion 1/2020 (Jan. 8, 2020), *available at* https://www.boletinoficial.gob.ar/detalleAviso/primera/224467/20200109.

27 USTR 2019 NTE Report at 25.

28 *See* WTO Trade Policy Review Body, *Report By the Secretariat - Brazil* (June 12, 2017) at 45, https://www.wto.org/english/tratop_e/tpr_e/s358_e.pdf.

29 World Steel Association, *World Steel in Figures 2019* at 27.

30 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).

31 *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).

exporters to forecast the costs of doing business in Brazil.[32] In July 2015, the MERCOSUR Common 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.[33]

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

2. Customs Barriers and Trade Facilitation

The Brazilian government continues to impose a 25 percent merchant marine tax on ocean freight plus port handling charges at Brazilian ports through its Merchant Marine Renewal Tax.[34] This tax puts U.S. products, including U.S.-produced steel products, at a competitive disadvantage vis-à-vis MERCOSUR products.

3. 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.[35] 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.[36]

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.[37] As the U.S. Commercial

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32 USTR, *2020 National Trade Estimate Report on Foreign Trade Barriers* at 59 ("USTR 2020 NTE Report").
33 *Id.*
34 *Id.* at 62. *See also* Rosaliene Bacchus, *Understanding Brazil's Taxes on Import*, Brazil Explore Magazine (Apr. 2010).
35 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").
36 *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) ("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").
37 *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);

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."[38] While wind turbine suppliers of any nationality are eligible to receive preferential BNDES financing, it is contingent on the wind towers using at least 70 percent Brazilian steel, and photovoltaic suppliers must use 60 percent Brazilian-made components by 2020.[39]

There are also strict rules in Brazil imposing local content restrictions in activities related to offshore oil and gas exploration activities. In 2018, the Brazilian National Petroleum Agency (ANP) implemented revised requirements for the use of local content for oilfield developments. This revision from a previous rule lowers certain requirements, but mandates that companies must use 50 percent local content for oil and natural gas exploration and production for onshore projects, 18 percent for offshore exploration, and ranging from 25 to 40 percent for offshore oil and natural gas production.[40] 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.[41]

D. 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 customs 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.[42] Russia agreed to decrease its tariffs on industrial goods very modestly from 9.5 percent to 7.3 percent,[43] and on capital goods and equipment to about 5 percent.[44] Although Russia

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Department of Commerce, International Trade Administration, *2015 Top Markets Report Renewable Energy: A Market Assessment Tool for U.S. Exporters* (July 2015).

38 Department of Commerce, U.S. Commercial Service, *2014 Country Commercial Guide for U.S. Companies: Doing Business in Brazil* (Sept. 9, 2014).

39 USTR, *2018 National Trade Estimate Report on Foreign Trade Barriers* at 57 ("USTR 2018 NTE Report").

40 Jeff Flick, *Brazil's ANP approves revised local content rules, appeases shipbuilders*, S&P Global (Apr. 12, 2018).

41 KPMG, *Taxation of Cross-Border Mergers and Acquisitions: Brazil* (Apr. 2016) at 4; Ernst & Young, *TradeWatch* (Mar. 2014) at 9.

42 *See* Russia Working Party Report, *Schedule CLXV - The Russian Federation, Addendum, Part I - Schedule of Concessions and Commitments on Goods*, WT/ACC/RUS/70/Add.1 (Nov. 17, 2011).

43 *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).

44 USTR, *United States, Russia Sign Bilateral WTO Market Access Agreement: Negotiations on WTO Membership Now Move to the Multilateral Phase* (Nov. 19, 2006).

has reduced its tariffs on certain steel products,[45] 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. Additionally, while Russia simplified its licensing regimes when it became a WTO member, the processes to obtain an import license remains burdensome.[46]

In July 2018, the Russian government instituted tariffs ranging from 25 to 40 percent on a wide-range of industrial products imported from the United States, including construction machinery and other steel-containing goods, in retaliation for the Section 232 steel and aluminum tariffs adopted by the U.S. government in March 2018.[47] AISI agrees with the U.S. government that Russia should "work with the United States to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American workers and companies."[48]

Russia also imposes local content requirements for wind energy projects.[49] The level of local content required of wind turbine equipment is currently 65 percent.[50] Draft regulations show the Russian government plans to tighten these requirements even more by limiting the maximum foreign share of components in wind-power equipment to 80 percent in 2021. Additionally, reports suggest that developers that export at least 8 percent of their costs receive additional state subsidies.[51]

In January 2017, the Russian government expanded its list of goods for national defense and services that must be locally sourced.[52] The government's list grew from 11 items to 132, and includes stainless steel pipes and tubs, as well as certain fabricated metal products.[53] Russia also recently expanded its Russian-origin government procurement

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45 *See* USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) at 9.
46 USTR 2018 NTE Report at 392.
47 USTR 2019 NTE Report at 412.
48 USTR, *2018 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Feb. 2019) at 10.
49 *See* Stefan Gsanger and Roman Denisov, *Perspectives of the wind energy market in Russia*, Freidrich Ebert Stiftung Russische Foderation and World Wind Energy Association (Mar. 2017) at 9; *see also* Eugene Gerden, *Russia eases local content rules*, Wind Power Monthly (July 20, 2015).
50 *See* Eugene Gerden, *Russia Sets New Rules and Steep Penalties for Wind Developers*, Wind Power Monthly (June 12, 2020).
51 *Id.*
52 *See* Global Trade Alert, *Russian Federation: Public procurement legal amendments that affect a wider group of goods* (Jan. 24, 2017) (last visited Oct. 1, 2017), *available at* http://www.globaltradealert.org/intervention/56403.
53 *Id.*

requirements beyond branches of the Russian government itself.[54] It now prohibits even some state enterprises from purchasing certain imported products, many of which are steel-containing goods like automobiles, metal products and heavy machinery.[55] These "import substitution" policies were expanded through the June 2015 Law on Russian Industrial Policy.[56] In August 2016, Russia informed members of the WTO Agreement on Government Procurement (GPA) of its intent to initiate negotiations to join the GPA.[57] In 2019, Russia expanded these limits to cover certain foreign-made electronics.[58] Russia also adopted additional resolutions that ban foreign products from the system of public procurement and requiring that foreign products cannot be purchased if there are at least two bids originating in Russia or any other Eurasian Economic Union (EAEU).[59]

In its 2020 Report to Congress on Russia's commitments relating to its WTO obligations, USTR noted that since Russia joined the WTO in 2012, "Russia has introduced a number of measures that establish preferential treatment for domestically or [EAEU] produced goods in public procurement such as a 15 percent prince preference for goods of EAEU origin in purchases for government use."[60] The USTR report goes on to comment that Russia has outright banned certain import products, such as construction and building materials, from consideration in government procurement processes if it is produced in the EAEU.[61] AISI supports efforts by the U.S. government and other WTO members to address the adoption of discriminatory government procurement practices against imports by the Russian government.

E. <u>Japan</u>

A variety of non-tariff barriers have traditionally impeded access to Japan's automotive market by U.S. automakers and auto parts suppliers.[62] These barriers include: "issues

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54 *See* USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) at 4.

55 *See, e.g.*, *id.*; *Import substitution in Russia - Mechanical and electrical engineering and metal industries*, CMS (June 16, 2016); WTO, *Report on G20 Trade Measures (Mid-October 2015 to Mid-May 2016)* (June 21, 2016) at 80.

56 *See, e.g.*, USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) at 30; *Import substitution in Russia*, Swedish Chamber of Commerce for Russia & CIS (Apr. 14, 2016) at 5-7.

57 *See* USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) 35; Julien Gourdon, James Messent, *How government procurement measures can affect trade*, OECD Trade Policy Papers No. 199, TAD/TC/WP(2015)26/FINAL (Feb. 8, 2017) at 16.

58 USTR, *2019 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Feb. 2020) at 38.

59 European Union Market Access Database, *Government Procurement: Buy Russian* (July 30, 2020) https://madb.europa.eu/madb/barriers_details.htm?isSps=false&barrier_id=11271.

60 USTR, *2019 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Feb. 2020) at 37.

61 *Id.*

62 USTR 2019 NTE Report at 291.

relating to unique standards and testing protocols; an insufficient level of transparency, including the lack of sufficient opportunities for input by interested persons throughout the process of developing regulations; and hindrances to the development of distribution and service networks." 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 consumers from importing steel and many steel-containing goods, thus leading to gross disparities in Japan's steel trade. In 2019, Japan exported 33.1 million MT of steel to the world, ranking second worldwide behind China.[63] Japan's export volume was approximately half that of China's, despite Chinese steel production being almost ten times larger than Japanese production.[64] In 2019, Japan had net exports of 26.7 million MT of steel and its steel exports, as a share of production, were 33.3 percent. In comparison, the United States had net imports of 19.8 million MT of steel, and its steel exports, as a share of production, were 8.3 percent.[65] According to the Commerce Department's Global Steel Trade Monitor, imports of Japanese steel products to the U.S. market totaled 1.18 million MT in 2019, while U.S. steelmakers only exported 15,400 MT of steel products to Japan.[66] 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.[67]

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[63] 2020 World Steel in Figures, World Steel Association at 27, *available at* https://bit.ly/2SVG4Aa.

[64] *Id.* at 9, 27.

[65] *Id.*

[66] International Trade Administration, Global Steel Trade Monitor, *available at* https://www.trade.gov/steel/global-monitor.asp.

[67] *See, e.g.*, *Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products From Japan*, 84 Fed. Reg. 38,001 (Dep't Commerce Aug. 5, 2019) (final results of expedited first five-year sunset review) (finding revocation would be likely to lead to continuation or recurrence of dumping); *Welded Large Diameter Line Pipe From Japan*, 84 Fed. Reg. 1,059 (Dep't Commerce Feb. 1, 2019), (final results of expedited third five-year sunset review) (finding revocation would be likely to lead to continuation or recurrence of dumping); *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 Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom*, 81 Fed. Reg. 67,962 (Dep't Commerce Oct. 3, 2016) (amended final affirmative antidumping deter. for Australia, the Republic of Korea, and the Republic of Turkey and antidumping duty orders); *Certain Cold-Rolled Steel Flat Products From Japan and the People's Republic of China*, 81 Fed. Reg. 45,956 (Dep't Commerce July 14, 2016) (antidumping duty orders); *Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4\1/2\ Inches) From Japan*, 79 Fed. Reg. 42,762 (Dep't

F. Indonesia

Indonesia has implemented various import policies that serve to protect its domestic steel industry. In its 2019 NTE Report, USTR explained that "Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia's market."[68] Additionally, over the last five years, Indonesia has periodically increased its applied tariff rates for a range of goods that compete with locally-manufactured products,[69] including "on foreign steel products to protect local steel producers from cheaper imports."[70] The duties, previously ranging from 0 to 5 percent, were increased to 15 percent.[71]

Like Japan, Indonesia has enacted barriers to shield its auto industry from foreign competition,[72] thereby limiting the export of U.S. vehicles and automobile parts to the country. This year, the Indonesian Industry Ministry increased local content requirements for vehicles from 60 percent to 90 percent.[73] This measure supports the Indonesian steel industry at the expense of U.S. steelmakers.

Additionally, the Indonesian government's National Industrial Development Masterplan for 2015 – 2035 (RIPIN),[74] promotes local content requirements for priority industries, such as the steel industry. To encourage the use of domestic products, the RIPIN states that the Indonesian government will "[p]rovid[e] incentives to private businesses that consistently use local product; [a]udit of compliance with the obligation to increase product use domestic; [e]ncourage products/ goods that are in the Inventory List of Goods/Services Domestic Production."[75] In short, the Indonesian government encourages domestic companies to use domestically sourced products, such as Indonesian steel, through various mechanisms.

Indonesian local content requirements are aided by efforts to increase Indonesian steel production. For instance, in 2017, Indonesian state-owned electric company PLN began construction on several power plants that will generate 10,000 MW of electricity using 40 percent local content.[76] PLN announced that it "will team up with several state-

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Commerce July 23, 2014) (prelim. results of the antidumping duty admin. review; 2012-2013) (calculating an antidumping duty assessment rate of 107.8 percent for Sumitomo Metal Industries, Ltd.).

68 USTR 2019 NTE Report at 265.

69 USTR 2018 NTE Report at 240.

70 Linda Yulisman, *Govt ups import duties to protect struggling domestic industry*, The Jakarta Post (May 5, 2015).

71 *Id.*

72 Matthew DeBord, *Ford is shutting down operations in Japan and Indonesia*, Reuters (Jan. 25, 2016).

73 Stefani Ribka, *Local content requirement for cars to hit 90% by 2019; Industry Ministry*, The Jakarta Post (Feb. 10, 2017).

74 Ministry of Industry, *Master Plan National Industrial Development 2015 – 2035* (June 2015).

75 *Id.* at 68.

76 *See* Viriya P. Singgih, *PLN seeks to boost local content to 40 percent*, The Jakarta Post (June 20, 2017).

owned enterprises to develop the plants, including … steel maker Krakatau Steel."[77] 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."[78] This combination of expanding domestic steel capacity through SEs, coupled with policies that encourage the Indonesian market to favor domestic steel, provides a two-fold advantage to Indonesian steel producers that puts U.S. companies trying to compete in that market at a significant disadvantage.

G. Malaysia

Malaysia currently institutes non-automatic import licensing requirements on nearly a dozen tariff lines of alloy steel and pipe products, as well as several steel-containing goods, such as certain types of motor vehicles.[79] 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.[80] In April 2017, the Malaysian government imposed "definitive and final safeguard duties on steel, wired rods and deformed bar in coils (steel wire rods) imported into Malaysia,"[81] beginning with a safeguard duty of 13.9 percent and reducing to 12.9 and 11.9 percent in the following two years.

H. Canada

Canada's provincial governments of Quebec and Ontario have local content requirement programs that act as trade barriers protecting Canada's domestic steel and renewable energy equipment industries. Hydro-Quebec and the Ontario Power Authority provide electricity in Quebec and Ontario respectively and purchase renewable electricity from wind farms at long term feed-in-tariff (FIT) rates. These FIT rates are set prior to construction and are required before a wind farm is built. Both Quebec and Ontario offer higher FIT rates contingent on local content requirements

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[77] *Id.*

[78] *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*, The Jakarta Post (July 26, 2016).

[79] *See List of Products That Require Import and Export Licenses Under MITI – Issuance of Licenses for Import/Export of Items Listed in the Custom Prohibition of Import/Export Order Under the Customs Act 1967*, *available at* http://www.miti.gov.my/miti/resources/Approve%20Permit/Guidelines/Issuance_of_Licenses_for_Import.pdf.

[80] *Najib announces measures to strengthen Malaysia's economy*, The Star Online (Jan. 20, 2015).

[81] International Tax Review, *Malaysia High Court backs safeguard duties for the steel sector* (July 13, 2018), *available at* https://www.internationaltaxreview.com/article/b1f7mzxpf1d25x/malaysia-high-court-backs-safeguard-duties-for-the-steel-sector.

such as steel wind towers or internal metal components being used in construction of the wind farms.

While both the Quebec and Ontario renewable energy FIT programs have local content requirements, Ontario's program goes a step further by requiring the use of steel produced in Ontario. Algoma, a Canadian steel company recently emerging from bankruptcy, is the only steel company in Ontario that produces the required steel plate used in wind towers. Ontario's local content program was challenged at the WTO and in 2014, Ontario's government stopped issuing new tenders and began phasing out the program. However, while the program is being wound down, there are still several tenders outstanding for wind farms that are either under construction or in various planning stages. Further, Quebec's local content program is still in effect and represents a significant trade barrier to both the U.S. steel and renewable energy equipment industries.

I. Other Recently Imposed Import Barriers

- In May 2020, Saudi Arabia increased its customs rates for metal products including iron or non-alloy steel, stainless steel, alloy steel, wire, pipes and tubes, and steel bolts from 5 percent to 20 percent.[82]

- The Dominican Republic applies a number of non-tariff trade barriers that have significantly hindered U.S. exports of rebar.[83] These barriers include those set forth in Dominican Quality Norm RTD 458,[84] which includes (1) product requirements that are more stringent than similar U.S.- and internationally-recognized standards; (2) discriminatory quality testing assessment measures in favor of domestic suppliers; and (3) an overly onerous import licensing scheme. In prior years, as a result of these barriers, AISI understands that Dominican authorities have detained U.S. rebar shipments at the port on several different occasions. However, as a result of the U.S. government's involvement from 2017 to the present,[85] the Dominican government has offered an alternative means of rebar certification, which has helped to facilitate U.S. rebar exports to the Dominican Republic. AISI commends the administration for its efforts and encourages the U.S. government to continue to monitor the situation to ensure that exports are cleared through Customs without delays or additional restrictions.

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82 *See* Ernst & Young, *Saudi Arabia increases customs duty rates on imports* (June 1, 2020), *available at* https://www.ey.com/en_gl/tax-alerts/saudi-arabia-increases-customs-duty-rates-on-imports.

83 *See* USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers* at 111-112 ("USTR 2017 NTE Report") ("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").

84 USTR 2019 NTE Report at 137; USTR 2020 NTE Report at 143.

85 USTR 2019 NTE Report at 137; USTR 2020 NTE Report at 143.

- In April 2019, the government of Egypt temporarily imposed import duties of 15 percent on iron billets and 25 percent on steel rebar for 180 days in an effort to protect its domestic steel industry from unfair competition. This is in addition to five-year tariffs put in place in 2017 on imports of steel rebar from China, Turkey and Ukraine.[86]

- In June 2019, the government of India imposed retaliatory measures on the United States covering $1.4 billion of goods of 28 products, including finished metals, with tariffs as high as 70 percent.[87] Before this announcement, India maintained 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.[88]

- Since mid-2014, Turkey has increased tariffs by an average of 26 percent on products across 50 different Harmonized System chapters, including steel.[89] Turkey imposes tariffs of up to 40 percent on steel products, including on flat-rolled steel coils, cold-rolled products of stainless steel, and certain bar and wire rod.[90] Turkey also imposes "additional customs duties" on several steel products.[91] For instance, in January 2017, Turkey issued additional customs duties of 30 percent on certain steel pipe and tube.[92] In June 2018, in response to the imposition of Section 232 tariffs on steel and aluminum, Turkey raised tariffs on $266.5 million worth of U.S. goods.[93] In April 2020, Turkey again raised

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86 *Egypt imposes temporary duties on 15 pct on iron billets, 25 pct on steel rebar*, Reuters (Apr. 15, 2019), *available at* https://www.reuters.com/article/egypt-economy-steel/update-1-egypt-imposes-temporary-duties-of-15-pct-on-iron-billets-25-pct-on-steel-rebar-idUSL5N21X1I0.

87 Vindu Goel, *India Raises Tariffs, Escalating Trade Fight with Trump*, The New York Times (June 15, 2019), *available at* https://www.nytimes.com/2019/06/15/business/india-tariffs-trade-trump.html.

88 *See Central Excise Tariff 2016-17*, Central Board of Excise and Customs (June 30, 2016) (last visited Oct. 5, 2017), *available at* http://www.cbec.gov.in/htdocs-cbec/excise/cxt-2016-17-new/cxt-1617-june16-idx; *Section XV – Chapter 72 – Base Metals and Articles of Base Metal*, Central Board of Excise and Customs (June 30, 2016) (last visited Oct. 5, 2017), *available at* http://www.cbec.gov.in/resources//htdocs-cbec/excise/cxt-2016-17-new/chap72.pdf; *Section XV – Chapter 73 – Articles of iron and steel*, Central Board of Excise and Customs (June 30, 2016) (last visited Oct. 5, 2017), *available at* http://www.cbec.gov.in/resources//htdocs-cbec/excise/cxt-2016-17-new/chap73.pdf.

89 USTR 2019 NTE Report at 483.

90 *Id.*; WTO, *Trade Policy Review Report: Turkey 2016* at 198.

91 *See* Ernst & Young, *Trade Watch*, Vol. 16, Issue 1 (Mar. 2017) at 33-34 (last visited Oct. 1, 2017), *available at* http://www.ey.com/Publication/vwLUAssets/ey-tradewatch-2017-vol-16-issue1/$FILE/ey-tradewatch-2017-vol-16-issue1.pdf (indicating application of additional customs duty of 25% on iron and steel wire and rod, as of July 5, 2015).

92 *See* Orçun Çetinaya, *Turkey: Turkish Trade Remedies – January 2017*, Mondaq.com (Feb. 8, 2017); *Turkey imposes additional customs duty on certain pipe imports*, SteelOrbis (Jan. 19, 2017); Global Trade Alert, *Turkey: The government increased the import tariffs on pipes, profiles, engines, pumps, generators, tractors and gearboxes* (Jan. 18, 2017).

93 *See* Turkey Country Commercial Guide, *Turkey – Import Tariffs*, Export.gov (June 17, 2019).

import duties on steel products, imposing an additional 30 percent import tariff that was in effect from April 15, 2020 until Sept. 30, 2020, and has since dropped to 10 percent.[94] Additionally, Turkey raised import duties on steel products 5 percent higher for imports from Generalized System of Preferences countries and countries with which Turkey does not have a preferential trade agreement.

III. 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 steelmakers and other manufacturers. These export barriers include, but are not limited to, 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 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.[95] The result is an increase in costs throughout the production chain, from intermediate to finished goods, as well as other distortions throughout the global economy. Some of the most restrictive global export barriers, which negatively affect the U.S. and global steel industries, are described below.

