October 26, 2021

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

RE: Comments Regarding Significant Foreign Trade Barriers  
[Docket Number USTR—2021—0016]

Dear Mr. Smith:

In response to a request from the Office of the United States Trade Representative (USTR),1 the American Iron and Steel Institute (AISI) hereby submits comments to the interagency Trade Policy Staff Committee regarding USTR’s 2022 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’s membership 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

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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. These subsidies have become increasingly prevalent in recent years, including among our trading partners, 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 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. According to the Organization for Economic Cooperation and Development (OECD) Steel Committee, global excess steel capacity remains substantial, totaling an estimated 478 million MT in 2021.\(^3\) Overcapacity at such significant levels has encouraged unfair foreign trade practices and subsidized imports that harm U.S. steelmakers. AISI appreciates that the U.S. government continues to recognize the challenges that 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 commitment to defending vital domestic industries from unfair trade policies and practices by foreign governments.

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3 OECD 90th Session of the OECD Steel Committee - Chair’s Statement (Sept. 22-24, 2021) (excess capacity figure based on data as of June 2021).
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.\(^4\) 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, despite a commitment in the Phase One deal with China to increase purchases of U.S.-produced steel.\(^5\) Since China acceded to the WTO in 2001, its demand for finished steel has increased 486 percent, to 995 million MT in 2020.\(^6\) If U.S. steel mills had been able to partake in even just one percent of this increased demand for steel, 2020 U.S. steel exports to China would have been 8.3 million MT.\(^7\) Instead, U.S. mills exported just 71,630 MT of steel to China last year, down substantially from the export volumes seen in the mid-2000s.\(^8\) Through July 2021, U.S. exports of steel products to China were down 11 percent from the same period in 2020.\(^9\)

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.\(^10\) China’s closed steel market is the result of the Chinese government’s creation of subsidized overcapacity—China

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\(^7\) \((995 - 168) \times 1\% = 8.27\) million MT.


\(^9\) Id.

\(^10\) U.S. Int’l Trade Administration, Global Steel Trade Monitor, Steel Exports Report: China (May 2020).
produced 1.065 million MT of crude steel in 2020, 965 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.\textsuperscript{11} 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.”\textsuperscript{12} 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.\textsuperscript{13} Using these policies, China has implemented a long-standing, \textit{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 13\textsuperscript{th} and 14\textsuperscript{th} Five-Year Plan periods. 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 [13\textsuperscript{th} 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.”\textsuperscript{14} 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.”\textsuperscript{15} 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, \textit{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.\textsuperscript{16} Instead of tackling the causes of growing debt and

\begin{itemize}
\item \textsuperscript{11} 2021 World Steel in Figures, World Steel Association at 9, available at https://www.worldsteel.org/en/dam/jcr:976723ed-74b3-47b4-92f6-81b6a452b86e/World%2520Steel%2520in%2520Figures%25202021.pdf.
\item \textsuperscript{13} USTR, 2017 Report to Congress on China’s WTO Compliance (Jan. 2018) at 90.
\item \textsuperscript{14} Notice of the Ministry of Industry and Information Technology Regarding Publication of the Steel Industry Adjustment and Upgrading Plan (2016-2020) Gong Xin Bu Gui [2016] No. 358 (Oct. 28, 2016).
\item \textsuperscript{15} Id.
\end{itemize}
depressed global prices, the Chinese Communist Party (CCP) has pursued a well-documented strategy of consolidation. Most recently, in August 2021, Chinese steelmakers Ansteel Group and Ben Gang formally began the process of combining their operations, which “will create the world’s third-largest producer” of steel with a combined capacity of 63 million metric tons of crude steel per year.\(^\text{17}\) Of note, earlier this year, USTR commented that “China’s state-led approach to the economy and trade makes it the world’s leading offender in creating non-economic capacity, as evidenced by the severe and persistent excess capacity situations in several industries, including steel, aluminum, and solar, among others.”\(^\text{18}\) China’s more recent policy initiatives have doubled down on the pursuit of self-sufficiency. Specifically, China’s “dual circulation” strategy “envisions a new balance away from global integration (the first circulation) and toward increased domestic reliance (the second circulation).”\(^\text{19}\) The policy “sees the continued decoupling of global supply chains as an enduring trend” and “engag[es] international capital, financial, and technological markets when advantages can be gained while simultaneously bolstering indigenous capabilities to avoid overreliance on the global economy – due to national security concerns or the vagaries of global economic cycles.”\(^\text{20}\) It is thus likely that U.S. companies in industries like steel and other strategic sectors will continue to find themselves cut out of the Chinese market as the CCP aims to satisfy more domestic demand from domestic producers.

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.\(^\text{21}\)

B. Argentina

Many U.S. exporters remain concerned about Argentina’s overly broad use of non-automatic import licensing\(^\text{22}\) and trade balancing requirements. USTR has recognized

\(^{17}\) Tom Daly, China steel firms start merger to create world’s third biggest producer, Reuters (Aug. 20, 2021), available at https://www.reuters.com/world/china/china-steel-firms-start-merger-create-worlds-third-biggest-producer-2021-08-20/.


\(^{19}\) Jude Blanchette and Andrew Polk, Dual Circulation and China’s New Hedged Integration Strategy, Center for Strategic and International Studies (Aug. 24, 2020).

\(^{20}\) Id


that “Argentina has imposed a number of customs and licensing procedures and requirements, which make importing U.S. products difficult.” 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. 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. As of December 2018, Argentina “maintain[s] non-automatic import licensing requirements on 10,571 12-digit tariff lines, including on products the government deems import sensitive, such as automobiles... iron and steel.” 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.

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 vehicles, 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.

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. Due in part to these protectionist barriers, Brazil was the tenth largest net exporter of steel in 2020, with 10.6 million MT in net exports.
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.\(^{31}\) The Brazilian government later reduced, but did not eliminate, the import tariffs on certain steel products, due to domestic supply shortages in Brazil.\(^{32}\) 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. exporters to forecast the costs of doing business in Brazil.\(^{33}\) 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.\(^{34}\) 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.\(^{35}\) 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.\(^{36}\) For example, Brazil’s national

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\(^{31}\) Brazil’s foreign trade body, Camara 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).


\(^{33}\) USTR 2021 NTE Report at 59.

\(^{34}\) Id.

\(^{35}\) Id. at 61. See also Rosaliene Bacchus, *Understanding Brazil’s Taxes on Import*, Brazil Explore Magazine (Apr. 2010), available at https://www.rosalienebacchus.com/articles/UnderstandingBrazilsTaxesOnImports_031210.html.

development bank, Banco Nacional de Desenvolvimento Econômico e Social (BNDES), will not give Brazilian producers full access to its funding unless at least 30 percent of a project’s equipment, by weight, is produced in Brazil.\textsuperscript{37}

Local content requirements in Brazil are particularly pronounced with respect to wind manufacturing, and oil and gas production. 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.\textsuperscript{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.\textsuperscript{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 18 percent for offshore exploration, and ranging from 10 to 25 percent for offshore oil and natural gas production.\textsuperscript{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.

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.\textsuperscript{41} This four percent interstate tax has remained in effect in 2021.\textsuperscript{42}
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.\(^{43}\) Russia agreed to decrease its tariffs on industrial goods very modestly, from 9.5 percent to 7.3 percent,\(^{44}\) and on capital goods and equipment to approximately 5 percent.\(^{45}\) Although Russia has reduced its tariffs on certain steel products,\(^{46}\) 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.\(^{47}\)

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.\(^{48}\) AISI appreciates the U.S. government’s commitment “to [continue] monitor[ing] Russia’s import and export restrictions to ensure their consistency with WTO rules, and [] pursu[ing] WTO options, as appropriate.”\(^{49}\)

\(^{44}\) 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), available at https://tass.com/opinions/762715.
\(^{45}\) USTR, United States, Russia Sign Bilateral WTO Market Access Agreement: Negotiations on WTO Membership Now Move to the Multilateral Phase (Nov. 19, 2006).
\(^{47}\) USTR 2021 NTE Report at 392.
\(^{48}\) USTR 2019 NTE Report at 412.
\(^{49}\) USTR, 2020 Report on the Implementation and Enforcement of Russia’s WTO Commitments (Dec. 2020) at 3; see also USTR 2021 NTE Report at 432.
Russia also imposes local content requirements for wind energy and solar projects.\textsuperscript{50} The level of local content required of wind turbine equipment is currently 65 percent,\textsuperscript{51} and reports suggest that developers that export at least 8 percent of their costs receive additional state subsidies.\textsuperscript{52} Solar projects are subject to an even higher – 70 percent – local content requirement.\textsuperscript{53}