A. China

China supplies 85–95 percent of the world's demand for rare earths,[96] and for years, the Chinese government 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. China has moved to strengthen state control over the rare earths industry in a manner that may also result in *de facto* restraints on exports of these raw materials. At the beginning of 2015, the Chinese Ministry of

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94 Ernst & Young, *Turkey Introduces new Additional Customs Duties, temporarily amends current duties* (Apr. 23, 2020), *available at* https://taxnews.ey.com/news/2020-1098-turkey-introduces-new-additional-customs-duties-temporarily-amends-certain-current-duties?uAlertID=Sd%2FG8rua1oj6%2Fl58EZ2AiA%3D%3D#:~:text=On%2018%20April%202020%2C%20Presidential,products%2C%20sports%20goods%20and%20machinery.

95 *See* OECD, *Steelmaking Raw Materials: Market and Policy Developments*, DSTI/SU/SC(2012)1/FINAL (Oct. 11, 2012) at 57 ("OECD, *Steelmaking Raw Materials 2012*"); Presentation of the Secretariat for the 81st Steel Committee Meeting, *Item 4. Developments in Markets for Steelmaking Raw Materials: Assessing the Gains from More Open Export Policies* (Sept. 8, 2016) at 2.

96 *See* Robert Castellano, *A new China rare earth embargo would damage several U.S. companies' technology competitiveness*, Seeking Alpha (June 28, 2018), *available at* https://bit.ly/3iZCjEC.

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 state enterprises by the end of 2015.[97] To support these efforts, extraction and production quotas have been granted exclusively to these six enterprises and their subsidiaries.[98]

Chinese monopolization of the rare earths industry is a vital part of China's plan to develop integrated supply chains.[99] Despite two WTO Dispute Settlement Body findings that China's export restrictions on raw materials are inconsistent with its WTO obligations, China appears to have no intention of ending its use of such restraints to advance its trade and industrial agenda. In July 2016, the U.S. initiated a third challenge against China over its export duties on nine key raw materials at the WTO.[100] The raw materials, including copper, magnesia, tin, among others, are critical for the competitiveness of American manufacturing. China's export duties artificially raised the prices of these materials for global manufacturers across industries ranging from wind energy to defense.[101] AISI agrees with USTR that it is "deeply concerning that the United States has been forced to bring multiple cases to address the same obvious WTO violations."[102]

Supply chain issues during the COVID-19 pandemic have highlighted the importance of diversifying China's sources for inputs.[103] Since rare earths constitute a small portion

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97 Yang Meng, *Six Major Rare Earths Groups Already Making Moves, Reorganization Must Show Concrete Progress by Year's End*, Securities Daily (Jan. 28, 2015).

98 *Notice of the Ministry of Industry and Information Technology Regarding Promulgation of the First 2017 Rare Earths Production Control Plan*, Gong Xin Bu Yuan [2017] No. 55;

99 In 2016, MIIT also issued a *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. 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, 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 state enterprise 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. *Notice of the Ministry of Industry and Information Technology Regarding Publication of the Rare Earths Industry Development Plan (2016-2020)* Gong Xin Bu Gui [2016] No. 319 (Sept. 29, 2016) at 11-12, 27.

100 USTR, *United States Challenges China's Export Duties on Nine Key Raw Materials to Level Playing Field For American Manufacturers* (July 13, 2016).

101 *See* Robert Castellano, *A new China rare earth embargo would damage several U.S. companies' technology competitiveness* (June 28, 2018); Barbara Lewis and Ernest Sheyder, *China cutting rare earth output, unnerving global manufacturers*, Reuters (Oct. 24, 2018), *available at* https://bit.ly/2H8mvCk; Panos Mourdoukoutas, *China Threatens To Cut Rare Earths Suppliers To the U.S. – Bad Idea*, Forbes (May 16, 2019), *available at* https://bit.ly/3k1YAmr.

102 USTR 2019 NTE Report at 103.

103 Jamie Smyth, *US-China: Washington revives plans for its rare earths industry*, Financial Times (Sept. 14, 2020), *available at* https://on.ft.com/3nObbMr.

of manufacturing costs, individual manufacturers or industries often do not have the means to prioritize developing alternative sources.[104] Experts emphasize that developing alternative sources of rare earths—it can take a decade to develop a sustainable source--may require a level of funding that only governments have access to.[105] With some of China's own sources for key raw materials at risk, the possibility that it resorts to more export restraints increases.[106]

B. India

As noted above, India surpassed Japan as the world's second-largest steel producer in 2019,[107] and the OECD calculates that Indian steelmaking capacity will increase to 142.1 million MT by 2022.[108] India also ranks among the world's leading producers of many critical raw materials, including coal, iron ore, manganese ore, chromite, zinc, bauxite, and aluminum.[109] Despite substantial reserves of such materials,[110] 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 used in steel production.[111]

1. Export Taxes and Other Restrictions

The Indian government has been aggressively attempting to make Indian steel more globally competitive, and it set a goal in 2017 to reach capacity of 300 million MT and production of 250 million MT by 2030.[112] To achieve its goals, the Indian government committed to "ensur[ing] availability of raw materials like iron ore, coking coal and non-coking coal, natural gas [,] etc. at competitive rates."[113]

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104 *Id.*

105 *Id.*

106 Andy Home, *Pressure builds on China's raw materials supply chains*, Reuters (Apr. 2, 2020), *available at* https://reut.rs/2Fsgwri.

107 OECD, *Latest developments in steelmaking capacity*, DSTI/SC(2019)3/FINAL (Mar. 2019) at 13, *available at* https://bit.ly/3lNpP4B; OECD, *Latest Developments in Steelmaking Capacity 2020*, DSTI/SC(2020)3/FINAL (June 2020) at 14, *available at* https://bit.ly/2SSY2DB.

108 OECD, *Latest Developments in Steelmaking Capacity 2020*, DSTI/SC(2020)3/FINAL (June 2020) at 14, *available at* https://bit.ly/2SSY2DB at 14.

109 India Brand Equity Foundation, *Metals and Mining* (Sept 4. 2020) (last visited Oct. 13, 2020), *available at* https://www.ibef.org/industry/metals-and-mining.aspx.

110 *Id.*; U.S. Geological Survey, *Mineral Commodity Summaries* (2020) at 21 31, 47, 105, *available at* https://pubs.usgs.gov/periodicals/mcs2020/mcs2020.pdf.

111 USTR 2019 NTE Report at 245-246.

112 *See* Draft Steel Scrap Policy (June 28, 2019) (last visited Oct. 12, 2020), *available at* https://steel.gov.in/policies/draft-steel-scrap-policy-seeking-comments-stake-holders; India National Steel Policy 2017 at 8.

113 *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) (last visited Oct. 13, 2020), *available at* https://www.firstpost.com/business/new-

Since 2008, India has imposed restrictions on certain critical raw materials, including iron ore, in the form of *ad valorem* export taxes.[114] 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[115] to "conserv[e] iron ore for domestic steel units."[116] In 2017, the Indian government increased the export duty on zinc from 5 percent to 7.5 percent,[117] as Indian galvanized steel producers were "planning to make additions to their existing [8 million tons] of capacit[y]."[118] The Indian government continues to signal that export restraints are critical for the development of the Indian steel industry, and the Indian steel sector, represented by the Federation of Indian Mineral Industries (FIMI), has been quick to advocate for raising export barriers when it thinks its supply is threatened. In May, after a rise of iron ore pellet exports to China, FIMI wrote a letter to the Indian Minister of Mines, calling for a ban on iron ore pellet exports.[119]

Such restrictions have a significant and troubling effect on exports.[120] "Having shipped just 4 million MT in 2015, India's 2016 iron ore exports [sky]rocketed to 22 million [MT]" when export duties were removed on low grade ore.[121] This confirms that India's trade distortive policies are limiting its supply of raw materials to world markets. The continuation of the 30 percent export duty for high-grade iron ore has limited export growth for all iron ore, and newspapers reported a stockpile of 162.85 MT of iron ore as of March 31, 2019.[122] In May 2020, the Chief Minister of Chhattisgarh ordered NMDC to reduce iron ore prices to provide relief to the local steel industry.[123]

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steel-policy-to-boost-domestic-products-use-invest-rs-10-lakh-cr-to-up-capacity-to-300-mn-t-by-2030-3422828.html.

114 *See* Unmesh Wagh, Department of Revenue, Government of India Ministry of Finance, *Notification No. 79/2008 and No. 66/2008 – Customs* (June 13, 2008).

115 USTR 2017 NTE Report at 218. *See also* OECD, *Steelmaking Raw Materials 2012* at 57; Rajesh Roy, *India Raises Iron Ore Export Tax*, Wall Street Journal (Jan. 2, 2012).

116 Jayajit Dash, *Iron ore exports to lose steam in FY18 on weak price outlook*, Business Standard (Apr. 21, 2017).

117 *See Metals and Mining*, India Brand Equity Foundation (last visited Oct. 5, 2017), *available at* https://www.ibef.org/industry/metals-and-mining.aspx.

118 *Galvanized Steel Products Catching Pace in India*, Steel360 (Dec. 17, 2016).

119 Sohrab Darabshaw, *Indian steel sector critical of rise of iron ore exports*, MetalMiner (May 15, 2020), *available at* https://agmetalminer.com/2020/05/15/indian-steel-sector-critical-of-rise-in-countrys-iron-ore-exports/.

120 *See* OECD, *Export Restrictions on Steelmaking Raw Materials: Examining Changes in the Stance of Policies Since 2009*, DSTI/SU/SC(2014)7 (June 2014) at 5.

121 *Core connections from mine to market*, WoodMackenzie (June 20, 2017), *available at* https://www.woodmac.com/ms/metals-mining/the-return-of-indian-iron-ore-exports-blip-or-trend/.

122 Budget 2020: FIMI pushes for exemption of export duty on iron ore, bauxite (Jan. 22, 2020) (last visited Oct. 12, 2020), *available at* https://www.deccanherald.com/business/budget-2020/budget-2020-fimi-pushes-for-exemption-of-export-duty-on-iron-ore-bauxite-796185.html.

123 Rashmi Drolia, *Chattisgarh: NMDC slashes iron ore prices after CM's* demand, Times of India (May 13, 2020).

Notably, India has the fifth largest bauxite reserves in the world,[124] and it maintains an export tax on bauxite to benefit Indian manufacturers.[125] As recently as April 2020, FIMI itself appealed to the government to waive the 15 percent export duty on bauxite,[126] as it was having difficulty competing with other, lower-priced bauxite sources, but AISI is not aware of any positive movement with respect to this request.

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).[127] India's current policy gives STEs the exclusive right to import and export certain minerals,[128] such as iron ore, manganese ore, and chrome ore.[129] 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.[130] MMTC, of which the Indian government owns a 90 percent stake, is annually responsible for a significant percentage of India's total iron ore exports.[131]

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 fellow government-owned National Mineral Development Corporation (NMDC) demonstrates the magnitude of state involvement

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124 *The shifts in the spatial structure of the world bauxite industry and Guinea's position in the industry*, Revista Espacios, Vol. 41, Art. 2 (June 11, 2020), *available at* https://www.revistaespacios.com/a20v41n21/a20v41n21p02.pdf.

125 *See* Dilip Kumar Jha, *Bauxite miners seek to abolish export duty*, Business Standard (Apr. 2, 2016).

126 Jayajit Dash, *As bauxite loses traction, Fimi seeks waiver of 15% duty on exports*, Business Standard (Apr. 23, 2020), *available at* https://www.business-standard.com/article/markets/as-bauxite-loses-traction-fimi-seeks-waiver-of-15-duty-on-exports-120042300518_1.html.

127 *See, e.g.*, Government of India Ministry of Commerce and Industry, *Foreign Trade Policy [1st April, 2015 – 31st March, 2020]* (Apr. 1, 2015) at 39, *available at* https://bit.ly/34YP5hB; Government of India Ministry of Commerce and Trade, *Foreign Trade Policy 2015-2020 extended for one year; Other immediate relief measures also announced*, *available at* https://bit.ly/3nSJzFW (extending policy to March 31, 2021).

128 Ministry of Commerce and Industry, Department of Commerce, Government of India, *Foreign Trade Policy*, 1st September 2004 – 31st March 2009 at 25.

129 Ministry of Steel, Export Policy for Iron Ore (last visited Oct. 13, 2020), *available at* http://steel.gov.in/policies/exportimport-policy-iron-ore.

130 Ministry of Steel, Export Policy for Iron Ore (last visited Sept. 27, 2018), *available at* http://steel.gov.in/policies/exportimport-policy-iron-ore.

131 MMTC website (last visited Oct. 13, 2020), *available at* http://mmtclimited.com/pages/display/107-minerals; Madhvi Sally, *MMTC's exports increased by 101% during Apr–Dec, 2019*, The Economic Times (Feb. 17, 2020), *available at* https://bit.ly/3j6AqWQ; *Government planning to sell 15 per cent stake in MMTC: CMD*, The Economic Times (last updated Dec. 3, 2016), *available at* https://bit.ly/3nQdWg8.

in the mining sector.[132] NMDC is India's largest iron ore miner,[133] and MMTC is its largest exporter of minerals. MMTC collects ore from other STEs, such as NMDC, as well as from smaller, private miners and offers it to world markets. Though reports of the government divesting its share have circulated since at least 2004 and recirculated earlier this year,[134] AISI is not aware of any steps towards divestiture.[135]

C. Indonesia

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.[136] In 2014, Indonesia imposed a complete ban on the export of unprocessed mineral ore exports.[137] Indonesia was expected to completely ban mineral ore concentrates in 2017;[138] 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 and washed bauxite.[139]

Specifically, in order to export these mineral concentrates, Indonesia requires that exporters satisfy the following requirements: convert their permit status from a

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132 *See, e.g.*, *Cabinet Approves Strategic Disinvestment In MMTC, NMDC, BHEL And Others*, Business World (Jan. 8, 2020), *available at* https://bit.ly/3nQbgPJ; Priyadarshi Siddhanta, *Iron ore export not profitable enough: NMDC*, The Indian Express (July 14, 2008), *available at* https://bit.ly/376ICnj.

133 *See, e.g.*, *NMDC LTD*, India Brand Equity Foundation (last visited Oct. 14, 2020), *available at* https://www.ibef.org/industry/metals-and-mining/showcase/nmdc-ltd; Swansy Afonso, *Iron Ore Has Surged Yet Top Miner in India Is Cutting Prices*, Bloomberg (Sept. 5, 2016), *available at* https://bloom.bg/3iZfuRw; *NMDC slashes iron ore prices*, The Economic Times (Dec. 4, 2014), *available at* https://bit.ly/2H7oTcc.

134 *See, e.g.*, *MMTC disinvestment after STC sell-off*, Economic Times (Apr. 4, 2004), *available at* https://bit.ly/3k1fYYy; ., *Cabinet Approves Strategic Disinvestment In MMTC, NMDC, BHEL And Others*, Business World (Jan. 8, 2020), *available at* https://bit.ly/3nQbgPJ.

135 Of note, since 2011, the Indian government has also restricted iron ore mining in the states of Karnataka and Goa, at times imposing an outright ban. Goa and Karnataka were India's first and second-largest sources of iron ore exports before the Indian Supreme Court banned mining in response to illegal mining complaints from environmental organizations. Swansy Afonso, *Vedanta's epic battle to restart iron ore mining in Goa to begin in Supreme Court next week*, The Print (Apr. 15, 2020), *available at* https://bit.ly/3nOo1u2; Saurabh Chaturvedi and Biman Mukherji, *India Iron Ore Exports May Slump on Mining Ban*, The Wall Street Journal (Mar. 28, 2013), *available at* https://on.wsj.com/3nTolry.

136 *See, e.g.*, *Indonesia sets new tax rates for mineral exports*, Reuters (Feb. 13, 2017); PwC, *Mining in Indonesia: Investment and Taxation Guide* (May 2017) at 45.

137 USTR 2018 NTE Report at 247.

138 *See, e.g.*, *Why Indonesia Keeps Putting off Its Export Ban*, Stratfor Worldview (Oct. 12, 2016).

139 *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).

"contract of work" to a "special mining license";[140] build a smelter within five years; and divest up to 51 percent of their company to local investors.[141] 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.[142] Indonesia also has an export licensing requirement for coking coal,[143] implemented in part to "ensure the fulfillment of [the] domestic need for coal."[144] However, licenses are difficult to obtain, with "[v]arious Indonesian mining companies [having] said that they had difficulty to secure the new export permits."[145]

Indonesia also implemented a full ban on the export of nickel ore in 2014 to ensure ample supply of raw materials at below cost for a newly-established stainless steel producer.[146] One Chinese company, Tsingshan, built a 3.0 to 3.5 million MT production stainless steel facility in Indonesia, almost exclusively for export markets to the United States and Europe, as Indonesian consumption of stainless steel products is well below the annual production capabilities at this facility.[147] According to the U.S. Geological Survey, last year Indonesia was the world's biggest mine producer of nickel, while also holding the largest reserves worldwide.[148] While the government of Indonesia in January 2017 announced a partial lifting of the export ban, a new ban on nickel ore

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140 *See* Fedina S. Sundaryani, *Govt issues eagerly awaited rules on mineral export ban relaxation*, The Jakarta Post (Jan. 12, 2017); Dave Forest, *Indonesia Just Rocked The Mining World With This Unexpected Move*, OilPrice.com (Jan. 16, 2017).

141 *See* Fedina S. Sundaryani, *Govt issues eagerly awaited rules on mineral export ban relaxation*, The Jakarta Post (Jan. 12, 2017); Dave Forest, *Indonesia Just Rocked The Mining World With This Unexpected Move*, OilPrice.com (Jan. 16, 2017).

142 *See Indonesia ushers in 2017 with changes to Mining Law*, Ashurst (Feb. 8, 2017).

143 Yoga Rusmana and Fitri Wulandari, *New Rules in Indonesia Require Coal Exporters to Have Licenses*, Bloomberg (July 24, 2014); PwC, *Mining in Indonesia: Investment and Taxation Guide* at 24, 26-27.

144 Indonesia Ministry of Trade, *Regulating the Coal Mining Business, The Ministry of Trade Issues Trade Minister Regulation Number 39 Year 2014*, Press Release (July 24, 2014).

145 *See Coal Mining in Indonesia: Coal Production & Export Update*, Indonesia-Investments (Nov. 27, 2014).

146 *China's stainless sector facing tough March: Tsingshan*, Fastmarkets AMM (Feb. 28, 2019), *available at* https://www.amm.com/Article/3314585/Chinas-stainless-sector-facing-tough-March-Tsingshan.html.

147 In November 2017, a 50-50 joint venture was announced between U.S.-based Allegheny Technologies and an affiliate of the Tsingshan Group to produce stainless steel sheet in North America using Indonesian redi-to-roll slabs, which are then hot rolled into coils in the United States. Grace Lavigne Asenov, *ATI, Tsingshan form stainless sheet venture (update)* Fastmarkets AMM (Nov. 2, 2017), *available at* https://www.amm.com/Article/3763984/ATI-Tsingshan-form-stainless-sheet-venture-update.html. Further, in in February 2019, a Chinese consortium led by Contemporary Amperex Technology Ltd and Tsingshan began working on a lithium battery industrial park in Sulawesi, Indonesia. In July 2020, Tsingshan expanded their investment to $15 billion and shortly thereafter Indonesia re-implemented a complete ban on nickel exports for 2020 through 2022. *A Chinese Steel Giant Is Upsetting the Global Nickel Market*, Bloomberg (Nov. 1, 2019), *available at* https://www.bloomberg.com/news/articles/2019-11-01/the-chinese-steel-giant-that-s-roiling-the-global-nickel-market.

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

exports went into effect in January 2020, two years earlier than originally planned.[149] As a result of this action by the Indonesian government, in November 2019, the European Union filed a complaint at the WTO on Indonesia's export bans and policies on nickel ore in particular, as well as scrap, coal and coke, iron ore and chromium.[150] AISI applauds the U.S. government's request to join the consultations in this case.[151]

Ultimately, these nickel export restrictions have encouraged foreign steelmakers to invest heavily in Indonesia to take advantage of the export ban at the expense of U.S. steelmakers. For instance, the 50-50 joint venture between U.S.-based Allegheny Technologies (ATI) and an affiliate of the a Chinese steelmaker, Tsingshan Group, to produce stainless steel sheet in North America using Indonesian redi-to-roll slabs, which are then hot rolled into coils in the United States, [152] takes advantage of this market-distorting nickel export ban. Meanwhile, in August, the second largest Chinese stainless steel producer, Taiyuan Iron and Steel (TISCO) announced that it plans to develop an integrated stainless steel operation in Indonesia.[153] AISI encourages USTR to work with its counterparts, particularly in Europe, to address these illegal export restrictions.

D. <u>Other Global Export Restrictions</u>

The OECD has identified a significant number of export restrictions on raw materials used in steelmaking by various countries.[154] For example:

- Argentina imposes a 5 percent export duty on iron and steel scrap.[155]

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149 Bernadette Christina, "Indonesian nickel miners consider selling ore locally ahead of 2020 ban, Reuters (Nov. 12, 2019), *available at* https://www.reuters.com/article/us-indonesia-nickel/indonesian-nickel-miners-consider-selling-ore-locally-ahead-of-2020-ban-idUSKBN1XM1QS.

150 Philip Blenkinsop, *EU takes Indonesia to WTO over nickel ore export curbs*, Reuters (Nov. 22, 2019), *available at* https://www.reuters.com/article/us-eu-indonesia-trade/eu-takes-indonesia-to-wto-over-nickel-ore-export-curbs-idUSKBN1XW1D8.