In addition to imposing local content requirements on renewable energy projects, Russia has also established local content requirements for a variety of industrial product sectors, including machine tools, automotive, special mechanical engineering, photonics and lighting, electrical-technical, cable, and heavy machinery pursuant to Russia’s 2015 Industrial Policy Law.\textsuperscript{54} “As a consequence, for example, some types of metalworking equipment must contain from 20 percent to 50 percent domestic parts, with increasing targets each subsequent year.”\textsuperscript{55}

In January 2017, the Russian government expanded its list of goods for national defense and services that must be locally sourced.\textsuperscript{56} The government’s list grew from 11 items to 132, and includes stainless steel pipes and tubs, as well as certain fabricated metal products.\textsuperscript{57} Russia also recently expanded its Russian-origin government procurement requirements beyond branches of the Russian government itself.\textsuperscript{58} 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.\textsuperscript{59} These

\begin{flushleft}
\textsuperscript{52} Id.
\textsuperscript{54} USTR 2021 NTE Report at 443.
\textsuperscript{55} Id.
\textsuperscript{57} Id.
\textsuperscript{59} USTR 2021 NTE Report at 443; see also Import substitution in Russia - Mechanical and electrical engineering and metal industries, CMS (June 16, 2016), available at https://www.cms-
“import substitution” policies were expanded through the Industrial Policy Law. In 2019, Russia expanded these limits to cover certain foreign-made electronics. 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). In April 2020, Russia implemented yet another series of bans and restrictions on entry of foreign industrial goods for public procurement and national defense and state security procurement.

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.” 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. 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. Japan

A variety of non-tariff barriers have traditionally impeded access to Japan’s automotive market by U.S. automakers and auto parts suppliers. These barriers include: “certain issues relating to unique standards and testing protocols, an insufficient level of transparency, including the lack of 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 2020, Japan exported 29.8 million MT of steel to the world, ranking third worldwide behind China and Russia.67 Japan’s export volume was slightly more than half that of China’s, despite Chinese steel production being more than ten times larger than Japanese production.68 In 2021, Japan had net exports of 29.8 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 13.6 million MT of steel, and its steel exports, as a share of production, were 8.3 percent.69 According to the Commerce Department’s Global Steel Trade Monitor, imports of Japanese steel products to the U.S. market totaled approximately 721,000 MT in 2020, while U.S. steelmakers only exported 14,200 MT of steel products to Japan.70 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.71

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68 Id. at 9, 27.
69 Id.
71 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 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.).
F. Indonesia

Indonesia has implemented various import policies that serve to protect its domestic steel industry. In its 2021 NTE Report, USTR explained that “Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia’s market.”72 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.73 Although Indonesian tariffs on non-agricultural goods are bound at 35.5 percent, tariff rates either exceed this amount or remain unbound on steel and key products.74

Like Japan, Indonesia has enacted barriers to shield its auto industry from foreign competition,75 thereby limiting the export of U.S. vehicles and automobile parts to the country. For instance, the Indonesian Industry Ministry has increased local content requirements for vehicles from 60 percent to 90 percent.76 Indonesia also recently imposed local content requirements, mandating up to 80 percent local content, for electric vehicles.77 These measures support the Indonesian steel industry at the expense of U.S. steelmakers.

Additionally, the Indonesian government’s National Industrial Development Masterplan for 2015 – 2035 (RIPIN),78 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.”79 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

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72 USTR 2021 NTE Report at 272.
73 Id. at 271.
74 Id.
79 Id. at 68.
construction on several power plants that will generate 10,000 MW of electricity using 40 percent local content.\(^8\) PLN announced that it “will team up with several state-owned enterprises to develop the plants, including … steel maker Krakatau Steel.”\(^9\) 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.”\(^8\) 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.\(^8\) The Malaysian government has also consistently sought to boost its economy through policies that discourage imports. For instance, in January 2015, Malaysia’s Prime Minister announced policy measures to strengthen the economy by intensifying the promotion of Buy Malaysia products.\(^4\) Buy Malaysia policies have persisted, if not intensified, during the COVID-19 pandemic.\(^5\)

H. **Canada**

Canada’s provincial government of Quebec has a local content requirement program that acts as a trade barrier protecting Canada’s domestic steel and renewable energy

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\(^{81}\) Id.


equipment industries. Hydro-Quebec provides electricity in Quebec and purchases 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. Quebec offers higher FIT rates contingent on local content requirements such as steel wind towers or internal metal components being used in construction of the wind farms.

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. 86

- The Dominican Republic applies a number of non-tariff trade barriers that have significantly hindered U.S. exports of rebar. 87 These barriers include those set forth in Dominican Quality Norm RTD 458, 88 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, 89 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.

- In April 2019, the government of Egypt imposed import duties on steel billet and rebar that are subject to a declining tariff. The applicable duty rate has remained significant in 2021 – 10 percent for billet and 17 percent for rebar. These tariffs were imposed in an effort to protect Egypt’s domestic steel industry from

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87 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”).

88 USTR 2021 NTE Report at 148-149.

89 Id.
unfair competition, and are in addition to five-year tariffs put in place in 2017 on imports of steel rebar from China, Turkey and Ukraine.

- 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. 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.

- Since mid-2014, Turkey has increased tariffs by an average of 26 percent on products across 50 different Harmonized System chapters, including steel. 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. Turkey also imposes “additional customs duties” on several steel products. For instance, in January 2017, Turkey issued additional customs duties of 30 percent on certain steel pipe and tube. In June 2018, in response to the imposition of Section 232 tariffs on steel and aluminum, Turkey raised tariffs

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90 Alyaa Stohy, *Egypt to review import duties on iron billets, rebar in April Duties on iron billets, steel rebar would be reduced to 10%, 17%, respectively, starting from April*, Daily News Egypt (March 31, 2021), available at https://dailynewsegypt.com/2021/03/31/egypt-to-review-import-duties-on-iron-billets-rebar-in-april/.


on $266.5 million worth of U.S. goods. In April 2020, Turkey again raised import duties on steel products, imposing an additional 30 percent import tariff that was in effect from April 15, 2020 until September 30, 2020, and has since dropped to 10 percent, where it remains. Additionally, Turkey raised import duties on steel products 5 percent higher for imports from Generalized System of Preferences (GSP) 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 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. 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 controls approximately 55 percent of global rare earths mining capacity and 85 percent of global rare earths refining capacity, 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 Industry and Information

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100 Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, the White House (June 2021) at 9.
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.\textsuperscript{101} To support these efforts, extraction and production quotas have been granted exclusively to these six enterprises and their subsidiaries.\textsuperscript{102}

Chinese monopolization exertion of state control over its rare earth industry is a vital part of China’s plan to develop integrated supply chains.\textsuperscript{103} 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.\textsuperscript{104} 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.\textsuperscript{105} 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.”\textsuperscript{106}

\begin{itemize}
\item \textsuperscript{101} Yang Meng, Six Major Rare Earths Groups Already Making Moves, Reorganization Must Show Concrete Progress by Year’s End, Securities Daily (Jan. 28, 2015).
\item \textsuperscript{102} 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.
\item \textsuperscript{103} 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.
\item \textsuperscript{104} USTR, United States Challenges China’s Export Duties on Nine Key Raw Materials to Level Playing Field For American Manufacturers (July 13, 2016).
\item \textsuperscript{106} USTR 2021 NTE Report at 110.
\end{itemize}
In January 2021, China’s Ministry of Industry and Information Technology ("MIIT") issued a draft version of the Regulations on Rare Earth Management indicating that China intends to exert greater control over the management of its rare earth metals. With some of China’s own sources for key raw materials at risk, the possibility that it resorts to more export restraints will only increase. To this end, supply chain issues during the COVID-19 pandemic have highlighted the importance of diversifying China’s sources for inputs. Since rare earths constitute a small portion of manufacturing costs, individual manufacturers or industries often do not have the means to prioritize developing alternative sources. 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.

B. India

In 2020, India was the world’s second-largest steel producer, and it is expected that Indian steelmaking capacity will increase by 18 percent to 120 million MT in 2022. 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. Despite substantial reserves of such materials, India restricts their export to manage the price of certain raw materials and other economic inputs and benefit its own consuming industries. Such measures include export tariffs, export quotas, and an opaque and confusing export licensing scheme, each of which significantly reduces India’s contribution to the world’s supply of raw materials used in steel production.