151 DS592: Indonesia – Measures Relating to Raw Materials, World Trade Organization, *available at* https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm.

152 Grace Lavigne Asenov, "ATI, Tsingshan form stainless sheet venture (update)", Fastmarkets AMM (Nov. 2, 2017), *available at* https://www.amm.com/Article/3763984/ATI-Tsingshan-form-stainless-sheet-venture-update.html.

153 Jack Anderson, "Nickel: TISCO signs contract for integrated Indonesian stainless steel project," *Roskill* (Aug. 20, 2020), *available at* https://roskill.com/news/nickel-tisco-signs-contract-for-integrated-indonesian-stainless-steel-project/.

154 OECD, *Export Restrictions in Raw Materials* at 27-32; Directorate-General for External Policies, Policy Department, *Trade in Commodities: Obstacles to Trade and Illegal Trade* (2015) at 18-20.

155 USTR 2020 NTE Report at 33.

- China, Vietnam, and Indonesia all impose taxes on exports of coking coal, at the rate of 10 percent, 15 percent, and 5 percent, respectively.[156] China has an export quota on coking coal.[157]

- Malaysia imposes a non-automatic export licensing requirement on exports of minerals and ores.[158] In addition, Malaysia frequently imposes periodic bans on bauxite mining, most recently doing so in January 2016[159] and only lifting this ban in early 2020.[160] During these periods, no new export permits were granted.

- Vietnam continues to impose a 40 percent export tax on iron ore, and a 22 percent export tax on nickel, cobalt, aluminum, lead, and zinc ores and concentrates.[161] Further, Vietnam imposes a 10 to 15 percent export tariff on coal, which the government has refused to lower.[162]

- Russia imposes a 30 percent export tax on natural gas.[163]

E. 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 steel input.[164] 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.

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156 *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) at 60, 173 ("2013 WTO Trade Policy Review Report: Vietnam"). 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*, S&P Global (Nov. 13, 2014).

157 *See* WTO Trade Policy Review Body, *Trade Policy Review Report by the Secretariat: China*, WT/TPR/S/342 (June 15, 2016) at 75, Table 3.11.

158 USTR 2018 NTE Report at 318.

159 *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).

160 Denise Heckbert, *Malaysia reverses production ban on bauxite*, The Northern Miner (Feb. 6, 2020), *available at* https://www.northernminer.com/commodities-markets/malaysia-poised-to-produce-bauxite/1003813664/.

161 *See MoF maintains raw iron export tax*, Viet Nam News (July 13, 2017). OECD, *Export Restrictions in Raw Materials* at 29. *See also Vietnam metallurgy association raises alarm over illegal iron ore exports to China*, Tuoi Tre News (Aug. 2, 2014); *Has iron ore been smuggled across the border?*, Vietnam.net (Dec. 2, 2014); 2013 WTO Trade Policy Review Report: Vietnam at 173, Table A3.5.

162 *See Finance Ministry refuses to cut tax rates for coal industry*, Vietnam.net (July 31, 2017).

163 *See* USTR 2018 NTE Report at 396.

164 OECD, *Steelmaking Raw Materials 2012* at 56; Presentation of Eric Harris, OECD/South Africa Workshop on Steelmaking Raw Materials (Dec. 11, 2014) at 9.

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 U.S. steelmakers that use electric arc furnaces for production as scrap is the primary input. Other key U.S. industries affected include foundries, construction, automotive manufacturing, and appliances. The problem impacts 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,[165] 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. Among others, the following countries have imposed complete bans on scrap exports: Argentina;[166] Azerbaijan;[167] Ghana;[168] Guyana;[169] Indonesia;[170] Kazakhstan;[171]

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165 *See* K.C. Fung and Jane Korinek, *Economics of Export Restrictions as Applied to Industrial Raw Materials*, OECD Trade Policy Paper No. 155, TAD/TC/WP(2012)23/FINAL (Apr. 26, 2013) at 4.

166 USTR 2019 NTE Report at 31; USTR 2020 NTE Report at 34.

167 The David J. Joseph Company, OECD Presentation (Dec. 5, 2011) at 18 ("DJJ OECD Presentation").

168 *Ghana bans exports of scrap ferrous metal to support local industry*, Reuters (Apr. 15, 2014); *Update 1 – Ghana bans export of scrap ferrous metal to support local industry*, Reuters (Apr. 15, 2014);

169 In February 2017, the Guyana government temporarily resumed scrap trade for "for a limited period of three months." *Scrap metal trade opens for 3 months*, Guyana Times (Feb. 6, 2017). *See also Ban on scrap metal trade coming in July*, Guyana Times (July 22, 2018); DJJ OECD Presentation at 18.

170 USTR 2019 NTE Report at 293; USTR 2020 NTE Report at 275; DJJ OECD Presentation at 18.

171 Valery Zavyazkin, *Kazakhstan Moves to Expand Scrap Export Ban*, Argus Media (Oct. 5, 2020), *available at* https://www.argusmedia.com/en/news/2147283-kazakhstan-moves-to-extend-scrap-export-ban.

Kenya;[172] Nigeria;[173]; Sri Lanka;[174] Uruguay;[175] Zambia;[176] Zimbabwe;[177] and the six member countries in the East Africa Community—Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda.[178] Many other countries have imposed trade-restrictive export tariffs on scrap as well, including: Armenia;[179] Egypt;[180]; India;[181] Iran;[182] Jordan;[183] Pakistan;[184] and Ukraine.[185] The UAE also imposed a four-month ban on steel scrap exports during 2020,[186] which it recently extended through the end of 2020.[187]

Notably, China imposes a 40 percent export tax on scrap,[188] severely restricting its exports of the raw material and benefiting its domestic manufacturers.[189] Depending on global scrap prices, this export tax is at times high enough to amount to a *de facto* export ban. China now produces and uses 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 are a major competitive disadvantage for U.S. steel producers and an unfair competitive advantage for Chinese steel producers.

Several countries have recently imposed new restrictions on steel scrap exports. Russia, for instance, in 2015, added scrap metal to the list of "commodities essential for the

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172 Aamera Jiwaji, *Punch-up over scrap metal*, African Business Magazine (Mar. 11, 2004), *available at* https://africanbusinessmagazine.com/uncategorised/punch-up-over-scrap-metal/; USTR 2020 NTE Report at 312.

173 WTO, *Trade Policy Review: Nigeria*, WT/TPR/S/356 (May 9, 2017) at 45; DJJ OECD Presentation at 18.

174 *Sri Lanka bans scrap metal exports*, Steel Guru (Oct. 11, 2010).

175 DJJ OECD Presentation at 18.

176 Esther Mseteka, *Ban scrap metal exports, ZRA urged*, Zambia Daily Mail Limited (May 19, 2015); *Ban on Scrap Metal Export Still in Effect*, The Globe Online (Feb. 28, 2019); James Kunda, *Scrap metal export ban stays – Chenda*, The Zambia Times (Feb. 2, 2014).

177 *Zimbabwe maintains ban on scrap metal exports*, New Zimbabwe (May 25, 2015).

178 *East African countries to ban scrap metal exports*, Recycling International (Aug. 13, 2010). *See also* Patrick Jaramogi, *Scrap dealers want ban on exports lifted*, New Vision (May 28, 2012).

179 *Armenia to limit scrap metal exports for development of own processing*, Kyiv Post (Oct. 4, 2012).

180 DJJ OECD Presentation at 18.

181 *Id.*

182 *Steel industry demands ban on import via land route*, The International News (Oct. 22, 2019); DJJ OECD Presentation at 18.

183 DJJ OECD Presentation at 18; *Jordan renews ban on scrap exports for another 6 months*, Steel Guru (May 7, 2010); USTR 2019 NTE Report at 296; USTR 2020 NTE Report at 301.

184 DJJ OECD Presentation at 18.

185 *Ukraine's scrap collection falls as export duties bite*, Argus Media (June 10, 2019), *available at* https://www.argusmedia.com/en/news/1918388-ukraines-scrap-collection-falls-as-export-duties-bite; USTR 2020 NTE Report at 499.

186 *UAE bans ferrous scrap exports; short-term effect limited by low overseas consumption*, Fastmarkets Metal Bulletin.

187 *UAE Extends Ban on Steel Scrap Exports for 4 Months*, Steel Guru (Sept. 22, 2020).

188 *See China retains ferrous scrap export tax*, Recycling Today (Jan. 3, 2017), *available at* https://www.recyclingtoday.com/article/china-ferrous-scrap-export-tax-steel/; *Chinese Ban on Scrap Metal Continues to Affect Market*, American Recycler (Aug. 2020).

189 *See* USTR 2020 NTE Report at 105.

domestic market...for which temporary export restrictions or prohibitions may be set in exceptional cases."[190] In 2019, Russia implemented a regional quota system for scrap exports, causing Russian ferrous scrap exports to hit a ten-year low.[191] Russian steel pipe producers have proposed the reinstatement of an iron and steel scrap quota system in 2020.[192] Uncertainty persists about future Russian rules on scrap exports, such as the management of domestically generated scrap through an exchange mechanism, due to the COVID-19 pandemic.[193] As such, AISI urges the U.S. government to continue to monitor the Russian government's restrictions and management of steel scrap exports, especially with regard to any new mechanisms implemented in response to COVID-19.

Other countries, such as South Africa,[194] also enforce licensing requirements on scrap exports, which have the effect of restricting trade. In 2020, South Africa amended its domestic steel scrap regulations, lowering the costs for domestic producers to obtain scrap metal, and the South African government is also considering introducing a scrap export tax.[195] South African steel producers have also called for increased restrictive measures of South African steel scrap—including a complete ban on exports—in response to challenges caused by the COVID-19 pandemic.[196] Again, AISI encourages the U.S. government to continue monitoring South Africa's restrictions on steel scrap exports.

IV. 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.

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190 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); USTR 2020 NTE Report at 431-32.

191 *Russian pipemakers seek to limit scrap exports again*, Argus Media (June 4, 2020).

192 *Id.*

193 *Russian plan for exchanged scrap metal trading halted by coronavirus*, S&P Global (May 28, 2020).

194 *See* International Trade Administration Commission of South Africa, *Export Control* (last visited Sept. 27, 2018), *available at* http://www.itac.org.za/pages/services/import--export-control/export-control ("The exportation of ferrous and non-ferrous waste and scrap, for example, inter alia, is controlled to assist the local foundries in acquiring ferrous and non-ferrous waste and scrap prior to its exportation.").

195 *South Africa amends price system for scrap metal to aid industry*, Reuters (Oct. 5, 2020), *available at* https://www.reuters.com/article/safrica-metals-scrap/south-africa-amends-price-system-for-scrap-metal-to-aid-industry-idUSL8N2GW4WD.

196 *Id.*

A. China

Both the U.S. government and business community have raised concerns regarding China's barriers for foreign investment. In 2019, the U.S. Department of State (State Department) found that "foreign investors have continued to express frustration that China, despite continued promises of providing national treatment for foreign investors, has continued to selectively apply administrative approvals and licenses and broadly employ industrial policies to protect domestic firms through subsidies, preferential financing, and selective legal and regulatory enforcement."[197]

The Chinese government strictly regulates investment by foreign firms within China. In 2019, amidst a pattern of slowing domestic economic growth, China unveiled its new Foreign Investment Law (FIL).[198] Under the FIL, foreign enterprises are supposed to be extended national treatment.[199] However, in practice, "foreign investors complain that the FIL and its implementing regulations lack substantive guidance, providing Chinese ministries and local officials significant regulatory discretion, including the ability to retaliate against foreign companies."[200] China also released the 2019 version of the "negative list" it has published since 2016, which classifies foreign investment into certain sectors as prohibited, restricted, and encouraged. The U.S.-China Economic and Security Review Commission found that revisions made to the list, which reduced the number of prohibited and restricted sectors from 48 to 40, while welcome, "do not amount to a significant liberalization of China's foreign investment regime."[201]

Ultimately, the Commission concluded that China's "incremental market opening measures over the course of 2018 and 2019, including limited easing of restrictions on foreign investment...are not market-driven, and instead reflect efforts by the Chinese government to mitigate trade frictions with the United States and attract foreign investment to strategic sectors, underscoring the state's dominant role in managing economic outcomes."[202]

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

In March 2015, China removed the steel industry from its list of "restricted" foreign investment industries, thereby theoretically opening the door to majority foreign

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[197] U.S. Department of State, *2019 Investment Climate Statement* at 5, *available at* https://bit.ly/3j03PSa.
[198] *Id.* at 10.
[199] The FIL includes a five-year transition period for those enterprises established under previous foreign investment laws.
[200] U.S. Department of State, *2020 Investment Climate Statement* at 10, *available at* https://www.state.gov/reports/2020-investment-climate-statements/.
[201] U.S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 73, *available at* https://bit.ly/318r46z.
[202] *Id.* at 50.

ownership of Chinese steel enterprises.[203] To date, AISI is unaware of any foreign attempts to acquire a controlling stake in a Chinese steel enterprise since the March 2015 revision. Even ignoring the FIL's lack of teeth, it is not surprising that there has been not been much foreign interest in the Chinese steel sector. If overcapacity wasn't enough of a deterrent, the Chinese steel sector is dominated by state-owned enterprises. USTR should continue to monitor this situation to ensure that the removal of the steel industry from the restricted list results in foreign investors being permitted to own controlling stakes in Chinese steel enterprises.

2. Indigenous Innovation and Technology Transfer Policies

China 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),[204] which include "subsidies contingent… upon the use of domestic over imported goods."[205] 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 research and development in China."[206] China has not lived up to these commitments and continues to impose policies that act as barriers to foreign investment.[207]

China has not only failed to adhere to generally accepted international norms to protect and enforce intellectual property rights (IPR) held by foreign companies. It affirmatively uses its indigenous innovation policy to acquire the intellectual property of foreign firms and implements its anti-trust laws in a way that curtails the IPR of foreign firms and protects its domestic firms from foreign competition.

Given that past U.S. government dialogues have been unsuccessful in leading to meaningful reforms, AISI supports USTR's use of Section 301 of the Trade Act of 1974 (Section 301) to push China to reform its practices related to forced technology transfers. AISI has yet to see any meaningful signs of improvement in China's foreign investment regime and IPR protections. While recent trade agreements reached with China do contain commitments for stronger IPR protections, it is imperative that the U.S. government effectively enforce the provisions agreed to by the Chinese government.

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203 *See* Catalogue for the Guidance of Foreign Investment Industries (2015 Amendment).

204 China's Protocol of Accession at 7.3.

205 *Id.*

206 *Id.*

207 *See Request for Comments Concerning China's Compliance with World Trade Organization (WTO) Commitments – Docket Number [USTR 2020-0033]*, American Iron and Steel Institute (Sept. 16, 2020).

B. Russia

The U.S. Department of State (State Department) explains that there are "fundamental structural problems in Russia's governance of the economy," which "continue to stifle foreign direct investment in the country."[208] The State Department further describes a Russian judicial system that "remains heavily biased in favor of the state" and that suffers from"[h]igh levels of corruption among government officials," which compounds the risk that investors face in Russia.[209] 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. The licensing regime is "non-transparent and unpredictable."[210]

1. Mining Investment Restrictions

Russia implements a number of barriers to foreign investment in its mining sector.[211] 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.[212]

Moreover, the government may deem significant discoveries by foreign mining groups as "strategic" and require foreign mining groups to sell 50 percent of their ownership interest in a project to a Russian partner.[213] 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.[214]

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208 *See* U.S. Department of State, Bureau of Economic and Business Affairs, *Investment Climate Statements for 2020*, *available at* https://www.state.gov/reports/2020-investment-climate-statements/russia/.
209 *See id.*
210 *See id.*
211 *See* USTR 2017 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).
212 *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* (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.
213 Baker McKenzie, *Doing Business in Russia* (2020) at 45,30-49.
214 Natalya Morozova and Rob Patterson, *Russia*, The Oil and Gas Law Review (Nov. 2013) at 211.

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. 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,[215] which allows its government to control access to the country's mineral resources, among other economic sectors. In fact, under Russia's Subsoil Law,[216] mineral resources in Russian territory are defined as state property.[217] Subsoil use rights may only be sold or transferred when expressly permitted by Russian law, and such transfers are strictly limited under the law.[218] The government is charged with designing and implementing policies governing subsoil rights, creating a federal subsoil reserve, and imposing restrictions for "national security and environmental protection."[219] Local governments may administer the use of the subsoil for purposes unrelated to mineral production and for the production of "common types of minerals."[220]

Russia generally awards licenses to mining companies following auctions, based on certain criteria,[221] including, among other things, contribution to social and economic development and national security interests.[222] The government reserves the right to

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215 *See* USTR 2020 NTE Report at 416.

216 *See* 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil] at section 1, art. 1; *see also Russian law developments*, Norton Rose Fulbright (Mar. 2017), *available at* http://www.nortonrosefulbright.com/knowledge/publications/147211/russian-law-developments (last visited Oct. 5, 2017).

217 *See Russia – Mining Law 2018*, International Comparative Legal Guides (Sept. 25, 2017), *available at* https://iclg.com/practice-areas/mining-laws-and-regulations/russia (last visited Oct. 5, 2017); Energy: Oil & Gas: Russia – Law & Practice, Chambers Global Practice Guides (2016) at 2; Nataliya Nikitina, *Mineral Resource Dilemma: How to Balance the Interests of Government, Local Communities and Abiotic Nature*, International Journal of Environmental Research and Public Health (Aug. 25, 2014) at 8638 ("In Russia subsoil, including the subsoil domain and mineral resources contained therein, energy and other resources are state property. Issues of ownership, use and disposal of subsoil shall fall under the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. Mineral and other subsoil resources produced under license terms may have the status of federal property, the property of the Russian Federation sub-divisions, municipal, private or any other property status").

218 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").

219 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil] at section 1, art. 3.

220 *Id.* at section 1, art. 5.

221 Alexei Druzhinin/TASS, *The Kremlin found an investor for the last major oil field* (June 6, 2016); *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, *Recent Developments in Russian Mining Regulation: Opportunities and Challenges* (Dec. 2, 2013) at 6.

222 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil], section 1, art. 13.1.

invalidate bids for a number of reasons.[223] 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.[224] According to reports, Russia's licensing system suffers from corruption, as well as a lack of stability and transparency.[225]

V. 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 significant trade barriers 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 subsidies identified below advantage foreign producers to the detriment of U.S. steelmakers.

A. China

The Chinese government at all levels (*i.e.*, 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.[226] These subsidies include billions of dollars through

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223 *See id.* at section 1, art. 14.

224 *See id.* at section 1, art. 21; *see also* Maria Pettersson, Anniina Oksanen, Tatiana Mingaleva, Victor Petrov, and Vladimir Masloboev, *License to Mine: A Comparison of the Scope of the Environmental Assessment in Sweden, Finland and Russia*, Natural Resources (Apr. 13, 2015) at 249; *Legislative Overview at a Glance: Russian Mining Regulations* at 4.

225 *See Energy: Oil & Gas: Russia – Law & Practice*, Chambers Global Practice Guides (2016) at 7; K. Rubakhin, *Lack of Transparency and Indications of Transborder Corruption in Investment Projects in Russia: Corruption and non-ferrous mining in Russia: a case study on the Khopyor area near Voronezh* (June 2015). *See also* Russia Working Party Report at ¶ 48; Yuliya Fedorinova, *Russia Gold-Mining Industry 'Shackled' by Regulation, Nesis Says*, Bloomberg (Oct. 3, 2012).

226 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").

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.[227]

As a result of such subsidies, China's steel industry has increased production far beyond domestic demand and, in August 2020, accounted for over 60 percent of worldwide crude steel production.[228] Domestic steel producers have brought and won countervailing duty cases against 19 different categories of Chinese steel imports, on a variety of flat, wire, long, pipe/tube and stainless products. Subsidies that the Commerce Department have 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.[229] 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.[230]

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[227] *See, e.g.*, David O. Shullman, *Protect the Party: China's growing influence in the developing* world, Brookings (Jan. 22, 2019), *available at* https://brook.gs/3ds0WIG; 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").

[228] *See, e.g.*, *August 2020 crude steel production*, World Steel Association (Sept. 24, 2020), *available at* https://bit.ly/33WoVg4.

[229] *See, e.g.*, Issues and Decision Memorandum accompanying *Certain Oil Country Tubular Goods from the People's Republic of China*, 85 Fed. Reg. 38,849 (Dep't Commerce June 29, 2020) (final results of the expedited second sunset review of the countervailing duty order); Issues and Decision Memorandum accompanying *Certain Collated Steel Staples from the People's Republic of China*, 85 Fed. Reg. 33,626 (Dep't Commerce June 2, 2020) (final affirmative countervailing duty determination and final affirmative critical circumstances determination); Issues and Decision Memorandum accompanying *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China*, 85 Fed. Reg. 17,533 (Dep't Commerce Mar. 30, 2020) (final results of the expedited first five-year sunset review of the countervailing duty order); Issues and Decision Memorandum accompanying *Non-Oriented Electrical Steel from the People's Republic of China*, 85 Fed. Reg. 11,339 (Dep't Commerce Feb. 27, 2020) (final results of the expedited first sunset review of the countervailing duty order); Issues and Decision Memorandum accompanying *Carbon and Alloy Steel Threaded Rod from the People's Republic of China*, 85 Fed. Reg. 8,844 (Dep't Commerce Feb. 18, 2020) (final affirmative countervailing duty determination); Issues and Decision Memorandum accompanying *Certain Fabricated Structural Steel from the People's Republic of China*, 85 Fed. Reg. 5,384 (Dep't Commerce Jan. 30, 2020) (final affirmative countervailing duty determination); Issues and Decision Memorandum accompanying *Aluminum Wire and Cable from the People's Republic of China*, 84 Fed. Reg. 58,137 (Dep't Commerce Oct. 30, 2019) (final affirmative countervailing duty determination); Issues and Decision Memorandum accompanying *Refillable Stainless Steel Kegs from the People's Republic of China*, 84 Fed. Reg. 57,005 (Dep't Commerce Oct. 24, 2019) (final affirmative countervailing duty determination); Issues and Decision Memorandum accompanying *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*, 84 Fed. Reg. 52,460 (Dep't Commerce Oct. 2, 2019) (final results of the expedited second sunset review).

[230] *Id.*

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.[231] The latest Steel Industry Adjustment and Upgrading Plan is drafted explicitly to implement the Made in China 2025 plan's objectives.[232] AISI remains concerned that state subsidization of upgraded manufacturing facilities could bestow further unfair competitive advantages on Chinese steel producers vis-à-vis global competitors.

China's subsidy practices continue to evolve in ways that make them more opaque and challenging to address under existing subsidy disciplines. For example, while the government has historically relied heavily on subsidized bank loans from government-owned or controlled banks, it has more recently shifted its emphasis to equity investments through "government guidance funds" that have been established at all levels of government. As of 2019, there were more than 2,000 of these funds with nearly $600 billion in capital making investments throughout the economy.[233] While many of them are focused on emerging high-tech sectors, they are also being used to support technological upgrades in traditional industries such as steel pursuant to industrial policies like Made in China 2025.[234]

Continued subsidization has propped up excess industrial capacity and prevented reductions that have been promised time and time again. Data released by the Chinese National Bureau of Statistics in January 2020 show that China's capacity utilization reached 80 percent last year—its intended goal—but with nearly 1 billion metric tons of steel produced in 2019, that indicates steelmaking capacity of approximately 1.25 billion MT,[235] well above the OECD estimation of 1.15 billion MT of capacity.[236]

Fueled by government subsidies, Chinese steel companies continued production through the COVID pandemic, increasing production from 2019 levels despite falling

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231 *Id.*
232 *Guidance for the Iron and Steel Industry to Reduce Excess Capacity and Resolve Difficulties for Future* Development, State Council, *available at* https://bit.ly/2Io7ooG.
233 Tianlei Huang, *Government-Guided Funds in China: Financing Vehicles for State Industrial Policy*, PIIE (June 17, 2019).
234 *See, e.g.*, Emily Feng, *China's State-Owned Venture Capital Funds Battle to Make an Impact*, Financial Times (Dec. 23, 2018).
235 Hongmei Li, *China '19 steel output shy of 1 billion t milestone*, Mysteel (Jan. 20, 2020), *available at* https://www.mysteel.net/article/5013155-0503/BLOG--China-19-steel-output-shy-of-1-billion-t-milestone.html.
236 OECD Steelmaking Capacity Database (2000-2019) (last visited Sept. 2, 2020), *available at* https://stats.oecd.org/Index.aspx?datasetcode=STI_STEEL_MAKINGCAPACITY.

global demand.[237] For instance, in August 2020, China produced 104.5 million MT of crude steel, which is an increase of 8.4 percent from August 2019.[238]

1. Subsidized Financing & Debt Restructuring

The Chinese government 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.[239] For years, the International Monetary Fund (IMF) has warned that China's financial system is creating a threat to global financial stability.[240] In 2019, China held $35.4 trillion USD in public and private debt.[241]

The surge in lending to support industrial policy objectives is a primary driver of the Chinese overcapacity problem. Comparatively inefficient SEs receive a disproportionate share of state-directed financing in China.[242] According to the U.S.-China Economic and Security Review Commission, [e]ven though they are more heavily indebted than private sector companies, [SEs still] enjoy preferential access to credit because banks believe they are implicitly guaranteed by the government."[243] In 2017, the Commerce Department found that approximately 40 percent of new debt economy-wide was being used to service existing obligations by firms that lacked the independent financial capability to repay their existing loans.[244]

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237 Thomas Hale and Neil Hume, *China turns to steel to galvanize post-COVID economy*, Financial Times (June 10, 2020), *available at* https://on.ft.com/2Fuw26b.

238 *August 2020 crude steel production*, World Steel Association (Sept. 24, 2020), *available at* https://bit.ly/33WoVg4.

239 *See, e.g.*, U.S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 56, 29, 138, *available at* https://bit.ly/318r46z.

240 *China's debt tops 300% of GDP, now 15% of global total: IIF*, Reuters (July 18, 2019), *available at* https://www.reuters.com/article/us-china-economy-debt/chinas-debt-tops-300-of-gdp-now-15-of-global-total-iif-idUSKCN1UD0KD.

241 U.S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 54-57, *available at* https://bit.ly/318r46z; *see also* William Pesek, *How Coronavirus May Bring China's Debt Pile to the Global Economy* (Feb. 29, 2020), *available at* https://bit.ly/3drgixe.

242 The Chinese government does not publish an official breakdown of debt. In 2016, the IMF estimated that SOEs held 57 percent of China's corporate debt. .S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 54, *available at* https://bit.ly/318r46z. *See* Memorandum from John Corrigan to the File, re: *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China, Review of China's Financial System Memorandum* (Aug. 1, 2017) at 9 ("DOC China Financial System Memo").

243 S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 55, *available at* https://bit.ly/318r46z; *see also* Linette Lopez, *There are 3 reasons China just took over a bank for the first time in 20 years, and 2 of them are a huge deal*, Business Insider (May 28, 2019).

244 DOC China Financial System Memo at 9.

With the debt burdens of strategically important enterprises becoming unmanageable, the Chinese government has 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.[245] 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.[246] Finally, the measure explained that, with regard to existing liabilities, banks should "implement debt restructuring measures such as adjusted loan repayment periods and repayment methods to assist enterprises in weathering the crisis."[247] 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.[248] CBRC's notice instructs the creditors' committees to "support the development of the real economy" and "guarantee the normal operations of enterprises."[249] Also in September 2016, the Chinese 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*.[250] 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 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.[251]

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245 *Opinion Regarding Supporting the Steel and Coal Industries in Resolving Overcapacity and Realizing Development Out of Difficulties*, Yin Fa [2016] No. 118 (Apr. 18, 2016).

246 *Id.*

247 *Id.*

248 Han Yi et al., *Debt Defaults Prompt Call for Creditor Committees*, Caixin (Sept. 12, 2016).

249 *CBRC Promulgates the Notice Regarding Carrying Out Banking Industry Financial Institution Creditors' Committees Work*, CBRC Website (Sept. 9, 2016).

250 *Opinions of the State Council Regarding Actively Stabilizing and Reducing the Enterprise Leverage Rate*, Guo Fa [2016] No. 54 (Sept. 22, 2016).

251 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. Shu Zhang and Matthew Miller, *China Tries Cure by Committee for Corporate Debt Hangover*, Reuters (Mar. 7, 2017).

The government "frequently interven[es] in bankruptcy proceedings to help [SOEs] restructure instead of allowing them to exit the market, thus perpetuating China's debt problems."[252] A typical transaction in the steel industry was the late-2016 merger of two SOEs, Wuhan Iron & Steel Company (WISCO) and Baoshan Iron & Steel Company (Baoshan), to form the world's second largest steelmaker by capacity.[253] After Baoshan 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 debt in a debt-to-equity swap.[254] The deal was then completed in December 2016 after the debt-to-equity swap cleaned up WISCO's balance sheet.[255] In March of this year, Baoshan announced that it was going to issue bonds worth up to $430 million, in part to repay debt.[256]

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 both urge China to reveal the nature and extent of state intervention in Chinese financial markets, and work with like-minded allies such as the European Union and Japan to impress upon Chinese authorities that such conduct will not be tolerated by significant trading partners.

2. Export Finance Support

China has made export financing a "focal point" of its export promotion strategy, launching what one expert has called "the most aggressive export credit financing campaign in history."[257] The U.S. Export-Import (EXIM) Bank estimated that China provided more than $500 billion of export credit in 2018. In comparison, the EXIM Bank had financed $610 billion over its 85-year history.[258]

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252 *Id.* at 54.

253 Christian Shepherd, *China Deal to Create World's Second-Largest Steelmaker*, Financial Times (Sept. 21, 2016) (describing the deal as the "poster child" of the Chinese government's industry restructuring plans).

254 Yuan Yang, *Chinese Banks Begin Raising Capital for Debt-to-Equity Swaps*, Financial Times (Oct. 24, 2016).

255 Wu Yiyao and Yang Ziman, *Big Merger forms No. 2 Steel Giant*, China Daily (Dec. 2, 2016).

256 Min Zhang and Shivani Singh, *China's Baosteel to issue bonds worth up to $430 mln amid coronavirus outbreak*, Reuters (Mar. 3, 2020), *available at* https://reut.rs/3k0UET4.

257 *See* Stephen J. Ezell, *Understanding the Importance of Export Credit Financing to U.S. Competitiveness*, Information Technology and Innovation Foundation (June 2011) at 7.

258 Report to U.S. Congress on Global Export Credit Competition (June 2019) at 4, *available at* https://bit.ly/318QhOd/.

Significantly, China's export financing practices appear to constitute prohibited export subsidies under the WTO rules because much of the financing is contingent on exports and granted at non-commercial terms.[259] The practices are also inconsistent with certain aspects of the OECD's Arrangement on Guidelines for Officially Supported Export Credits.[260] There are even some signs that "China's practices may be creating incentives for countries to engage in rate cutting and to offer exceptional terms that the (OECD) Arrangement seeks to limit."[261] For example, "the growth in export credit in a number of OECD nations has significantly outstripped export credit growth in the United States in the past decade."[262]

Following 2015 and 2016 U.S.-China Strategic and Economic Dialogue meetings, the U.S. Department of Treasury (Treasury Department) announced that it had received assurances from China that it would adhere to the international export financing norms that are consistent with global best practices.[263] AISI encourages the U.S. government to continue to monitor Chinese export financing practices and takes the steps necessary to defend against China's "opaque and exploitative model of economic development and finance."[264]

3. Currency Manipulation

AISI members, along with other U.S. manufacturers, have long expressed concern over China's policy of controlling the exchange rate between its currency (known as the

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259 *See The EU may initiate a WTO dispute settlement over Chinese export credits*, Trade Perspectives (May 6, 2011).
260 *Id.*
261 Export Assistance and the China Challenge at 5. *See also* .S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 373, *available at* https://bit.ly/318r46z ("China's aggressive and well-coordinated export finance practices are forcing other countries' export credit agencies to defensively change their policies and practices simply to maintain their access to large global markets, let alone expand their share.").
261 *Id.*
262 *Id.*
263 U.S. Department of Treasury, *2015 U.S.-China Strategic and Economic Dialogue U.S. Fact Sheet – Economic Track* (June 25, 2015) *and* U.S. Department of Treasury, *2016 U.S.-China Strategic and Economic Dialogue U.S. Fact Sheet – Economic Track* (June 7, 2016).
264 *Id.* at 6; *see also* Dr. Christopher Ashley Ford's Remarks to the U.S. House of Representatives China Task Force, *History, Ambition, and Technology: The Chinese Communist Party's Challenges to U.S. Export Control Policy* (July 13, 2020) ("In my view, the U.S. policy community was lamentably slow in waking up to the degree to which the PRC's rise to "great power" status presented at least as much by way of threats as by way of constructive opportunities. That rise was something that many prior U.S. leaders both supported and encouraged, on the naïve assumption that helping the PRC become more powerful would somehow encourage it to become a "responsible stakeholder" in the liberal world order rather than simply further empowering it as a disruptively self-aggrandizing force in the international community. If this was indeed the objective, the West's embrace and assistance was a world-historical failure, and it is to our collective shame that it took the policy community so long to recognize this.") Though Dr. Ford speech was made in regard to U.S. export control policy, it is a helpful reminder that of the CCP's "strategic ambitions and the many ways in which they challenge U.S. foreign policy and national security interests."

renminbi (RMB) or the yuan) and the U.S. dollar. Traditionally, China has intervened in the foreign exchange markets to weaken the yuan, to give its exporters a boost and make it more expensive for its trading partners to export.[265] The effects of China's currency manipulation have been profound.[266] Recently, China has allowed the value of the yuan to once again drop significantly against the dollar. As a result, the U.S. government officially designated China as a currency manipulator on August 5, 2019,[267] just one day after China's central bank, the People's Bank of China (PBC), allowed the yuan to fall to a new low yuan-to-dollar ratio of 7-to-1.[268] The U.S. and Chinese governments began discussions and negotiations during the fall of 2019 on currency, which led in January 2020 to the Treasury Department removing China from its list of currency manipulators. China joined several countries, such as Germany and Japan, on a monitoring list of currency practices.[269]

The domestic steel industry encourages USTR to continue to take a hard line with the Chinese government on currency manipulation, particularly as steel production soars in

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265 In 2004, for example, AISI joined a coalition of U.S. industrial, service, agricultural, and labor associations seeking relief under Section 301[a] of the Trade Act of 1974, as amended, from China's manipulation of the renminbi. Petition for Relief under Section 301[a] of the Trade Act of 1974 on behalf of the China Currency Coalition (Sept. 9, 2004), *available at* http://www.aflcio.org. This petition demonstrated that China's exchange-rate policy constitutes a prohibited export subsidy within the meaning of Articles 1, 2, and 3 of the SCM Agreement and Articles VI and XVI of the GATT 1994. *Id.* at 50.

266 In 2017, C. Fred Bergsten and Joe Gagnon of the Peterson Institute for International Economics published a study, "Currency Conflict and Trade Policy," that estimates that currency manipulation by U.S. trading partners caused the United States to run about $200 billion in higher trade deficits annually, cost more than 1 million jobs during and after the Great Recession, and was a factor in causing the recession and in slowing the recovery from it. China was by far the world's largest currency manipulator and its currency manipulation encouraged other export-dependent economies to manipulate their currencies to keep up. Bergsten and Gagnon wrote that China's currency manipulation accounted for one-third of the U.S. job displacement from the rapid growth in Chinese imports that began when China joined the WTO. C. Fred Bergsten and Joe Gagnon, *Currency Conflict and Trade Policy*, Peterson Institute (June 2017).

267 U.S. Department of the Treasury, *Treasury Designates China as a Currency Manipulator* (Aug. 5, 2019), *available at* https://home.treasury.gov/news/press-releases/sm751.

268 The Treasury Department noted in its press release that the PBC openly acknowledges "that it has extensive experience manipulating its currency and remains prepared to do so on an ongoing basis." *Id.* As a result of the Treasury Department's decision in August, the U.S. government will begin engagement with the IMF on efforts to "eliminate the unfair competitive advantage by China's latest actions." U.S. Department of the Treasury, *Treasury Designates China as a Currency Manipulator* (Aug. 5, 2019), *available at* https://home.treasury.gov/news/press-releases/sm751.

269 U.S. Department of the Treasury, *Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States* (Jan. 13, 2020), *available at* https://home.treasury.gov/system/files/136/20200113-Jan-2020-FX-Report-FINAL.pdf. In a statement, the Treasury Department Secretary Steven Mnuchin said that "China has made enforceable commitments to refrain from competitive devaluation, while promoting transparency and accountability." U.S. Department of the Treasury, *Treasury Releases Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States* (Jan. 13, 2020), *available at* https://home.treasury.gov/news/press-releases/sm873.

China as its economy recovers from the pandemic. We also commend the Commerce Department for amending the application of countervailing duty practices to include countries that undervalue their currencies as a subsidy. AISI has for many years advocated for treating currency manipulation as a countervailable subsidy and applauds the administration for initiating this important action, which could, particularly on imports of Chinese steel products, allow for U.S. steelmakers to petition for relief.

B. Japan

Like China, Japan has a history of manipulating its currency, the Yen,[270] in a manner that encourages exports and discourages imports.[271] As demonstrated by the American Automotive Policy Council and others, Japanese companies have used this manipulation to gain a competitive advantage.[272] This policy aids Japanese automakers and encourages increased exports of Japanese steel.[273]

C. India

The Indian government also heavily subsidizes its domestic industries, including its steel industry.[274] The Indian steel industry was 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,[275] and the government continues to play a large role in the industry. The Indian Ministry of Steel, a branch of the Indian government, "deals with coordination and planning of the growth and development of Iron and Steel Industry in the country."[276] Reflecting the ambitious goals of its National Steel Policies, India's support for its steel industry is direct and massive. AISI applauds USTR for its successful challenge of India's export subsidy schemes at the WTO in November 2019, but it is also aware that India is unlikely to conform with the ruling until it has exhausted the WTO appeals process.

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[270] *See, e.g.*, Ralph Jennings, *It's Not Quite China, But Japan Is Controlling Currency Prices To Help Exporters*, Forbes (Mar. 7, 2017); Chikako Mogi and Hiroko Komiya, *Japan's Three Biggest Banks Declare Yen's Depreciation Is Over*, Bloomberg (Mar. 1, 2016) (stating that "the yen is the second-most undervalued major currency by a purchasing-power measure").

[271] *See* Silvia Amaro, *Trump does have a point on the Japanese yen Being undervalued: Strategist* (Feb. 8, 2017).

[272] American Automotive Policy Council, *U.S. Trade Agreements & Currency Manipulation* at 7 ("Japan has used direct intervention in currency markets – and the threat of intervention – to gain a competitive export advantage").

[273] *See* Silvia Amaro, *Trump does have a point on the Japanese yen Being undervalued: Strategist* (Feb. 8, 2017); Bradford Wernle, *Ford's Hinrichs: Toyota, Japanese unfairly aided by currency manipulation*, www.autonews.com (Feb. 6, 2014); Yuka Obayashi, *In glum steel market, Abenomics-inspired Nippon Steel is upbeat*, Reuters (Sept. 30, 2013).

[274] USTR 2019 NTE Report at 245.

[275] *See* Import Administration, U.S. Dep't of Commerce, *Report to the President, Global Steel Trade, Structural Problems and Future Solutions* (2000).

[276] *See* Indian Ministry of Steel, *available at* https://steel.gov.in/.

In 2018, India surpassed Japan as the second largest steel producer in the world.[277] The Indian government 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, all of which adversely impact the ability of U.S. steelmakers to export to India. 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.[278] 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 the production of the exported product.[279]

- **Duty Drawback Rebate Program (DDB).** In 2018, the Indian government increased the duty drawback on 102 products, including several traditional exports.[280] The DDB offsets customs duties on inputs used for exported products and is offered at fixed rates independent of tax levied on inputs. The Indian government uses the program as a tool to boost exports.[281]

- **Duty Free Import Authorization Scheme (DFIA Scheme).** In effect since May 1, 2006, the DFIA Scheme exempts companies from paying import duties for inputs used in steel production, such as inputs, fuel, and energy sources.[282] Like the

277 World Steel Association, *World Steel in Figures 2019* at 9.

278 *See* Issues and Decisions Memorandum accompanying *Oil Country Tubular Goods from India*, 84 Fed. Reg. 50,001 (Dep't Commerce Sept. 24, 2019) (final results of the expedited sunset review of the countervailing duty order) at 8-9 ("OCTG from India I&D Memo"), referring to Preliminary Decision Memorandum accompanying *Certain Oil Country Tubular Goods from India*, 81 Fed. Reg. 24,799 (Dep't Commerce Oct. 14, 2016) (preliminary affirmative countervailing duty deter.) at 6–7 (unchanged in final 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").

279 *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.

280 Kirtika Suneja, *Duty drawback rates increased for 102 products in bid to boost exports*, The Economic Times (Jan 25, 2018).

281 *Id.* ("'The revised rates of duty drawback will help address the concerns of these export sectors and make India's exports more competitive in global economy,' the finance ministry said in a statement.").

282 Government of India, Ministry of Commerce and Industry, *Foreign Trade Policy 27th August 2009 – 31st March 2014* (June 5, 2012) at 59; Government of India, Ministry of Commerce and Industry, *Public Notice No. 56 /2015-2020: Procedure to deal with the pending applications for issuance of Duty Free Import Authorisation(s) (DFIA) and their transferability* (Jan. 22, 2016).

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.[283]

- **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.[284]

- **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.[285] In April 2015, the export obligation under the EPCGS was reduced for capital goods procured from indigenous manufacturers.[286] Steel firms in India have benefited from the EPCGS and have recently sought an extension in the export obligations under the program.[287]

- **Merchandise Exports from India Scheme (MEIS).** The MEIS was introduced in India's 2015-2020 Trade Policy (FTP) as a "reward to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field."[288] 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.[289] Export items with a higher level of domestic content can receive a

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283 Issues and Decision Memorandum accompanying *Polyethylene Terephthalate Film, Sheet, and Strip from India*, 76 Fed. Reg. 30,910 (Dep't Commerce May 27, 2011) (final results of countervailing duty new shipper rev.) at 9.

284 Government of India, Ministry of Commerce and Industry, *Foreign Trade Policy 27th August 2009 – 31st March 2014* (June 5, 2012) at 81. *See also* Pravakar Sahoo, *The failure of India's EOUs*, East Asia Forum (June 18, 2016).

285 Export Promotion Capital Goods, National Informatics Center, Government of India.

286 Government of India, Ministry of Commerce and Industry, Department of Commerce, *Highlights of the Foreign Trade Policy 2015-2020* at 6.

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

288 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.