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110 Id.

111 Id.

112 2021 World Steel in Figures, World Steel Association at 9.


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.\textsuperscript{117} 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.”\textsuperscript{118}

Since 2008, India has imposed restrictions on certain critical raw materials, including iron ore, in the form of \textit{ad valorem} export taxes.\textsuperscript{119} 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\textsuperscript{120} to “conserv[e] iron ore for domestic steel units.”\textsuperscript{121} In 2017, the Indian government increased the export duty on zinc from 5 percent to 7.5 percent,\textsuperscript{122} as Indian galvanized steel producers were “planning to make additions to their existing [8 million tons] of capacity[.]”\textsuperscript{123} 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.

Such restrictions have a significant and troubling effect on exports.\textsuperscript{124} “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.\textsuperscript{125} 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

\textsuperscript{118} See New Steel Policy to boost domestic products use, invest Rs 10 lakh cr to up capacity to 300 mm t by 2030, First Post (May 4, 2017), available at https://www.firstpost.com/business/new-steel-policy-to-boost-domestic-products-use-invest-rs-10-lakh-cr-to-up-capacity-to-300-mm-t-by-2030-3422828.html.
\textsuperscript{119} See Unmesh Wagh, Department of Revenue, Government of India Ministry of Finance, Notification No. 79/2008 and No. 66/2008 – Customs (June 13, 2008).
\textsuperscript{123} Galvanized Steel Products Catching Pace in India, Steel360 (Dec. 17, 2016).
\textsuperscript{125} 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/.

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growth for all iron ore. In May 2020, the Chief Minister of Chhattisgarh ordered NMDC to reduce iron ore prices to provide relief to the local steel industry. NMDC has been ordered to continue lowering its iron ore prices this year.

Notably, India has the fourth largest bauxite reserves in the world, and it maintains an export tax on bauxite to benefit Indian manufacturers. As recently as April 2020, FIMI itself appealed to the government to waive the 15 percent export duty on bauxite, 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). India’s current policy gives STEs the exclusive right to import and export certain minerals, such as iron ore, manganese ore, and chrome ore. 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. MMTC, of which the Indian government owns a 90 percent stake, is annually responsible for a significant percentage of India’s

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130 See Dilip Kumar Jha, Bauxite miners seek to abolish export duty, Business Standard (Apr. 2, 2016).
total iron ore exports. Ensuring that exports are channeled through STEs allows the Indian government to control the price and supply of steelmaking raw materials in domestic and global markets.

C. **Indonesia**

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

Specifically, in order to export these mineral concentrates, Indonesia requires that exporters satisfy the following requirements: convert their permit status from a “contract of work” to a “special mining license”; build a smelter within five years; and divest up to 51 percent of their company to local investors. The Indonesian Minister of Energy and Mineral Resources has indicated that permits will be reviewed every six months and companies with “insufficient” progress in smelter construction will have their permits revoked. Indonesia also has an export licensing requirement

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


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 id.

143 See Indonesia ushers in 2017 with changes to Mining Law, Ashurst (Feb. 8, 2017).
for coking coal, implemented in part to “ensure the fulfillment of [the] domestic need for coal.” However, licenses are difficult to obtain, with “[v]arious Indonesian mining companies [having] said that they had difficulty to secure the new export permits.”

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. 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. 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. While the government of Indonesia in January 2017 announced a partial lifting of the export ban, a new ban on nickel ore exports went into effect in January 2020, two years earlier than originally planned. 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.

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


applauds the U.S. government’s request to join the consultations in this case\textsuperscript{152} and is pleased with recent engagement with domestic industry stakeholders as the WTO case proceeds.

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 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,\textsuperscript{153} takes advantage of this market-distorting nickel export ban. Meanwhile, in August 2020, 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.\textsuperscript{154} More recently, in March 2021, the Indonesian government issued a press release regarding Chinese steel producer Nanjing Iron & Steel Group Co., Ltd.’s plans to invest in the Indonesian steel industry.\textsuperscript{155} AISI encourages USTR to work with its counterparts, particularly in Europe, to address any illegal export restrictions.

D. Other Global Export Restrictions

The OECD has identified a significant number of export restrictions on raw materials used in steelmaking by various countries.\textsuperscript{156} For example:

- On July 2, 2016, Argentina implemented a 360-day ban on all exports of scrap of iron, steel, copper, and aluminum. According to USTR, Argentina has “consistently extended the ban in subsequent years.”\textsuperscript{157} The Government most recently extended this ban on December 23, 2020 for an additional year.\textsuperscript{158}

\begin{thebibliography}{99}
\bibitem{oecd} 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.
\bibitem{ustr} USTR 2021 NTE Report at 25.
\end{thebibliography}
China India, Ukraine, Kazakhstan, Russia, and several EU countries all impose export restrictions on coking coal. China also has an export quota on coking coal.

Malaysia imposes a non-automatic export licensing requirement on exports of minerals and ores. In addition, Malaysia frequently imposes periodic bans on bauxite mining, most recently doing so in January 2016 and only lifting this ban in early 2020. 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. Further, Vietnam imposes a 10 to 15 percent export tariff on coal, which the government has refused to lower. On July 14, 2021, Vietnam announced that it was imposing a 5 percent export tariff on billet.

Russia imposes a 30 percent export tax on natural gas.

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. The

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161 USTR 2021 NTE Report at 346.
162 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).
165 See Finance Ministry refuses to cut tax rates for coal industry, Vietnam.net (July 31, 2017).
167 See USTR 2021 NTE Report at 449.
168 OECD, Steelmaking Raw Materials 2012 at 56; Presentation of Eric Harris, OECD/South Africa Workshop on Steelmaking Raw Materials (Dec. 11, 2014) at 9.
global steel industry depends on trade in scrap and other key raw materials such as iron ore, coke, coal, and ferroalloys. Approximately 30 countries restrict scrap exports, which has resulted in market distortions, severe shortages, and increased prices.

1. Effects of Scrap Export Restrictions

Export restrictions on steel scrap have a drastic effect on the world market. Reduced international supply can lead to higher global prices. Limits on scrap availability impact all consumers of scrap and negatively impact important manufacturing sectors in the U.S. economy. Because the vast majority of steel scrap is used to make new steel, government restrictions on global scrap supply have adverse effects on 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, 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.

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2. **Scrap Export Restrictions Imposed Globally**

A number of countries have imposed complete bans on scrap exports, including the following: Argentina; Armenia; Azerbaijan; Ghana; Guyana; Indonesia; Kazakhstan; Kenya; Nigeria; Sri Lanka; Uruguay; Zambia; and the six member countries in the East Africa Community—Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda. Many other countries have imposed trade-restrictive

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174 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), available at https://guyanatimesgy.com/scrap-metal-trade-opens-for-3-months/. See also *Scrap metal dealers call on Govt to lift ban on export* (March 18, 2021), available at https://guyanatimesgy.com/scrap-metal-dealers-call-on-govt-to-lift-ban-on-export/.


180 DJJ OECD Presentation at 18.


export tariffs on scrap as well, including: Egypt;\textsuperscript{183} India;\textsuperscript{184} Iran;\textsuperscript{185} Jordan;\textsuperscript{186} and Pakistan.\textsuperscript{187} In October 2021, Ukraine proposed a partial ban on scrap exports for two years to increase its domestic steel output.\textsuperscript{188}

The EU recently announced proposals aimed on restricting the export of “waste” materials, including metals, as part of its review of the Waste Shipment Regulation.\textsuperscript{189} Recycled ferrous metals, including steel, are infinitely recyclable, with the vast majority of the metals in use today having been produced with recycled metals as the raw material input. While branded as an effort to increase recycling within the EU, AISI is concerned that any restrictions on the EU’s export of recycled material will have the harmful and trade-distorting effect of restricting the export of scrap and other critical raw materials used in steelmaking.

Notably, China imposes a 40 percent export tax on scrap,\textsuperscript{190} severely restricting its exports of the raw material and benefiting its domestic manufacturers.\textsuperscript{191} Depending on global scrap prices, this export tax is at times high enough to amount to a \textit{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.