289 Government of India, Ministry of Commerce and Industry, Department of Commerce, *Foreign Trade Policy [1st April, 2014-31st March, 2020]* at § 3.02.

higher reward,[290] and entities that have "excelled in international trade and have successfully contributed to country's foreign trade" can receive special treatment and privileges to facilitate their trade.[291]

In April 2015, India's Commerce Ministry announced the country's latest FTP, which continues to include subsidies targeted at boosting exports and will run through March 31, 2021. 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.[292]

Indian steel producers also receive significant subsidies at the subnational level.[293] 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.[294] 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.[295] When the Goods and Services Tax was instituted in 2017,[296] local governments revised their incentive plans to ensure that "beneficiaries from various sectors, including automobile, steel, [and] cement" continued to receive "interest and power tariff subsidies apart from the exemption in stamp duty, octroi duty and electricity duty."[297]

290 Government of India, Ministry of Commerce and Industry, Department of Commerce, *Highlights of the Foreign Trade Policy 2015-2020* at 6.
291 Government of India, Ministry of Commerce and Industry, Department of Commerce, *Highlights of the Foreign Trade Policy 2015-2020* at 4.
292 *11 features of the New Trade Policy you must know*, DNA India (Apr. 1, 2015).
293 *See, e.g.*, Issues and Decision Memorandum accompanying *Finished Carbon Steel Flanges from India*, 85 Fed. Reg. 18,193 (Dep't Commerce Apr. 1, 2020) (final results of countervailing duty review) at 7 ("State Government of Uttar Pradesh – Exemption from Entry Tax for the Iron and Steel Industry); OCTG from India I&D Memo at 3-4 (listing subsidies provided by the State Government of Maharashtra and Uttar Pradesh).
294 *See, e.g.*, Karnataka Industrial Policy 2020–2025, *available at* https://bit.ly/3lMJLof; State Government of Andhra Pradesh, *Industrial Development Policy 2015-20*, *available at* https://bit.ly/3k28V1B; State Government of Maharashtra, *Package Scheme of Incentives 2013* (Apr. 1, 2013), *available at* https://bit.ly/3nRihQ; Government of Haryana, Enterprises Promotion Policy-2015, *available at* https://bit.ly/2SSvCtg.
295 *See, e.g.*, Karnataka Industrial Policy 2020–2025; State Government of Maharashtra, *Package Scheme of Incentives 2013* (Apr. 1, 2013).
296 *See* Saheli Roy Choudhury, *India rolls out its biggest tax reform in 70 years. Here's what it means*, CNBC (June 30, 2017).
297 Sanjay Jog, *GST Impact: Maharashtra may revise incentives plan*, Daily News & Analysis (July 24, 2017).

D. Turkey

In recent years, the steel industry in Turkey has grown exponentially with the aid of government subsidies, jumping from the seventeenth largest crude steel-producing country in the world in 2000 to the eighth largest steel producer in 2018 and 2019.[298] Turkey exported 19.7 million MT of steel products in 2019,[299] nearly half of its total crude steel production. 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 U.S. steelmakers. Since 2014, the Commerce Department has put in place seven countervailing duty orders following investigations on steel products from Turkey.[300] Several of the most significant Turkish government subsidies that contributed to its steel industry's growth are described below.

- **Development Investment Bank of Turkey Loans:** The recently-renamed Development Investment Bank of Turkey (DIBT), a direct extension of the Turkish government,[301] provides strategic and preferential loans based on state policies and national interests, which are used by Turkish steel producers to expand production and capacity. The DIBT was renamed in 2018 and its funding support to the Turkish economy nearly doubled that same year to TL 13.6 billion, up from a loan volume of TL 7.0 billion in 2017 and TL 5.4 billion in 2016.[302] The bank's funding increased to nearly TL 16.0 billion in 2019.[303]

- **Turk Eximbank Subsidies:** The Export Credit Bank of Turkey (Turk Eximbank) is a state-owned bank and the sole official export credit agency in Turkey .[304] In

[298] 2020 World Steel in Figures, World Steel Association at 8.
[299] *Id.* at 26.
[300] *See Certain Oil Country Tubular Goods from the Republic of Turkey*, 79 Fed. Reg. 53,688 (Dep't Commerce Sept. 10, 2014) (countervailing duty orders and amended affirmative final countervailing duty deter. for India); *Steel Concrete Reinforcing Bar from Republic of Turkey*, 79 Fed. Reg. 68,926 (Dep't Commerce Nov. 6, 2014) (countervailing duty order); *Welded Line Pipe from the Republic of Turkey*, 80 Fed. Reg. 75,054 (Dep't Commerce Dec. 1, 2015) (countervailing duty order); *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey*, 81 Fed. Reg. 62,874 (Dep't Commerce Sept. 13, 2016) (amended final affirmative countervailing duty deter. and countervailing duty order); *Steel Concrete Reinforcing Bar from the Republic of Turkey*, 82 Fed. Reg. 32,531 (Dep't Commerce July 14, 2017) (amended final affirmative countervailing duty deter. and countervailing duty order); *Carbon and Alloy Steel Wire Rod from the Republic of Turkey*, 83 Fed. Reg. 23,420 (Dep't Commerce May 21, 2018) (amended final affirmative countervailing duty deter. for the Republic of Turkey and countervailing duty orders for Italy and the Republic of Turkey); and *Large Diameter Welded Pipe from the Republic of Turkey*, 84 Fed. Reg. 18,771 (Dep't Commerce May 2, 2019) (countervailing duty order).
[301] *See* WTO Trade Policy Review Body, *Trade Policy Review Report by the Secretariat: Turkey*, WT/TPR/S/331 (Feb. 9, 2016) at 102 ("WTO Trade Policy Review Report: Turkey 2016").
[302] The Development and Investment Bank of Turkey, *Annual Report* 2018 at 32.
[303] The Development Investment Bank of Turkey, *Annual Report* 2019 at 118.
[304] WTO Trade Policy Review Report: Turkey 2016 at 87.

late 2018, the CEO of the Turk Eximbank pledged to finance 27 percent of Turkey's total exports in 2019, up from 25 percent in 2017 and 26 percent in 2018.[305]

- Turk Eximbank also offers short-, medium-, and long-term export insurance programs for Turkish companies,[306] which are aimed at further subsidizing costs for domestic producers by reducing the financial uncertainty involved with doing business in foreign countries.

- Turk Eximbank's Foreign Trade Company loan program was implemented to assist large trading companies with their export financing needs and the program benefits Foreign Trade Corporate Companies (FTCC)[307] and Sectoral Foreign Trade Companies.[308] The Commerce Department has also found this program to constitute a countervailable subsidy.[309] Similar credits are available for smaller companies.[310]

- **Regional Development Subsidies**: Turkey's government has established special zoning programs, including Organized Industrial Zones (OIZ), Free Zones, and Technology Development Zones.[311] These programs have been used to subsidize and improve the performance of export companies in Turkey.

- **Tax Incentives for R&D Activities:** The Turkish government provides a wide range of research and development (R&D) subsidies to support new technological developments. For example, pursuant to Law No. 5746, Turkish steel producers are eligible to receive corporate tax breaks for R&D expenses;

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305 *Eximbank Aims to finance 27 pct of Turkey's total exports: CEO*, Hurriyet Daily News (Dec. 27, 2018), *available at* http://www.hurriyetdailynews.com/eximbank-aims-to-finance-27-pct-of-turkeys-total-exports-ceo-140059.

306 *See* WTO Trade Policy Review Report: Turkey 2016 at 87.

307 An FTCC is a company whose export performance was at least $75 million in the previous year.

308 Turk Exim Bank, Corporate, *available at* https://www.eximbank.gov.tr/en/about-us/corporate

309 Issues and Decision Memorandum accompanying *Certain Welded Carbon Steel Standard Pipe from the Republic of Turkey*, 71 Fed. Reg. 43,111 (Dep't Commerce July 31, 2006) at 6-7 ("Carbon Steel Pipe from Turkey I&D Memo"); Issues and Decision Memorandum accompanying *Carbon and Certain Alloy Steel Wire Rod from the Republic of Turkey*, 67 Fed. Reg. 55,815 (Dep't Commerce Aug. 30, 2002) (final neg. countervailing duty deter.) at 6-7 ("Wire Rod from Turkey I&D Memo").

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

311 Laws No. 1319 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. Presidency of the Republic of Turkey, Investment Guide – Investment Zones, *available at* https://www.invest.gov.tr/en/investmentguide/pages/investment-zones.aspx. *See also* WTO, *Trade Policy Review Report: Turkey 2016* at 42.

income tax exemptions for R&D researchers; 50 percent of R&D employee insurance premiums; and tax-free revenue accounts for R&D expenses.[312] The Turkish government's Scientific and Technological Research Council of Turkey (TUBITAK) also provides grants to support research, technology development, and innovation activities of Turkish companies.[313] For example, the "Frontier R&D Laboratory Support Program" (*i.e.*, TUBITAK 1515) provides support for up to 75 percent of a recipient's R&D budget, with a maximum amount of TL 10 million.[314]

- **<u>The Purchase of Electricity for More Than Adequate Remuneration (MTAR)</u>:** Turkish steel producers with power generation facilities receive subsidies from the Turkish government in the form of purchases of electricity for MTAR. Turkey's steel industry relies largely on electric arc furnaces,[315] 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,[316] which dominates the Turkish power sector,[317] for above-market prices.[318] 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. In a July 2019 decision memorandum in the 2016 countervailing duty administrative review on imports of steel concrete reinforcing bar from the Republic of Turkey, the Commerce Department found that one respondent was receiving a countervailable subsidy in the form of purchase of electricity generated from renewable resources for MTAR.[319] The government of Turkey was found to guarantee a certain minimum price for electricity sold from renewable sources to the marketplace by Icdas, which is a respondent company that generates renewable energy and sells the excess electricity generated.[320]

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312 PwC, *Global Research & Development Incentives Group* (Apr. 2017) at 40; PwC, *Turkey: Corporate - Tax credits and incentives* (June 19, 2014).

313 *See* Presidency of the Republic of Turkey, Investment Office, *Guide to State Incentives for Investments in Turkey* (Jan. 2019) at 37.

314 *Id.*

315 2020 World Steel in Figures, World Steel Association at 10.

316 *See, e.g.*, Energy Market Regulatory Authority, *Turkish Energy Market: An Investor's Guide* (2012) at 26.

317 *See, e.g.*, International Energy Agency, *Energy Policies of IEA Countries: Turkey 2009 Review* (2010) at 105, 112, 114, 116.

318 *See, e.g.*, I. Atiyas, et al., *Reforming Turkish Energy Markets: Regulatory Reform and Competition in the Turkish Electricity Industry* (2012) at 22, 24.

319 *See* Issues and Decision Memorandum accompanying *Steel Concrete Reinforcing Bar From the Republic of Turkey*, 84 Fed. Reg. 36,051 (Dep't Commerce July 26, 2019) (final results and partial rescission of countervailing duty admin. rev.; 2016) at 8.

320 *See* Preliminary Decision Memorandum accompanying *Steel Concrete Reinforcing Bar From the Republic of Turkey*¸ 83 Fed. Reg. 63,472 (Dep't Commerce Dec. 10, 2018) (prelim. results of countervailing duty admin. rev. and intent to rescind rev. in part; 2016) at 15-16.

- **<u>The Provision of Natural Gas for Less than Adequate Remuneration (LTAR)</u>:** 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.[321] In addition, the Turkish government has full ownership of petroleum pipeline corporation BOTAS and petroleum corporation TPAO.[322] Significantly, BOTAS controls more than 80 percent of Turkey's entire gas import market.[323] In a recent subsidy investigation of Turkish rebar, the Commerce Department found that the Turkish government has "overwhelming involvement in the Turkish natural gas market," and that Turkey's provision of natural gas for LTAR constitutes a countervailable subsidy.[324]

- **<u>Inward Processing/Duty Drawback</u>:** The Turkish government provides import duty rebates or duty drawback assistance to Turkish manufacturers under the country's Inward Processing Regime.[325] Turkish companies may be issued one of two different types of Inward Processing Certificates: (i) D-1 certificates for imported goods used in the production of exported goods, or (ii) D-3 certificates for imported goods used in the production of goods sold in the domestic market. The Inward Processing Regime encourages Turkish steel producers to export their products rather than selling them domestically.

- **<u>Tax and Fee Incentives for Renewable Energy</u>:** The Turkish government provides incentives to promote renewable energy production through the exemption or reduction of taxes and license and usage fees typically required in the energy sector. Renewable energy generation plants are exempt from customs duties for imported machinery and equipment and value-added tax for both domestically purchased and imported machinery and equipment with an investment incentive certificate, regardless of the region of the investment.[326] Further, power generation plants using local natural resources or renewable energy resources are exempted from annual license fees for eight years from the

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321 *See* WTO, *Trade Policy Review Report: Turkey 2016* at 96.
322 *See id.* at 102.
323 *See* USTR 2018 NTE Report at 457.
324 *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.
325 *See, e.g.*, Inward Processing, Website of the Ministry of Customs and Trade, Republic of Turkey, *available at* https://www.ticaret.gov.tr/gumruk-islemleri/sikca-sorulan-sorular-frequently-asked-questions/english/inward-processing.
326 *See* Presidency of the Republic of Turkey, Investment Office, *Guide to Investing in Turkish Renewable Energy Sector* at 21-22.

date of completion.[327] Renewable energy generation plants are granted a 50 percent discount for transmission system usage fees for the first five years of operation.[328] Turkish steel producers are involved in the renewable energy sector and are eligible for these tax and fee incentives.

- **<u>Government-Directed Policy Loans from State-Owned Banks</u>:** The Turkish government provides additional subsidies through government-directed policy loans available to the Turkish manufacturing sector and steel industry. According to its Eleventh Development Plan, which covers 2019 through 2023, the Turkish government takes actions to strengthen its financial structure in order to incentivize manufacturing, generally, and encourage expanding steel exports, specifically.[329] With regard to industrial policies, the Plan provides that "[t]he support of the Development and Investment Bank to industrial investments will be strengthened, particularly in priority sectors," as well as that the "Turkey Wealth Fund will support large-scale investments, particularly in priority sectors, by financing or becoming a shareholder."[330] In particular, the Plan explains that "[i]n the iron and steel sector, importance will be given to expanding exports and export markets."[331] Encouraging manufacturing exports is largely facilitated in the Plan through encouraged and preferential lending to the manufacturing sector.[332] The Plan sets several financial targets for the Turkish banking sector with respect to the manufacturing industry.[333] The provision of preferential financing to Turkish steel producers is possible because Turkey's banking system is heavily influenced by state-owned banks (SOBs).[334] In 2019, three of the four largest banks in Turkey, by total asset value, were SOBs: Türkiye Cumhuriyeti Ziraat Bankası A.Ş., Türkiye Halk Bankası A.Ş., and Türkiye Vakıflar Bankası T.A.O.[335] These three SOBs comprise nearly one-third

327 *See id.* at 19.
328 *See id.* at 20; *Electricity Market, Law No. 6446*, Turkish Official Gazette (Mar. 30, 2013) at Provisional Art. 4; Prof. Dr. H. Ercument Erdem, *The New Electricity Market Law*, Erdem & Erdem (Mar. 2013).
329 *See* Presidency of the Republic of Turkey, Presidency of Strategy and Budget, *Eleventh Development Plan (2019-2023)* at 61-94. *See also Turkey identifies 17 countries, 5 sectors for sustainable exports*, Daily Sabah (Aug. 29, 2019); *Export Master Plan to raise Turkey's export targets: Official*, Hurriyet Daily News (Sept. 13, 2019).
330 Presidency of the Republic of Turkey, Presidency of Strategy and Budget, *Eleventh Development Plan (2019-2023)* at 61-62
331 *Id.*
332 *Id.* at 61-94.
333 *Id.* at 63.
334 *See generally* Thomas Marois and Ali Riza Gungen, *The Critical Role of State-Owned Banks in Turkey's Development*, Centre for Development Policy and Research, School of Oriental and African Studies (June 2014); *Financial Services Sector in Turkey*, Republic of Turkey Prime Ministry, Investment Support & Promotion Agency (Oct. 2017); Thomas Marois and Ali Riza Gungen, *Reclaiming Turkey's state-owned banks* (Dec. 2013).
335 *See* The Banks Association of Turkey, Turkish Banks – Ranked by Total Assets (2019).

of Turkey's banking sector assets,[336] and they provide financing to Turkish steel producers at discounted rates and with preferential terms in accordance with the Turkish government's stated policy objectives. Critically, Turkish SOBs have been in a weaker financial position than privately owned banks in recent years, indicating that Turkish SOBs were not necessarily offering credit solely in line with market principles but rather in accordance with government policies.[337]

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.

For example, the BNDES provides long-term financing at subsidized interest rates to Brazilian industries and much of this support has been directed at critical industries, such as the steel sector.[338] BNDES provided preferential financing of approximately $12.1 billion in the first nine months of 2018 to various sectors throughout the Brazil[339] and USTR has noted that loans from one BNDES program, Special Agency for Industrial Finance (FINAME), are "used primarily for capacity expansion and equipment purchases" in several key industries.[340] BNDES FINAME loans also provide capital financing to companies in Brazil for the acquisition of Brazilian machinery or equipment.[341]

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.[342] In December 2013, the European Union requested dispute settlement consultations with Brazil, in part over its

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336 *See Fitch Affirms Three Turkish State-Owned Commercial Banks 'BBB-'*, Reuters(Oct. 15, 2015); Thomas Marois and Ali Riza Gungen, *Reclaiming Turkey's state-owned banks* (Dec. 2013) at 9-11.

337 *Turkish state-owned banks weaker than private ones – Fitch*, Avhal News (Oct. 4, 2019).

338 2020 Investment Climate Statement – Brazil, *available at* https://www.state.gov/reports/2020-investment-climate-statements/brazil/.

339 USTR 2019 NTE Report at 60.

340 *Id.* at 61.

341 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; *see also BNDES FINAME Financing, available at https://www.bndes.gov.br/wps/portal/site/home/financiamento/finame*

342 USTR 2019 NTE Report at 61.

use of the RECAP program, which the European Union 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."[343] The United States and Japan have since requested to join the consultations.

F. Korea

For several years, the Korean government has provided subsidies for favored local industries,[344] including its steel industry. Over the past five years, the United States government issued five countervailing duty orders on Korean steel exports, including (i) corrosion-resistant steel; (ii) cold-rolled steel; (iii) hot-rolled steel; (iv) carbon and alloy cut-to-length steel plate; and (v) large diameter welded pipe in response to several of these subsidies.[345] These subsidies include: preferential loans from government banks, export loans, equity infusions, tax exemptions, and grants.[346]

The subsidies have had significant effects, ranging from contributing to the global steel overcapacity crisis to distorting downstream industries. For example, Korea produces almost no oil or gas,[347] yet through government subsidies has developed and sustained a pipe and tube production industry as an offtake for its excess hot-rolled coil capacity.[348] Given the lack of domestic demand for these downstream products, they are almost entirely exported and frequently end up in the U.S. market. Korea continues to be the largest exporter of oil country tubular goods (OCTG) to the U.S. market.[349] The Korean pipe industry is further distorted by price fixing—six Korean pipe producers were recently found by the Korean government to have colluded to fix prices from 2003 to at least 2013.[350]

Continued high levels of steel exports from China to Korea further encourage Korean government subsidies to its steel producers to assist them in their exports of steel to

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343 *Id.*
344 *Id.* at 320.
345 U.S. International Trade Commission, *Antidumping and Countervailing Duty Orders in Place* (last visited Sept. 23, 2019), *available at* www.usitc.gov.
346 *See* Issues and Decision Memorandum accompanying *Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 Fed. Reg. 53,439 (Dep't Commerce Aug. 12, 2016) (final affirmative determination) at Section VII.
347 U.S. Energy Information Administration, International Data, *Total Petroleum and Other Liquids Production 2015 – 2019* (last visited Oct. 13, 2020), *available at* https://www.eia.gov/ petroleum/data.php.
348 *See* Issues and Decision Memorandum accompanying *Oil Country Tubular Goods from the Republic of Korea*, 85 Fed. Reg. 41,949 (Dep't Commerce July 13, 2020) (final results of antidumping duty admin. review) at cmt. 1-B.
349 *Drilling Down*, Fastmarkets AMM (Mar. 2020) at 10, *available at* https://www.amm.com/pdf/2020/Fastmarkets_STP_March2020.pdf.
350 Don Yanchunas, *S. Korean pipe producers fixed prices: US mills*, American Metal Market (July 12, 2018), *available at* https://www.amm.com/Article/3820339/S-Korean-pipe-producers-fixed-prices-US-mills.html.

other markets, including the U.S. market. According to the Commerce Department's Global Steel Trade Monitor, China exported 8.2 million MT steel to Korea in 2019.[351] In 2019, Korea imported 16.2 million MT of steel, while at the same time exporting 29.7 million MT of steel, thus causing Korea to be the fifth largest net exporter of steel at 13.5 million MT last year.[352]

The Trade Preferences Extension Act of 2015 (TPEA) amended the Tariff Act of 1930 to allow Commerce to disregard a respondent's actual cost of an input when the "particular market situation" (PMS) in the country of production "does not accurately reflect the cost of production in the ordinary course of trade." During Senate debate on the TPEA, Senator Brown identified the Korean OCTG and steel industries as examples of industries where government subsidization enables foreign competitors to dominate overseas markets.[353] In 2016, in the 2014 – 2015 administrative review of OCTG from Korea, the Commerce Department confirmed that unfairly-traded Chinese hot-rolled flat products and subsidies from the Korean government had contributed to the creation of a PMS in regards to the production of OCTG in Korea. The Commerce Department has made similar findings in subsequent Korea steel pipe administrative reviews.