Other 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 domestic market...for which temporary export restrictions or prohibitions may be set in exceptional cases.”\textsuperscript{192} In 2019, Russia implemented a regional quota system for scrap

\textsuperscript{183} DJJ OECD Presentation at 18.
\textsuperscript{184} Id.
\textsuperscript{186} 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.
\textsuperscript{187} DJJ OECD Presentation at 18.
\textsuperscript{188} Natalia Zinets, Ukraine may impose temporary ban on scrap metal exports (Sept. 30, 2021), available at https://www.nasdaq.com/articles/ukraine-may-impose-temporary-ban-on-scrap-metal-exports-2021-09-30.
\textsuperscript{191} See USTR 2020 NTE Report at 105.
\textsuperscript{192} 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), available at
exports, causing Russian ferrous scrap exports to hit a ten-year low. In June 2021, Russia’s prime minister signed a resolution increasing its export duties on ferrous scrap, which will be in effect for 180 days. 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. 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.

Countries such as South Africa 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 later introduced a two month ban on scrap exports. South Africa’s restrictions on the export of steel scrap have continued, with its current system described as one that effectively “forces metal recyclers to first offer their scrap to domestic consumers at a large discount before they can get a permit to export.” 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.

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.”

The Chinese government strictly regulates investment by foreign firms in China. In 2020, the U.S. State Department found that, despite modest openings in its financial sector, “China remains . . . a relatively restrictive investment environment for foreign investors due to restrictions in key economic sectors.” As the State Department recognizes, foreign investments in China are subject to barriers that ensure significant local involvement in foreign investment. These barriers include ownership limits, requirements for joint venture partnerships with Chinese firms, national industrial policies that requires certain levels of indigenous capacity (i.e., Made in China 2025), and technology transfers as a condition of gaining market access.

In general, U.S. investors are being prevented from investing in China through an overarching national policy of favoring Chinese companies and bolstering the role of state-owned enterprises. According to recent reports, Chinese President Xi Jinping plans to direct the Chinese economy even further towards Chinese government control. In the past year alone, the CCP has pursued an increasingly prominent role in Chinese enterprises, chilling the ability of foreign investors to operate autonomously. According to one analyst, “when U.S. or European firms compete against, say, COSCO Shipping or Huawei, it is the entirety of the Chinese government’s balance sheet that it must contend with, not just an individual firm. U.S. companies have long tried to prosper within this system by partnering with local firms and keeping ahead of their

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202 Id.
local rivals, but as Beijing sets its sights much higher up the value-added chain, the space for foreign companies in China is shrinking.”

The Chinese government strictly regulates investment by foreign firms within China. For instance, China recently released the 2020 version of the “negative list,” which it has published since 2016; this list classifies foreign investment into certain sectors as prohibited, restricted, and encouraged. While the number of covered industries on this list has decreased from 40 to 33, many of the lifted restrictions were for industries that Chinese companies already dominate. Additionally, the reduction in restrictions were primarily in the financial sector, where China is encouraging foreign direct investment to support financially distressed and overextended financial institutions – making this investment extremely risky. While foreign investments and enterprises in certain economic sectors do not need pre-approval from the Chinese government and should be accorded national treatment, in practice, complex and intertwined regulatory process stifle even these investments.

More recently, China’s NDRC and MOFCOM issued new regulations restricting foreign investment on national security grounds effective January 2021. These regulations expand existing reviews of foreign direct investments, and apply to any foreign investment with a conceivable nexus to national security that could provide a foreign investor any influence over the board of directors or influence over business decisions. The vagueness of these measures gives the government wide discretion to restrict investment, including in any company located “near” military facilities or those beyond mere mergers and acquisitions (e.g., greenfield investments, trusts, convertible debts). These “national security” justifications provide cover for China to implement vague and expansive restrictions on foreign investment.

Ultimately, the U.S.-China Commission concluded that “[t]hough Beijing is moving to liberalize China’s financial sector, its steps are incremental and designed to serve state objectives.” These techniques are “part of a familiar pattern whereby the Chinese

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208 Id.
government first welcomes foreign investment in newly opened sectors and then unfairly strengthens domestic firms’ ability to compete with the foreign firms.” We urge USTR to consider the Chinese government’s actions across years of unfair investment barriers and hold the government accountable for actions that restrict foreign investment.