Another source of subsidization by the Korean government is the state-owned Korea Electric Power Corporation (KEPCO), which was created to "satisfy the nation's electric power supply and demand."[354] 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.[355] The Korean government, through KEPCO, also purchases electricity from steel producers for more than adequate remuneration, only to sell it back to them at subsidized prices. Despite shareholder criticism of KEPCO pricing, which has led KEPCO to post operating losses in 2017, 2018, and 2019, the Korean government has declared that it will not raise electricity prices until 2022.[356]

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

351 International Trade Administration, Global Steel Trade Monitor (last visited Oct. 13, 2020), *available at* https://beta.trade.gov/gstm.
352 2020 World Steel in Figures, World Steel Association at 9, *available at* https://bit.ly/2SVG4Aa.
353 *See* Issues and Decision Memorandum accompanying *Oil Country Tubular Goods from the Republic of Korea*, 85 Fed. Reg. 41,949 (Dep't Commerce July 13, 2020) (final results of antidumping duty admin. review) at cmt. 1-B (citing Congressional Record-Senate, S2899, S2900 (May 14, 2015)).
354 KEPCO Overview, *available at* http://home.kepco.co.kr/kepco/EN/A/htmlView/ENAAHP001.do?menuCd=EN010101
355 Republic of Korea, Trade Policy Review (2016), WT/TPR/346 at 93.
356 *The paradox of electricity prices in South Korea*, The Hankyoreh (July 31, 2012). In 2019, KEPCO posted a $1.17 billion operating loss. *Id*.

extensively as an instrument of industrial policy to encourage investment" and "state-owned financial institutions have a major role in assisting Korea's industrial development."[357] 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.[358]

Counter to its efforts to develop a greener industry, the government also provides carbon emissions credits for free or at subsidized prices to steel companies.[359] In September 2016, the Korean government issued a detailed industrial policy plan to support the modernization and "price competitiveness" of the domestic steel industry.[360] 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.[361] In an administrative review of the countervailing duty order on Certain Corrosion-Resistant Steel Products from Korea, the Commerce Department found that Korean steel company Dongbu received long-term loans from the Korea Development Bank and benefited from the restructuring of debt despite being uncreditworthy.[362]

The Korean government also heavily subsidizes the domestic shipbuilding industry, one of the key demand drivers for steel, both by purchasing from the industry and providing financial benefits to companies that will make purchases.[363] In November

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357 Republic of Korea, Trade Policy Review (2016), WT/TPR/346 at 89-90.

358 *Id.* at 131.

359 *Korea Emissions Trading Scheme*, International Carbon Action Partnership (updated Sept. 15, 2020) (last visited Oct. 13, 2020), *available at* https://bit.ly/3k1kDtB; Asia Development Bank, *The Korea Emissions Trading Scheme: Challenges and Emerging Opportunities* (Nov. 2018) at 15, *available at* https://www.adb.org/sites/default/files/publication/469821/korea-emissions-trading-scheme.pdf.

360 Government of the Republic of Korea, *Proposal for Strengthening the Competitiveness of the Steel Industry* (Sept. 30, 2016).

361 *Id.*

362 Issues and Decision Memorandum accompanying *Certain Corrosion-Resistant Steel Products from the Republic of Korea*, 81 Fed. Reg. 35,310 (Dep't Commerce June 2, 2016) (final affirm. deter., and final affirm. critical circumstances deter., in part) at 26-34.

363 Government of the Republic of Korea, Ministry of Trade, Industry and Energy, *Gov't provides five measures to increase competitiveness of shipping industry*, Press Release (Oct. 31, 2017).

2018, the government of Japan requested consultations with Korea over the subsidization of its shipbuilding industry and the European Union has joined in the consultations.[364] In early October of this year, in and administrative review of the countervailing duty order on Certain Hot-Rolled Steel Products from Korea, the Commerce Department found that the Korean government had provided subsidies to Hyundai Steel in the form of free port usage rights and the right to collect fees from third-party users.[365]

In addition to these subsidies, the Korean government manages its currency, providing a benefit to domestic manufacturers. The Treasury Department assessed that the Korean "won depreciated 3.7 percent against the dollar in 2019, while depreciating slightly on a real effective basis."[366] AISI agrees with the Treasury Department that as a country with well-developed institutions and markets, Korea "should limit currency intervention to only truly exceptional circumstances of disorderly market conditions."[367]

Despite numerous affirmative countervailing findings, the Korean government has demonstrated a firm resolve to subsidize its steel industry through any and all available channels. AISI emphasizes the heightened threat that such pervasive subsidization poses to the U.S. industry and encourages the U.S. government to prioritize resolving the overarching issue of the Korean government's interference in its steel industry in international diplomatic fora.

G. Russia

Russia remains one of the largest exporters of steel mill products to the global steel market, steadily increasing its exports over the past seven years, from 27.2 million MT in 2013 to 29.5 million MT of steel in 2019, of which 7.5 million metric tons was imported into the U.S. market.368 Russia exports approximately 41 percent of its crude steel production to the world and is the third largest net-exporter of steel mill products worldwide.369

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[364] WTO, *DS571: Korea – Measures Affecting Trade in Commercial Vessels (Japan)* (last visited Oct. 15, 2020), *available at* https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds571_e.htm.

[365] Issues and Decision Memorandum accompanying *Certain Hot-Rolled Steel Flat Products From the Republic of Korea*, 85 Fed. Reg 64,122 (Dep't Commerce Oct. 9, 2020) (final results of countervailing admin. review).

[366] U.S. Department of the Treasury, *Foreign Exchange Policies of Major Trading Partners of the United States* (Jan. 2020) at 6, 25, *available at* https://home.treasury.gov/system/files/136/20200113-Jan-2020-FX-Report-FINAL.pdf.

[367] *Id.*

[368] International Trade Administration, *Global Steel Trade Monitor*, *available at* https://beta.trade.gov/gstm (last visited Oct. 8, 2020).

[369] 2020 World Steel in Figures, World Steel Association at 9 and 27.

1. Natural Gas Subsidies

According to the U.S. Energy Information Administration, Russia maintains the largest proven reserves of natural gas in the world.[370] As USTR noted in its 2020 NTE Report, Open Joint Stock Company Gazprom (Gazprom), a Russian state-owned company, "has a monopoly on exports of pipeline natural gas produced in Russia and charges higher prices on exports of natural gas than it charges to most domestic customers."[371] Before joining the WTO in 2012, Russia implemented a trade-distortive dual pricing system for natural gas, requiring international purchasers to pay a premium for natural gas.[372] This dual pricing system remains in place and acts as a trade-distortive energy subsidy to Russian industrial producers.[373] In particular, this subsidy provides Russian 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,[374] and the Commerce Department has determined that the Russian government provides natural gas to steel producers for less than adequate remuneration.[375]

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.[376] However, as USTR has said, Russia's progress in even meeting this

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370 U.S. Energy Information Administration, EIA Beta, *International Energy Statistics* (last visited Oct. 8, 2020), *available at* https://www.eia.gov/beta/international.

371 USTR 2020 NTE Report at 425.

372 *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.

373 Russia Working Party Report at "Pricing Policies"; *see* USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) 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").

374 Ambrus Barany and Dalia Grigonyte, *Measuring Fossil Fuel Subsidies*, ECFIN Economic Brief (Mar. 2015) at 10.

375 *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) 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* (Sept. 2, 2016).

376 *See* Russia Working Party Report at 132; USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) at 32.

modest commitment has been "modest and uneven."[377] 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,[378] including for its steel producers, which heavily consume natural gas.[379] 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."[380]

In addition to its dual pricing scheme, as of 2020, Russia continues to impose a 30 percent export tax and licensing requirement on natural gas, further benefiting domestic users.[381] AISI remains concerned with these trade-distortive policies, especially given Russia's refusal to phase out the export tax.[382] 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.[383] USTR should also closely monitor any future actions by the Russian government to prohibit some or all natural gas exports.

2. Preferential Loans

This year, Russia implemented a new "Corporate Competitiveness Program" from the Russian Export Center to support exporters by subsidizing their interest rates on bank loans for exports that meet certain performance standards.[384] In August, the Russian Ministry of Industry and Trade announced that it planned to increase support for

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377 *See* USTR, *2019 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Feb. 2020) at 33.

378 *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).

379 *See* Management Report, PJSC Gazprom 2015 (2015) at 18 ("Moreover, natural gas is heavily used in the steel-making...industry").

380 *See* Russia Working Party Report at ¶ 132; USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) at 32.

381 2016 WTO Trade Policy Review Report: Russia at 67, 69; Russia Working Party Report at ¶ 631. *See also* Zachary Waller, *Tax Changes in Russian Oil and Gas* (Apr. 20, 2016); Lars Petter Lunden and Daniel Fjaertoft, *Government Support to Upstream Oil & Gas in Russia, International Institute for Sustainable Development* (July 2014) at 18, 19, 20.

382 *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").

383 *See, e.g.*, USTR, *2016 Report on the Implementation and Enforcement of Russia's WTO Commitments* (Dec. 2016) 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).

384 Russia Export Center, *Corporate Competitiveness Program* (Aug. 2020), *available at* https://www.exportcenter.ru/kppk/.

exporters under the program from 2 billion rubles ($27.3 million) in 2020 to 19 billion rubles ($259.4 million) in 2021 and 86 billion rubles ($1.17 billion) in 2022. Funding for the program is expected to reach 286 billion rubles ($3.9 billion) in 2021-24. While the Russian government did not name specific projects, it indicated it had entered into agreements with the metals industry.[385]

The Russian steel industry and related industries have historically received preferential loans from state-owned and -controlled banks such as VTB Bank, Vneshecomobank and Sberbank, which have provided billions of dollars in loans to Russian steel producers.[386] 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,[387] 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.[388]

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385 Anastasia Lvova, *The Ministry Of Industry And Trade This Year Sharply Reduced State Support For Exports*, Vedomosti (Aug. 18, 2020)., *available at* https://www.vedomosti.ru/business/articles/2020/08/17/836923-minpromtorg-sokratil (Google Translate from Russian).

386 *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).

387 *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").

388 *See, e.g.*, *BRIEF – Russia's Mechel says Vnesheconombank agrees to restructure $190 mln loan*; *Mechel Wins Sberbank Loans*, GTR (Oct. 17, 2012). After years of declining credit ratings, in March 2015, at the company's request, Moody's withdrew Mechel's credit rating of Caa3 and a probability of default rating of Ca-PD/LD. *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"). Despite the absence of an international credit rating, Sberbank restructured $446 million of Mechel's debt on April 18, 2016. 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"). Moreover, state-owned banks, including Sberbank, Gazprombank and VTB, negotiated a $5.1 billion debt restructuring deal with Mechel in 2016. *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). In 2017, Venesheconombank agreed to restructure a loan for up to $190 million for Elagaugol, part of Mechel's mining division. *BRIEF – Russia's Mechel says*

In 2015, the Russian government created a list of 199 companies deemed to be strategic firms eligible for state assistance.[389] The list included steelmaker Severstal, aluminum producer Rusal, and the mining company Norilsk Nickel.[390] 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.[391] Russia expanded this group to more than one-thousand companies in response to the COVID-19 pandemic.[392] The Russian government announced that these companies will receive state support, including loans at subsidized rates, state subsidies, debt restructuring, and other measures deemed necessary.[393]

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,[394] 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.[395] 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.[396] Beginning on July 1, 2019, the Russian government launched a 19 billion ruble ($301 million) support program for its domestic car market amid declining demand and sales. The Russian government estimates that the new program, "First Far, Family Car" will increase sales by an additional 75,000 vehicles this year.[397]

Vnesheconombank agrees to restructure $190 mln loan; *Mechel Reports Restructuring Debt With Vnesheconombank*, Nasdaq GlobalNewswire (Sept. 28, 2017).

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

390 *Id.*

391 Paul Whitfield, *Russia Offers Aid to 'Strategic Companies' to Ease Lender Jitters*, The Street (Feb. 9, 2015).

392 TASS, *Systemic Companies to Receive Preferential Loans, Says Putin* (Apr. 15, 2020), *available at* https://tass.com/economy/1145425.

393 *Id.*; Vasilisa Strizh, Jennifer A. Josefson, Bela Pelman, Alexandra Rotar, Valentina Semenikhina, *Russia Covid-19 Response: State Support For Large Businesses*, White & Case (Apr. 6, 2020), *available at* https://www.morganlewis.com/pubs/russia-covid-19-response-state-support-for-large-businesses-cv19-lf.

394 *See The Russian government has decided on subsidies to the automotive industry for 2018-2020*, RusAutoNews.com (Sept. 22, 2017).

395 *Id.*

396 *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).

397 *See* IntelliNews, *Russian Government to Support Local Car Market*, The Moscow Times (June 27, 2019), *available at* https://www.themoscowtimes.com/2019/06/27/russian-government-to-support-local-car-market-a66180.

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.

H. Vietnam

The Vietnamese government provides subsidies to select industries, in an effort to support the development of the domestic economy. The Commerce Department recently found in its investigation of Vietnam's wind tower industry that the Vietnamese government provides import duty exemptions on imports of raw materials used in exported goods.[398] Under Decree No. 75/2011/ND-CP, the Government of Vietnam provides investment credit and export credit to companies participating in eligible projects, such as producers of cold-rolled steel.[399] The Vietnamese government also supports small and medium-sized enterprises through payment for consulting services and training programs.[400]

The Vietnamese government also manipulates its currency – the Vietnamese dong – as a means of subsidizing its domestic exporters, which include Vietnamese steel producers. Indeed, this month, USTR initiated an investigation under Section 301 of the Trade Act of 1974 into "Vietnam's acts, policies, and practices that may contribute to the undervaluation of its currency and the resultant harm caused to U.S. commerce."[401] This investigation follows a determination from the Treasury Department that the Vietnamese currency was undervalued in 2019 by approximately 4.7 percent, due in part to interventions from the Vietnamese government.[402] Likewise, the Commerce Department has initiated a subsidy investigation into the undervaluation of the

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398 *See* Memorandum from Davina Friedmann, Senior Case Analyst, AD/CVD Operations, Off. VI to Erin Kearney Program Manager AD/CVD Operations, Off. VI, re: *Final Determination of Countervailing Duty Investigation of Utility Scale Wind Towers from Vietnam: Calculation Memorandum for CS Wind Vietnam Co., Ltd.* (June 29, 2020) at 5.

399 *See* Statement of Reasons Concerning the Final Determinations with Respect to the Dumping and Subsidizing of Cold-Rolled Steel from China, South Korea, and Vietnam, Canada Border Services Agency (Nov. 15, 2018) at Appendix II.

400 Pritesh Samuel, *Government Incentives for SMEs in Vietnam – 2 New Circulars*, Vietnam Briefing (Sept. 3, 2019), *available at* https://www.vietnam-briefing.com/news/government-incentives-smes-vietnam-2-new-circulars.html/.

401 USTR, *USTR Initiates Vietnam Section 301 Investigation* (Oct. 2, 2020), *available at* https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/october/ustr-initiates-vietnam-section-301-investigation.

402 David Lawder, *U.S. Treasury says Vietnam currency was undervalued in 2019 in tire probe assessment*, Reuters (Aug. 25, 2020).

Vietnamese dong in the agency's ongoing investigation of Passenger Vehicle and Light Trucker Tires from Vietnam.[403]

As highlighted above, when a country intervenes in its currency markets to weaken its domestic currency it can have a profound and adverse effect on its foreign trading partners. Accordingly, as it has with China, AISI encourages USTR to take a hard line with respect to the Vietnamese government's manipulation of its currency to the benefit of Vietnamese exporters and to the detriment of U.S. companies seeking to do business in Vietnam. Once again, AISI commends the Commerce Department for amending its countervailing duty regulations to cover countries that undervalue their currencies as a form of subsidizing exports. AISI encourages USTR to conduct a thorough investigation of Vietnam's distortive currency practices, which will further allow for the U.S. government to remedy the persistent devaluation of the Vietnamese dong and permit the U.S. steel industry to compete on a level playing field.

I. Indonesia

Indonesia provides fiscal and non-fiscal incentives to companies, ranging from tax incentives, land assistance, and discounted electricity. The steel industry in Indonesia is dominated by Krakatau Steel, an Indonesian SE, which is heavily subsidized. Recently, the Indonesian government bailed out Krakatau Steel by restructuring $2.2 billion in debt.[404] Other subsidies to Krakatau Steel include equity infusions,[405] local content requirements, and provision of iron ore and coal for LTAR as a result of export bans on minerals. Further as discussed below, Krakatau Steel has created several joint venture steel companies, which are also subsidized both by the Indonesian government and other governments through transnational subsidies.

J. Malaysia

According to Malaysia's Third Industrial Plan, which covers 2006-2020,[406] "[i]ncentive schemes will continue to be an important policy instrument to promote and attract investments in the targeted industries and sub-sectors."[407] The Plan lists tax incentives, grants, and specialized industrial parks with discount land and utilities among the

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403 *See* Initiation Checklist *Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam*, DOC Case No. C-552-829 (Inv.) (June 22, 2020).

404 *Krakatau Steel will finish the restructuring of its US$ 2.2 billion debt by the end of 2019*, IDN Financials (Dec. 13, 2019), *available at* https://www.idnfinancials.com/news/30791/krakatau-steel-finish-restructuring-debt.

405 *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 Fed. Reg. 40,457, 40,462 (Dep't Commerce July 26, 1999) (preliminary affirmative countervailing duty determination and alignment of final countervailing duty determination with final antidumping duty determination).

406 Ministry of International Trade and Industry Malaysia, *IMP3 Third Industrial Master Plan 2006-2020* (Aug. 18, 2006).

407 *Id.* at Ch. 4, p. 156.

subsidies to be granted.[408] The specialized industrial parks are part of the Malaysian government's strategy to develop industrial linkages[409] and build out downstream related industries. For example, "iron and steel is a basic material required by most industries, the sub-sector has developed linkages, especially in manufacturing and construction. Strong linkages have been established between the capital-intensive upstream activities of the sub-sector and the higher value-added downstream manufacturing activities, such as those in the E&E, machinery and transport equipment industries."[410]

Additionally, as detailed below, the Malaysian steel industry has benefited from transnational subsidies, most notably through China's One Belt One Road program. The Malaysian and Chinese governments have partnered together to create a new subsidized steel company, Alliance Steel, located in the Malaysia-China Kuantan Industrial Park (MCKIP). The subsidies range from financial subsidies (*i.e.*, tax incentives, loans, and grants) to land and utilities at discounted prices. These subsidies have bestowed a substantial competitive advantage to Alliance Steel, both in the domestic Malaysian steel market and for export sales.

K. <u>Canada</u>

In recent years, Canada has provided significant subsidies to the steel and aluminum sector both at the national and provincial level. The Canadian government provided $2 billion in loans and grants to steel and aluminum companies in 2018.[411] Algoma, an Ontario steel company that emerged from bankruptcy in 2018, reportedly received $150 million in loans and grants in 2019 to "help transform the evolving steel mill."[412] As discussed above, Algoma has also benefited from Ontario and Quebec government's local content requirements of renewable energy policies tailored to benefit Algoma.

At the provincial level, the Government of Quebec introduced a cap and trade system for greenhouse gas emissions, effective January 1, 2013, as part of the 2013-2020 Climate Change Action Plan. This program places a cap on the amount of greenhouse gas emissions allowed each year, with acceptable levels becoming stricter each year. Qualifying companies engaged in renewable activities generate emission units, which emitting companies purchase to offset their emissions. The Government of Quebec sells emissions units at auction four times a year, and the funds raised from the auctions go the Green Fund (Fonds Vert). The Green Fund provides grants for "programs or

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408 *Id.* at Ch. 4, pp. 156-159.
409 *Id.* at Ch. 1, pp. 12, 22.
410 *Id.* at Ch. 12, p. 332.
411 Daniel Leblanc, *Ottawa to provide up to $2-billion in help to steel and aluminum industries*, The Globe and Mail (June 29, 2018), *available at* https://www.theglobeandmail.com/politics/article-ottawa-to-provide-up-to-2-billion-in-help-to-steel-and-aluminum/.
412 Billy Yost, *Algoma Steel Is Back from the Brink of Bankruptcy and Staying Strong*, Hispanic Executive (Mar. 16, 2020), *available at* https://hispanicexecutive.com/algoma-steel/.

measures to combat climate change, waste management, or water governance."[413] Quebec's government has also provided "free allocation of carbon allowance to large emitters and/or emission-intensive and trade-exposed {(EITE)} industries."[414] The iron and steel industry was included on the list of EITE industries exempted because they are "exposed to global competition," and "increased costs place them at a disadvantage among foreign competitors that are not subject to similar emission restrictions."[415]

L. Transnational Subsidies

Governments have long provided subsidies to companies in pursuit of policy objectives. Subsides are often one part of larger industrial policies designed to shelter and support domestic industries until they are strong enough to compete internationally. Developing economies, in particular, tend to have detailed plans for development of specific industries as part of a larger plan for economic development. However, over the last decade, countries have increasingly begun providing transnational subsidies to assist domestic companies' operations abroad. Governments often find willing partners in the governments of other nations with developing economies. Consequently, companies receive an unfair competitive advantage in the form of subsidies from two different governments. Given differing policy objectives of each government, these transnational subsidies are often provided primarily in the form of partnerships or joint ventures in order to pursue dual policy objectives. Additionally, governments do not always explicitly announce or declare these as subsidies, instead phrasing them as economic partnerships, financing for development, or foreign direct investment.

Perhaps the most well-known transnational subsidy policy is China's One Belt One Road program.[416] As part of these programs, the Chinese government has pledged $1 trillion in investment for overseas economic development. The One Belt One Road programs provide a central role for SEs and are pitched to developing nations as an

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413 Government of Quebec, Ministry of Environment, *Green Fund*, *available at* http://www.environnement.gouv.qc.ca/ministere/fonds-vert/liste-aides.htm.

414 Report of the Standing Senate Committee on Energy, the Environment and Natural Resources, *Decarbonizing Heavy Industry: The Low-Carbon Transition of Canada's Emission-Intensive and Trade-Exposed Industries* (Apr. 2018) at 34, *available at* https://sencanada.ca/content/sen/committee/421/ENEV/reports/2018-03-23_EITE_FINAL_WEB_e.pdf.

415 *Id.* at 28.

416 Andrew Chatzky & James McBride, *China's Massive Belt and Road Initiative*, Council on Foreign Relations (Jan. 28, 2020) ("President Xi announced the initiative during official visits to Kazakhstan and Indonesia in 2013. The plan was two-pronged: the overland Silk Road Economic Belt and the Maritime Silk Road. The two were collectively referred to first as the One Belt, One Road initiative but eventually became the Belt and Road Initiative.").

"infrastructure-prioritized development path."[417] Additionally, One Belt One Road assists China's efforts to reduce industrial overcapacity by "transferring domestic low-end manufacturing industries to the less developed countries along the BRI route" [418] The OECD noted in a report on the One Belt One Road program that "[t]he BRI aims to create new markets, facilitate trade as well as investment, including with a shift of production capacity to where there is ready demand (arising, for example, from new infrastructure investment) or where production factors are cheaper."[419]

In short, One Belt One Road programs subsidize Chinese overcapacity industries dominated by SEs such as steel in several ways. First and foremost are direct subsidies such as grants or loans. Second, One Belt One Road infrastructure projects funded by the Chinese government are often contingent on purchases from Chinese SEs, artificially creating demand for Chinese products. In effect, these subsidies are Chinese content requirements as opposed to local content requirements. Third, the "[transfer of] domestic low-end manufacturing industries" often takes the form of Chinese SE's establishing joint ventures or subsidiaries abroad, which effectively serve as an indirect conduit of Chinese subsidies to companies in other countries.

Malaysia is a prime example of the Chinese government's One Belt One Road transnational subsidies in practice. In February 2013, the Malaysian and Chinese governments jointly launched the MCKIP in the Port of Kuantan, Malaysia as a One Belt One Road project.[420] The MCKIP is jointly owned 51% by a Malaysian consortium (including 30% ownership by the Malaysian government) and 49% by Chinese SEs under State-owned Assets Supervision and Administration Commission (SASAC) control.[421] The MCKIP One Belt One Road project is a joint effort of both the Malaysian and Chinese governments and is a small piece of a larger One Belt One Road project to develop the East Coast Economic Region, including the construction of the East Coast Rail Link railroad.[422]

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417 Jon (Yuan) Jiang, *The Belt and Road Initiative: A Domestically-Motivated Program Fueling Global Competition*, China Brief (May 29, 2020), *available at* https://jamestown.org/program/the-belt-and-road-initiative-a-domestically-motivated-program-fueling-global-competition/.
418 *Id.*
419 *The Belt and Road Initiative in the global trade, investment and finance landscape*, OECD Business and Finance Outlook (2018) at 16, *available at* https://doi.org/10.1787/bus_fin_out-2018-6-en.
420 *See generally* Malaysia-China Kuantan Industrial Park Website, *available at* http://www.mckip.com.my/.
421 Alice Tsang, *Prospects for the Malaysia-China Kuantan Industrial Park and Kuantan Port*, Hong Kong Means Business (May 16, 2017), *available at* https://hkmb.hktdc.com/en/1X0AA0CO/hktdc-research/Prospects-for-the-Malaysia-China-Kuantan-Industrial-Park-and-Kuantan-Port.
422 Kate Mayberry, *China signals Belt and Road shift with Malaysia rail project*, Al Jazeera (Apr. 15, 2019), *available at* https://www.aljazeera.com/economy/2019/4/15/china-signals-belt-and-road-shift-with-malaysia-rail-project.

One of the anchor companies of the MCKIP is Alliance Steel, a newly created Chinese SE that is a joint venture of Guangxi Beibu Gulf International Port Group Co. Ltd.[423] and Guangxi Shenglong Metallurgical Co. Ltd., which are "jointly established by the two governments."[424] As a Chinese SE, Alliance Steel benefits from a combination of subsidized lending and grants from the Chinese government. Similarly, the Malaysian government has announced subsidies for investors in MCKIP ranging from 15 years of corporate tax exemption to preferential land prices,[425] all of which could benefit Alliance Steel. These subsidies have bestowed a substantial competitive advantage to Alliance Steel, both in the domestic Malaysian steel market and for export sales. In 2019, the Malaysian Iron and Steel Industry Federation blamed Alliance Steel for tanking the local steel market, resulting in losses for the Malaysian steel industry.[426]

Transnational subsidies have also had a significant impact in Indonesia. The Indonesian government strongly enforces a mix of local content requirements and export bans as a means of compelling transnational subsidies and foreign direct investment from other countries. Between 2009 to 2014, legislation in Indonesia introduced domestic processing requirements for nickel ore, iron ore, chromium and coal. Additionally, export licenses are required for nickel ore, iron ore, scrap steel and coal. Notably, in 2014, Indonesia banned exports of nickel ore. The combined effect of these policies is to mandate a local metals supply chain in Indonesia, with companies agreeing to joint ventures with Krakatau Steel in order to receive export licenses.

Critically, over the past decade, Krakatau Steel—a major state-owned Indonesian steel producer—has created several joint ventures with foreign companies: Krakatau-POSCO for slab and hot rolled plate, Krakatau Nippon Steel Sumikin (KNSS) for cold rolled and galvanized steel products,[427] and Krakatau Osaka Steel (KOS) for long products. Both

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423 Guangxi Beibu Gulf International Port Group Co Ltd also holds the Chinese Consortium investment in MCKIP and is under SASAC control.

424 Alliance Steel Website, Company Profile, *available at* http://alliancesteel.com.my/articleList_6_1.html.

425 Alice Tsang, *Prospects for the Malaysia-China Kuantan Industrial Park and Kuantan Port*, Hong Kong Means Business (May 16, 2017), *available at* https://hkmb.hktdc.com/en/1X0AA0CO/hktdc-research/Prospects-for-the-Malaysia-China-Kuantan-Industrial-Park-and-Kuantan-Port.

426 Ee Ann Nee, *Misif blames China-owned Alliance Steel for Malaysian industry's losses*, The Sun Daily (Oct. 24, 2019), *available at* https://www.thesundaily.my/business/misif-blames-china-owned-alliance-steel-for-malaysian-industry-s-losses-CX1527411.

427 *KNSS, Joint Venture Manufacturing and Selling Automotive Flat Steel Products in Indonesia, Holds Opening Ceremony*, Nippon Steel (Aug. 8, 2018), *available at* https://www.nipponsteel.com/en/news/20180808_100.html.

KOS[428] and KNSS[429] have received preferential financing from the Japan Bank for International Cooperation, and Krakatau POSCO has received substantial ongoing support from the Korean government.[430] In short, Indonesia and Korea have a relationship going back at least to 2012 that includes industrial cooperation and, in the case of Krakatau POSCO, transnational subsidization. Silmy Karim, the CEO of Krakatau Steel explained in an interview that POSCO invested $3.5 billion in Krakatau POSCO and that the Korea ExImBank recently restructured the debt to help Krakatau Steel.[431] At approximately the same time, at the request of Indonesia, the Korean EximBank announced that it "intends to provide untied soft loans under the name of the Economic Development Partnership Facility."[432]

These two case studies of China-Malaysia and Korea-Indonesia exemplify how transnational subsidies provide an unfair advantage in international competition and are a significant trade barrier for U.S. companies operating globally. Indeed, as with purely domestic subsidies, transnational 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.

Given that transnational subsidies increasingly put U.S. steel companies at a competitive disadvantage against foreign producers that are being subsidized by their

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428 *Loan for Construction Steel Manufacturing and Sales Business of Japanese Company in Indonesia*, Japan Bank for International Cooperation (Nov 27, 2015), *available at* https://www.jbic.go.jp/en/information/press/press-2015/1127-44275.html.

429 *Loan for Construction Steel Manufacturing and Sales Business of Japanese Company in Indonesia*, Japan Bank for International Cooperation (Mar. 4, 2016), *available at* https://www.jbic.go.jp/en/information/press/press-2015/0304-46923.html.

430 The Embassy of Indonesia in Seoul, Korea highlights the close ties between the Republic of Korea and Indonesia, which now includes a "special strategic partnership...that would not merely {be} transactional but must be based on the spirit of mutual assistance" as of November 2017. Embassy of Indonesia in Seoul, Korea, *available at* https://kemlu.go.id/seoul/en/pages/hubungan_bilateral/558/etc-menu. Additionally, both Heads of State signed a "Memorandum of Understanding between the Ministry of Industry of the Republic of Indonesia and the Ministry of Trade, Industry and Energy of the Republic of Korea on Industrial Cooperation." *Id.* The Embassy of Indonesia in Seoul website also indicates that "{i}n 2012, Indonesia and South Korea had agreed to establish the Indonesia-ROK Comprehensive Economic Partnership (IK-CEPA) in order to increase trade and economic relations, in which it based on 3 (three) main pillars, namely...trade and investment facilitation." *Id.* Moreover, in December 2015, the Indonesian Investment Coordinating Board (BKPM) signed a memorandum of understanding with Woori Bank. *BKPM Teams up with South Korean Bank to Boost FDI*, Tempo.Co (Dec. 19, 2015), *available at* https://en.tempo.co/read/729173/bkpm-teams-up-with-south-korean-bank-to-boost-fdi. The Head of the BKPM stated publicly that the goal of the cooperation is to increase foreign direct investment to the industrial sector in Indonesia. MG Noviarizal Fernandez, *BKPM Intensify Promotion to South Korea*, Bisnis.com (Dec. 17, 2015), *available at* https://ekonomi.bisnis.com/read/20151217/9/502746/bkpm-gencarkan-promosi-ke-korea-selatan.

431 Putri Adityowati, *At Least We Can Breathe Now*, Tempo Magazine (Feb. 4, 2020), *available at* https://magz.tempo.co/read/36370/at-least-we-can-breathe-now.

432 *South Korea KIND Explores Potential Investment in Indonesia*, The Insider Stories (Sept. 23, 2019), *available at* https://theinsiderstories.com/south-korea-kind-explores-potential-investment-in-indonesia/.

own and other governments, the U.S. government should take the steps necessary to ensure that appropriate remedies are applied in order to secure a level playing field abroad for U.S. producers and suppliers of steel products. The European Union, for instance, has recently began imposing countervailing duties on imports from third-countries that are subsidized by the Chinese government through One Belt One Road initiatives.[433] Notably, the European Union has countervailed subsidies provided by Chinese authorities and through a joint China-Egypt economic cooperation zone in Egypt to Egyptian exporters.[434] In effect, the European Union has attributed Chinese subsidies to Egypt, thus allowing advantages conferred under One Belt One Road programs to Egyptian exporters to be remedied under the European Union's countervailing duty law.[435]

The evolving European approach to combatting transnational subsidies afforded foreign producers in third countries through China's One Belt One Road program and other initiatives is consistent with WTO law,[436] and it is also replicable under U.S. law. That is, the U.S. government can pursue similar remedies to counterbalance the adverse effects of transnational subsidies stemming from China and other countries. However, as currently written, the Commerce Department's regulations prevent remedial action on such subsidies as they provide that the agency will not countervail a subsidy if it is funded "{b}y a government of a country other than the country in which the recipient firm is located."[437] The provision in the Commerce Department's regulation is not mandated by U.S. statute, though, as the trade laws do not require that transnational subsidies not be remedied.[438] As such, the regulation could be withdrawn entirely or modified in a way to allow the Commerce Department to address transnational subsidies through the established countervailing duty laws.[439]

In short, AISI encourages USTR to pay special attention to the systemic problem of transnational subsidies and the unfair advantages they impose upon U.S. steel producers when competing in foreign markets. AISI urges USTR to work with the Commerce Department and other government agencies to collect the information

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433 *See* Gibson Dunn, *European Commission Imposes Countervailing Duties on Imports from Egypt for Subsidies Provided by China* (June 24, 2020), *available at* https://www.gibsondunn.com/european-commission-imposes-countervailing-duties-on-imports-from-egypt-for-subsidies-provided-by-china/.
434 *Id.*
435 *Id. See also* Mukesh Bhatnagar, The Indian Review of Corporate and Commercial Laws, *Guest Post: EU Targets China's Belt and Road Initiative in Egypt through Countervailing Duty* (Aug. 22, 2020), *available at* https://www.irccl.in/single-post/2020/08/23/guest-post-eu-targets-china-s-belt-and-road-initiative-in-egypt-through-countervailing-du.
436 *See id.*; WTO Agreement on Subsidies and Countervailing Measures at Art. 1.1(a)(1).
437 19 C.F.R. § 351.527.
438 *See* 19 U.S.C § 1671(d).
439 AISI also notes that it is also possible – to a limited extent – to address transnational subsidies through an expansive reading the international consortium exception provided in the statute and explicitly referenced in the Commerce Department's regulations. *See* 19 U.S.C. § 1671(d); 19 C.F.R. § 351.527.

required and modify their regulations and practices, as necessary, to fully combat the growing problem of transnational subsidies in foreign steel markets.

VI. STATE ENTERPRISES AND GOVERNMENT INTERVENTION

Foreign governments are increasingly using state enterprises (SEs)[440] and other methods of government intervention to unfairly tilt the commercial playing field, both within a country's borders and in global markets. The OECD notes that while "state enterprises are relatively low in numbers compared to private enterprises, they account for an important share of global crude steel production. In 2016, 22 of the world's 100 largest steelmaking companies were state enterprises… and [SEs] represented at least 32% of global crude steel output in 2016."[441] 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.

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

SEs often receive massive subsidies and other benefits from their governments, which provide an unfair competitive advantage to SEs in their worldwide operations. As the OECD has noted, the main concern regarding state-ownership for the trade community is the "anti-competitive effects of advantages granted to SEs."[442] Some of the most significant ways in which governments benefit their SEs and distort the global marketplace include: direct subsidies in the form of cash grants and/or capital infusions;[443] preferential loans and access to finance;[444] tax reductions and exemptions; preferential access to raw materials and other inputs; and preferential regulatory treatment.[445]

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440 As used in these comments, "state-owned enterprises" includes "state-supported enterprises" and other government-backed entities.

441 OECD, *State Enterprises in the Steel Sector* (Dec. 2018) at 4.

442 Przemyslaw Kowalski, Max Büge, Monika Sztajerowska and Matias Egeland, *State-Owned Enterprises: Trade Effects and Policy Implications*, OECD Trade Policy Paper No. 147, TAD/TC/WP(2012)10/FINAL (Mar. 22, 2013) at 9 ("OECD, *SOEs: Trade Effects and Policy Implications*"). *See also* Hans Christiansen and Yunhee Kim, *State-Invested Enterprises in the Global Marketplace: Implications for a Level Playing Field*, OECD Corporate Governance Working Papers No. 14 (July 30, 2014) at 13 ("OECD, *SIEs in the Global Marketplace*"); *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (July 2015).

443 *See* Andrew Szamosszegi and Cole Kyle, *An Analysis of State-owned Enterprises and State Capitalism in China*, U.S. China Economic and Security Review Commission (Oct. 26, 2011) at 49.

444 *See* OECD, *SIEs in the Global Marketplace* at 13; Stephen Lacey, *How China Dominates Solar Power*, The Guardian (Sept. 12, 2011).

445 *See* Antonio Capobianco and Hans Christiansen, *Competitive Neutrality and State-Owned Enterprises*, OECD Corporate Governance Working Papers No. 1 at 6-7, 20 ("Competitive Neutrality"); OECD, *SOEs: Trade Effects and Policy Implications* at 5, 16.

Because SEs are frequently subsidized and otherwise advantaged by their home governments,[446] 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.[447] These distortive effects essentially cause market-based U.S. steelmakers 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."[448] 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.[449] 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.

B. State Enterprises by Country

Of the world's 25 largest SEs, thirteen are domiciled in China (including Hong Kong), three are Russian, and two are Brazilian.[450] Other countries with significant SEs include Argentina, Belgium, Colombia, Czech Republic, France, Germany, India, Italy, Korea,

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446 *See, e.g.*, Scott Cendrowski, *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").

447 OECD, *SIEs in the Global Marketplace* at 13; OECD, *SOEs: Trade Effects and Policy Implications* at 5. *See also* OECD, *Broadening the Ownership of State-Owned Enterprises: A Comparison of Governance Practices* (Feb. 4, 2016) at 27 ("OECD, *Broadening the Ownership of SOEs 2016*") (referring to the "other social objectives" of OECD).

448 Competitive Neutrality at 6. *See also* OECD, *SIEs in the Global Marketplace* at 14.

449 *See, e.g.*, S&P Global, *Italy Likely to take majority stake in ArcelorMittal Italia: sources* (Oct. 7, 2020).

450 OECD, *SIEs in the Global Marketplace* at 7.

Mexico, Netherlands, Norway, Saudi Arabia, South Africa, Spain, Sweden, Thailand, and Turkey.[451] Additional country-specific information on SEs is provided below.

China: Nowhere is the rise of state capitalism more evident than in China. SEs continue to 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.[452] With respect to the steel industry, the Chinese government has ownership interests in 18 of the 20 largest steel producers in China.[453] The CCP is at odds with the majority of the world in terms of how it views its approach to economic development, and its actions during the COVID-19 pandemic demonstrate that the government has no intention of transitioning to a market economy.[454] Instead, over the past year, the CCP has taken new steps to increase its influence over SEs.[455]

Since 2015, the share of private companies investing in factories and major projects in China has declined.[456] During the 13th Five Year Plan period, the Chinese government has relied heavily on the concept of "mixed ownership reform" in its attempts to reform the state sector.[457] Mixed ownership reform seeks to draw additional non-state investment into Chinese SEs, purportedly to promote market-orientation by giving private investors a greater say in SE operations.[458] The policy has not, however, been coupled with necessary corporate governance reforms, so that it has become "little more than an attempt to receive private sector payments without offering anything in return – an empty box with nice wrapping paper."[459] The CCP has in fact moved to expand and formalize its influence over the operations of firms of all ownership structures,[460] while also promoting investment by the state sector in non-state firms in key emerging industries.[461] As a result, in response to CCP policies, the Chinese government continues to promote, subsidize, and expand the state sector despite warnings from the

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[451] *See generally* OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices* (2018); OECD, SIEs in the Global Marketplace.
[452] *See, e.g.*, DOC China Financial System Memo at 9.
[453] OECD State Ownership Report at 6-7.
[454] Lingling Wei, *China's Coronavirus Response Toughens State Control and Weakens the Private Market*, The Wall Street Journal (Mar. 18, 2020), *available at* https://www.wsj.com/articles/chinas-coronavirus-response-toughens-state-control-and-weakens-the-private-market-11584540534.
[455] U.S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 86, *available at* https://bit.ly/318r46z.
[456] *Id.* at 130.
[457] *See, e.g.*, Ann Listerud, *MOR Money MOR Problems: China's Mixed-Ownership Reforms in Practice*, CSIS (Oct. 1, 2019).
[458] *Id.*
[459] *Id.*
[460] *See, e.g.*, Federica Russo, *Politics in the Boardroom: The Role of Chinese Communist Party Committees*, The Diplomat (Dec. 24, 2019).
[461] *See, e.g.*, Iris Leung, *China Rolls Out "Government Guidance Funds to Boost Tech Startups*, Techwire Asia (May 23, 2017).

IMF that effects from a large wave of SE defaults could ripple through the global economy.

As illustrated above, China has embarked on a campaign to expand state influence past country borders, providing financial support for enterprises "going out" and building capacity in foreign countries.[462] As of 2019, Chinese SEs either owned equity in or had an operating lease at approximately 70 ports outside of China.[463] Because of the expansive control of the Chinese government over Chinese firms, even decisions by "private" Chinese companies "may be guided by national security or industrial policy objectives beyond the economic return sought by private actors."[464]

As the U.S.-China Economic and Security Review Commission stated in its 2019 annual report:

> China's government has [] pursued limited market and financial system opening over the last year in an effort to attract foreign capital. These measures remain narrowly designed to address specific pressures facing China's economy and do not appear to herald a broader market liberalization of the kind that U.S. companies and policymakers have long advocated.[465]
>
> The CCP has taken new steps to promote itself globally as a model worthy of emulation, attempting to cast its political system and approach to economic development as superior alternatives to that of the United States and other democratic countries.[466]

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462 David Stanway and Ruby Lian, *China looks overseas in bid to slim down bloated steel sector*, Reuters (Apr. 20, 2016). Chinese manufacturers receive hundreds of billions of dollars of state support to build and purchase plants on foreign soil, through money provided by institutions such as China Development Bank, Bank of China and funds like China Investment Corp. Chinese SEs, backed by below-market financing and state support, have become dominant players in China's outbound investment. .S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 181, *available at* https://bit.ly/318r46z. The Chinese government encourages strategic partnerships and investments between its steelmakers and overseas interests to increase exports of steel. For instance, Indonesia has repeatedly manipulated its nickel ore export market in recent years, including a complete ban on exports at the beginning of 2020, so the largest Chinese producer of stainless steel, Tsingshan, built a 3.0 to 3.5 million MT production stainless steel facility in Indonesia, almost exclusively for export markets to the United States and Europe. Maytaal Angel, *Stainless steel glut builds in China as Indonesia ups output*, Reuters (May 3, 2018), *available at* https://www.reuters.com/article/us-stainless-glut-nickel/stainless-steel-glut-builds-in-china-as-indonesia-ups-output-idUSKBN1I412C.

463 U.S.-China Economic and Security Review Commission Annual Report (Nov. 2019) at 299, *available at* https://bit.ly/318r46z.

464 *Id.* at 181.

465 *Id.* at 1.

466 *Id.* at 30.

> Under military-civil fusion, so-called "guidance funds" pool state-owned and private capital together for investments, allowing the state to steer ostensibly private capital toward investments in nascent dual-use sectors it deems strategically important.[467]

<u>Iran</u>: Backed by the Iranian government, the steel industry in Iran is growing rapidly and is increasingly export-oriented. Iranian steel production capacity increased from 16.0 million MT in 2009 to 36.0 million MT in 2019.[468] Iran intends to significantly further increase its steel production capacity. The OECD has commented that based on current development projects, Iranian steelmaking capacity could increase by 19.6 million MT by 2022.[469] Indeed, the Iranian government has announced plans to increase national steel capacity to 55 million MT by 2025, of which 10-15 MT is earmarked for export.[470] The growth of the Iranian steel industry is critical to Iran. By value, steel represented 8.7 percent of Iran's total exports in 2018.[471] In 2017, the top three steel producers in Iran are all state-owned companies and accounted for 64 percent of Iran's total steel production in 2017.[472] Iranian steel exports will likely increase as a result of worsening economic conditions in Iran due to U.S. sanctions and the COVID-19 pandemic.[473]

The growth of the Iranian steel industry is supported by China. China has strategically supported the growth of the Iranian steel industry by providing Iranian steel producers with the investment, equipment, and strategic advice necessary to grow the industry.[474] Chinese-financed developments in the Middle East are also often viewed as a way for China to transfer its steel overcapacity.[475] The Chinese government has sought to develop a closer, strategic relationship with Iran as part of its One Belt One Road Initiative, and the Chinese Metallurgical Group Corporation, a Chinese state-owned company, has announced plans to finance some of Iran's steel capacity building

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467 *Id.* at 376.
468 OECD Steel Committee, *Latest Developments in Steelmaking Capacity* (May 22, 2020) at 35.
469 *Id.* at 17.
470 OECD, *Recent developments in steelmaking capacity*, DSTI/SC(2018)2/FINAL (2018) at 9, 17-19; Press TV, *US Sanctions are surprise boon to Iran's steel exports* (Jan. 9, 2019).
471 U.S. Int'l Trade Administration, *Global Steel Trade Monitor, Steel Exports Report: Iran* (Mar. 2019) at 1.
472 *Id.* at 6.
473 Djavad Salehi-Isfahani, *Can Iran Weather the Trump storm?* (May 3, 2019); The World Bank, *Iran's Economic Update – April 2020*, The Hill (Apr. 16, 2020)
474 *Persian Iron and Steel ambition: What investment opportunities are there for Chinese companies entering the Iranian steel industry?*, China Steel News Network Editor (Jan. 25, 2019).
475 Afshin Molavi, *Enter The Dragon: China's Belt And Road Rising In The Middle East*, Hoover Institution (Oct. 2, 2018).

projects.[476] In 2020, Iran and China signed a 25-year strategic partnership treaty, covering economic, security, and trade issues.[477]

Spurred by government support, low-priced Iranian shipments have also distorted other Middle Eastern markets and exacerbated the global steel overcapacity crisis. For instance, a leading steel producer in Oman—Jindal Shadeed Iron & Steel (JSIS)—remarked in 2015 that "{i}t is a fact that cheap steel imports have been creating an unhealthy situation for the steel industry worldwide. The dumping of steel from China, CIS, Iran, Turkey, and so on, at prices much lower than the cost of steel, is pushing the world steel market into a very critical situation...Local steel units have been under pressure and are forced to either close down or reduce their output."[478] The same official further commented that JSIS was "operating at half the capacity due to the slump in prices (triggered by) cheap imports mainly from China, Iran, the CIS, and so on."[479] Likewise, Indian steel producers have complained that cheap Iranian hot-rolled coil has flooded the Indian market, using the UAE as an intermediary to avoid U.S. sanctions.[480] Similarly, the Lebanese government has acknowledged that Iranian steel is imported into Lebanon, but that it is difficult to track the origin of these shipments as they are shipped from Iran through other countries, such as Turkey, before reaching Lebanon.[481]

Russia: The Commerce Department notes that "[b]urdensome regulations, the preponderance and strength of state-owned enterprises, and government policies encouraging localization present challenges to U.S. exporters" in Russia.[482] Indeed, Russia has "reasserted direct state control over 'strategic' industries," including oil, gas, and transportation,[483] which are important to the steel industry. According to the U.S.

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[476] OECD, *Recent developments in steelmaking capacity*, DSTI/SC(2018)2/FINAL (2018) at 9; Abdul Kerimkhanov, *China seeks to develop comprehensive strategic ties with Iran*, AzerNews (Feb. 21, 2019).

[477] Alam Saleh and Zakiyeh Yazdanshenas, *Iran's Pact With China Is Bad News for the West*, Foreign Policy (Aug. 9, 2020); Farnaz Fassihi, *Defying U.S., China and Iran Near Trade and Military Partnership*, The New York Times (July 11, 2020).

[478] Conrad Prabhu Muscat, *Steel industry seeks punitive duties on cheap imports: Discounted foreign steel floods local market*, Oman Daily Observer (Dec. 30, 2015).

[479] *Id.*

[480] *Steel firms in a tizzy as hot rolled coils arrive from Iran*, The Hindu Business Line (Apr. 3, 2019). *See also* Amir Havasi, *China's Troubled Relationship With Iranian Steel Industry*, Financial Tribune (Aug. 16, 2017); Suresh P Iyengar, *Now, steel import from Iran worries Indian companies*, The Hindu Business Line (Feb. 28, 2019).

[481] Tony Badran, *Lebanese Government in Denial about Illicit Imports of Iranian Steel*, Foundation for Defense of Democracies (May 3, 2019).

[482] U.S. Department of Commerce, *Russia - Market Challenges* (Oct. 13, 2019), *available at* https://www.trade.gov/knowledge-product/russia-market-challenges.

[483] *Something old, something new*, The Economist (Jan. 21, 2012); Heli Simola and Laura Solanko, *Overview of Russia's oil and gas sector*, Bank of Finland, BOFIT Institute for Economies in Transition, BOFIT Policy Brief 2017 No. 5 (May 19, 2017) at 6 ("An effort is also made to control the structure of oil sector production through taxation."). *See also 2014 Index of Economic Freedom: Russia*, The Heritage Foundation, *available at* http://www.heritage.org/index/country/russia ("The state has reasserted its dominance in

State Department, while the Russian government published a new privatization plan in January 2020, "[t]he Russian government and its SOEs dominate the economy."[484] The Russian government still maintains a list of 136 SEs with "national significance" whose privatization is only permitted with a special government decree.[485] Further, while Russia has made some privatization efforts, "most large SOEs remain in state hands and 'large scale' privatization…is not keeping up with implementation plans," which the government has attributed to low share prices, "which would yield insufficient revenue for government coffers."[486]

__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.[487] The Heritage Foundation noted that "the state maintains an extensive presence in many areas through [SEs]" with public debt accounting for 70 percent of gross domestic product (GDP) in 2019.[488] In 2017, 65 percent of India's investments in SE's were concentrated in the manufacturing, energy, and mining sectors, which are critical for steel manufacturing and raw materials.[489] 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.[490] In December 2019, the Ministry of Steel published a draft version of the "Promotion of Greenfield investments in the steel sector" Policy, aiming to set up "greenfield" steel plants with "investments to the tune of ~ ₹1-1.5 Lakh Crore."[491] This funding will likely be provided by India's state-controlled banking system.[492]

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the aerospace, mining, and oil and gas industries"); *OECD, SOEs: Trade Effects and Policy Implications*, OECD Trade and Agriculture, Working Party of the Trade Committee (Mar. 2013) at 6.

484 *See 2020 Russia Investment Climate*.

485 *Id.*

486 *Id.*

487 *See* U.S. Department of Commerce, *India – 7-State-Owned Enterprises* (Aug. 2, 2017).

488 *2017 Index of Economic Freedom: India*, The Heritage Foundation, *available at* http://www.heritage.org/index/country/india.

489 U.S. Department of Commerce, *India – 7-State-Owned Enterprises* (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.

490 Ten lakh crore rupees is approximately $136.52 billion at the time of this submission. *See also* India National Steel Policy 2017 at 2 (explaining that after 2004, the "Indian steel sector witnessed a wave of investments…funded by banks.").

491 *Draft Policy - Promotion of Greenfield investments in the steel* sector, Ministry of Steel (Dec. 2019), *available at* https://bit.ly/2FybrOk. The range of ₹1-1.5 lakh crore is approximately $13.65 billion - $20.48 billion USD at the time of this submission.

492 *See National Steel Policy: Without funds, the steel vision could rust*, Financial Express (Dec. 15, 2020), *available at* https://www.financialexpress.com/opinion/national-steel-policy-without-funds-the-steel-vision-could-rust/1868717/; Megha Manchanda, Jyoti Mukul, *NPA's in Sector Will Disappear: Steel Secy*, Business Standard (May 6, 2017); India National Steel Policy 2017.

Indonesia: Indonesia currently has at least 118 SEs, which operate in almost all sectors of the economy, including mining, energy, manufacturing, steel, and logistics.[493] According to the State Department, twenty Indonesian SEs account for a quarter of the value of all listed shares on the Indonesian stock exchange.[494] Additionally, "SEs receive strong preference for [Government of Indonesia] projects."[495] 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."[496] In fact, in 2015, the Indonesian government injected $3 billion into various SEs.[497] Recipients of the funds include Aneka Tambang, which plans to build an alumina refinery, and Krakatau Steel, which plans to modernize its plants.[498] In 2018, the Indonesian government issued a plan to use state-owned holding companies as a way to stimulate sluggish economic growth in the country by putting large sums of capital towards supporting the expansion of SEs.[499] In 2020, Krakatau Steel benefited from a government orchestrated debt restructuring.[500]

Malaysia: Most of Malaysia's larger companies are either government-linked investment companies with partial government ownership or government investment companies wholly owned by the government. Government-linked investment companies are primarily corporations that received a government debt-for-equity swap as a result of the 1997 Asian Financial Crisis. Government officials are appointed to the board of the companies and can control companies to pursue government policies. The Ministry of Finance lists 70 SOEs on its website, including among others 1Malaysia Development Berhad, Export-Import Bank of Malaysia, and Petroliam Nasional Berhad.[501] Overall, government-linked investment companies account for 42 percent of the market capitalization of Malaysia's stock market.[502] As the 2020 USTR NTE Reported noted, "Malaysia has traditionally used government procurement contracts to support national public policy objectives… As a result, it has generally invited

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493 U.S. Department of State, Bureau of Economic and Business Affairs, *Investment Climate Statements for 2017: Indonesia* (2017); Kyunghoon Kim, *Jokowi wakes up the leviathan*, New Mandala (Dec. 2, 2016).
494 *Id.*
495 U.S. Department of Commerce, *India – 7-State-Owned Enterprises* (Aug. 2, 2017).
496 Kyunghoon Kim, *Jokowi wakes up the leviathan*, New Mandala (Dec. 2, 2016).
497 *Id.*
498 Wataru Suzuki, *Indonesia's growth strategy: Inject cash into state companies*, Nikkei Asian Review (Feb. 5, 2015).
499 Kyunghoon Kim, *Indonesia's state-owned predicament*, Asia & the Pacific Policy Society (June 26, 2018), *available at* https://www.policyforum.net/indonesias-state-owned-predicament/.
500 *House of Representatives approves Rp 3 trillion government loan for Krakatau Steel*, IDN Financials (July 16, 2020), *available at* https://www.idnfinancials.com/news/35212/house-representatives-approves-government-loan-krakatau-steel
501 Malaysia, Ministry of Finance, Government Investment Companies Division (GIC), *Frequently Asked Questions* (Oct. 24, 2019), *available at* https://www.treasury.gov.my/index.php/en/contactus/faqs/gic.html.
502 P. Aruna, *The changing face of corporate Malaysia*, The Star (July 23, 2016) *available at* https://www.thestar.com.my/business/business-news/2016/07/23/the-glic-conundrum/.

international tenders only when domestic goods and services are not available."[503] Given the dominating presence of government-linked investment companies and government investment companies, these policies are prevalent and prevent the U.S. steel industry from competing on a level playing field in Malaysia.

Vietnam: Vietnamese SEs operate in pillar industries of the Vietnamese economy, including "electricity, minerals, petroleum, finance, food, and telecommunications."[504] 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.[505] As of 2018, Vietnamese SEs accounted for only 0.4% of all Vietnamese enterprises, while accounting for 28.8% of Vietnam's GDP.[506] Vietnam has made some efforts to reform its SE sector, including plans released in recent years to divest hundreds of SEs by the end of 2020. However, the restructuring program appears to have stalled as the Vietnamese government has lowered the number of SEs to be reduced from 137 announced in 2016 under Decision 58/2016/QD-TTg to 93 announced in September 2019 by Decision 26/2019/QD-TTg.[507] At the end of the first half of 2019, only 35 of the targeted 137 SEs had been equitized, and audit experts believe it will be challenging for Decision No. 26 to be achieved before the deadline.[508] Regardless, Vietnam has continued to set divestment goals in 2020 with Decision 908/2020/QD-TTg requiring divestment of 124 more SEs.[509]

Actions taken by the Vietnamese government and steel industry also allow and promote the circumvention of U.S. trade orders. To illustrate, in May 2020, the Commerce Department self-initiated an investigation into the circumvention of the antidumping and countervailing duty orders on stainless steel strip from China where Chinese stainless streel strip products are completed in Vietnam before being shipped to the United States.[510] Similarly, in December 2019, the Commerce Department

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[503] 2020 USTR NTE at 346

[504] *State-Owned Enterprise Reform in Viet Nam: Progress and Challenges*, Asian Dev. Bank Inst. (Jan. 2020) at 1-2, *available at* https://www.adb.org/sites/default/files/publication/562061/adbi-wp1071.pdf.

[505] U.S. Department of State, Bureau of Economic and Business Affairs, *Malaysia Investment Climate Statement 2017* (June 29, 2017).

[506] *State-Owned Enterprise Reform in Viet Nam: Progress and Challenges*, Asian Dev. Bank Inst. (Jan. 2020) at 1-2, *available at*, https://www.adb.org/sites/default/files/publication/562061/adbi-wp1071.pdf.

[507] Baker McKenzie, *Vietnam issues Decision No. 26 on the list of State-owned enterprises to be equitized by end-2020*, (Sept. 9, 2019), *available at* https://www.lexology.com/library/detail.aspx?g=cf3ec85e-e90f-46ff-bb18-644c03c6eab2.

[508] Khanh Chi, *Some Way to Go in SOE Equitization*, Vietnam Econ. Times (Nov. 17, 2019), *available at* https://vneconomictimes.com/article/business/some-way-to-go-in-soe-equitization.

[509] Trinh Nguyen, *Vietnam's Equitization Plans: Opportunities and Challenges for Investors*, Vietnam Briefing (July 10, 2020), *available at* https://www.vietnam-briefing.com/news/vietnams-equitization-opportunities-and-challenges.html/.

[510] U.S. Department of Commerce, *U.S. Department of Commerce Self-Initiates Circumvention Inquiry Involving Exports of Stainless Steel Sheet and Strip Completed in Vietnam* (May 12, 2020), *available at* https://www.trade.gov/press-release/us-department-commerce-self-initiates-circumvention-inquiry-involving-exports.

completed its investigation into the circumvention of five different steel products shipped from Vietnam.[511] In those investigations, the Commerce Department concluded that steel products produced in Korea and Taiwan, shipped to Vietnam for minor processing, and then exported to the United states as corrosion-resistant or cold-rolled steel were circumventing existing antidumping and countervailing duty orders.[512] This problem is not unique to the steel industry, as the Commerce Department initiated a circumvention inquiry in June 2020 into shipments of Chinese hardwood plywood that are completed in Vietnam before being shipped to the United States.[513]

Brazil: The Brazilian government owns or controls a variety of SEs at both the federal and state levels,[514] with a contributor in Forbes recently calling Brazil "the China of Latin America."[515] Public reports indicate that the Brazilian government owns all or part of more than 130 companies.[516] SEs in Brazil are dominant in the mining, energy, and financial sectors.[517] While the Bolsonaro government in Brazil has taken steps to privatize some SEs, others remain under state control/ownership.[518]

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,[519] while the Vietnamese government owns 65 percent of its largest steel producer, Vietnam Steel.[520] In addition, the following governments

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511 U.S. Department of Commerce, *U.S. Department of Commerce Announces Five Affirmative Final Circumvention Determinations on Steel Products from Vietnam* (Dec. 16, 2019), *available at* https://www.commerce.gov/news/press-releases/2019/12/us-department-commerce-announces-five-affirmative-final-circumvention.

512 *Id.*

513 U.S. Department of Commerce, *U.S. Department of Commerce Initiates Circumvention Inquiry of Hardwood Plywood Completed in Vietnam* (June 10, 2020), *available at* https://www.trade.gov/press-release/us-department-commerce-initiates-circumvention-inquiry-hardwood-plywood-completed.

514 *See* U.S. Department of State, *2017 Investment Climate Statements: Brazil* (June 29, 2017).

515 Kenneth Rapoza, *When It Comes to State-Owned Companies, Brazil is the China of Latin America*, Forbes (Nov. 3, 2018), *available at* https://www.forbes.com/sites/kenrapoza/2018/11/03/when-it-comes-to-state-owned-companies-brazil-is-the-china-of-latin-america/#44892c1d53da.

516 *Id.*

517 *Something old, Something new*, The Economist (Jan. 21, 2015); *OECD Progress Report, SOEs: Trade Effects and Policy Implications* at 6. *See also* Aldo Musacchio and Sergio G. Lazzariniat, *State-Owned Enterprises in Brazil: History and Lessons*, OECD Workshop on State-Owned Enterprises in the Development Process (Apr. 4, 2014) at 21, 37.

518 *See* Jeffrey T. Lewis and Paulo Tevisani, *Brazil Ruling Eases Sales of State-Owned Subsidiaries*, The Wall Street Journal (June 7, 2019), *available at* https://www.wsj.com/articles/brazil-ruling-eases-sales-of-state-owned-subsidiaries-11559919720.

519 *About Us*, Steel Authority of India (last visited Oct. 15, 2020), *available at* https://www.sail.co.in/company/about-us ("The Government of India owns about 75% of SAIL's equity and retains voting control of the Company"); Charlotte Rao, *Indian Steel Surges Ahead But Needs Demand to Catch Up*, S&P Global (Mar. 8, 2017).

520 *406 SOEs under divestment: exciting opportunities for investors*, Vietnam Net Bridge (Aug. 27, 2017).

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).[521] In fact, in 2016, four of the ten largest steel companies in the world were SEs.[522] According to the OECD, that same year, "state enterprises accounted for at least 32 percent of global crude steel production."[523]

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.[524] Governments often will prevent steel mill closures in order to maintain employment levels and for other non-commercial purposes.[525] In a purely market-based system, "the power of the market alleviates excess capacity, by forcing inefficient producers that incur profit losses to eventually exit the market."[526] 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.

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521 *Algeria: State-Owned IMETAL Takes over ArcelorMittal's Shares in Three Companies*, The North Africa Post (Aug. 8, 2016); *The changing face of Europe's flat steel industry*, S&P Globals (Sept. 23, 2016); *Italy takes full control of troubles Ilva steel plant*, Reuters (Jan. 21, 2015), *but see* Matteo Meneghello, *Italian government hands IlVA to AM Investco* (June 6, 2017) (indicating that the Government of Italy will own Ilva for at least another 12 months).

522 *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).

523 *See* Lieven Top, 83rd Session of the OECD Steel Committee – Chair's Statement (Sept. 28-29, 2017).

524 *See, e.g.*, *See* Lieven Top, 83rd Session of the OECD Steel Committee – Chair's Statement (Sept. 28-29, 2017); Bryce Baschuk, *U.S., EU Press China to Justify its Extensive Steel Subsidies*, Bloomberg (Apr. 14, 2017); Wiley Rein LLP, *Unsustainable: Government Intervention and Overcapacity in the Global Steel Industry* (Apr. 2016); *Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects*, OECD Science, Technology and Industry Policy Papers No. 18 (Feb. 20, 2015) ("OECD Excess Capacity Report").

525 *See* Bethany Allen-Ebrahimian, *Chinese Steel Output Hits All-Time High*, Foreign Policy (July 19, 2017); *Zombie firms and China's economic woes*, East Asia Forum (Nov. 21, 2016).

526 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).

VII. CONCLUSION

The trade barriers described in this submission 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 2021 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
Interim President and Chief Executive Officer