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 ownership of Chinese steel enterprises.\(^\text{211}\) To date, AISI is unaware of any foreign attempts to acquire a controlling stake in a Chinese steel enterprise since the March 2015 revision. It is not surprising that there has not been much foreign interest in the Chinese steel sector because, as noted above, China only removes industries from the list once they achieve domestic dominance. More notably, the Chinese steel sector is dominated by state-owned enterprises—many of which are some of the world’s largest steel producers. This has had a chilling effect on foreign investment in the steel sector, with the Chinese government loath to cede control of these “national champions.” Furthermore, no foreign company would risk investing in a competitor to a company supported by the weight of the Chinese government. 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),\(^\text{212}\) which include “subsidies contingent... upon the use of domestic over imported goods.”\(^\text{213}\) 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.”\(^\text{214}\) China has not lived up to these commitments and continues to implement policies that act as barriers to foreign investment.\(^\text{215}\)

\(^{211}\) See Catalogue for the Guidance of Foreign Investment Industries (2015 Amendment).

\(^{212}\) China’s Protocol of Accession at 7.3.

\(^{213}\) Id.

\(^{214}\) Id.

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. For example, Chinese government measures distort investment by requiring the transfer of technology as a condition for obtaining investment and regulatory approvals, mandating unnecessary disclosure of proprietary information, and failing to prevent cyber intrusions.216

USTR recognizes that while China has made some initial efforts to adhere to its Phase One commitments, China’s “steps toward reform require effective implementation and fall short of the full range of fundamental changes needed to improve the IP landscape in China.”217 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.

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 throughout.”218 The State Department further describes imprisonment of prominent foreign investors and 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.219 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.”220 This

219 See id.
220 See id.
follows a general trend of manufacturers finding it difficult to obtain product approvals within Russia due to burdensome licensing regimes.221

1. Mining Investment Restrictions

Russia implements a number of barriers to foreign investment in its mining sector.222 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 ownership in domestic mining companies to less than 25 percent.223

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.224 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.225

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,226 which allows its government to control access to the country’s mineral resources, among other economic

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221 U.S. Department of State, 2020 Investment Climate Statements: Russia, available at https://www.state.gov/reports/2020-investment-climate-statements/russia/
222 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).
223 See Jon Hines, Vasilsa Striz, Alexander Marchenko & Philip Korotin, Russia’s Regime of Foreign Investment Restrictions in Strategic Sectors with Focus on Mineral Resource Investments, Morgan Lewis (Aug. 2020) at 21; 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.
224 Baker McKenzie, Doing Business in Russia (2020) at 45,30-49.
225 Natalya Morozova and Rob Patterson, Russia, The Oil and Gas Law Review (Nov. 2013) at 211.
sectors. In fact, under Russia’s Subsoil Law, mineral resources in Russian territory are defined as state property. Subsoil use rights may only be sold or transferred when expressly permitted by Russian law, which strictly limits such transfers. 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.” Local governments may administer the use of the subsoil for purposes unrelated to mineral production and for the production of “common types of minerals.”

Russia generally awards licenses to mining companies following auctions, based on certain criteria, including, among other things, a proposal’s contribution to social and economic development and national security interests. The government reserves the right to invalidate bids for a number of reasons. 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. According to reports,

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229 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”).
230 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil] at section 1, art. 3.
231 Id. at section 1, art. 5.
232 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.
233 2395-1-LRF, Feb. 21, 1992, (Garant 10004313) [On Subsoil], section 1, art. 13.1.
234 See id. at section 1, art. 14.
235 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.
Russia’s licensing system suffers from corruption, as well as a lack of stability and transparency.236

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.

AISI is currently evaluating recent announcements by the EU, Canada, and other countries related to environmental and energy policies directly benefiting their respective steel industries. We respectfully request the opportunity to provide further comments to USTR on these issues after further evaluation of the potential impact of these policies.

The government subsidies identified below, advantage foreign producers to the detriment of U.S. steelmakers, and should be addressed.

A. 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 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, commonly known as the Belt and Road Initiative (BRI). 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 “infrastructure-prioritized
development path.” 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.” 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.”

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 “[t]he BRI
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.

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237 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.”).
238 Jon (Yuan) Jiang, The Belt and Road Initiative: A Domestically-Motivated Program Fueling Global
initiative-a-domestically-motivated-program-fueling-global-competition/.
239 Id.
240 The Belt and Road Initiative in the global trade, investment and finance landscape, OECD Business and
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.241 The MCKIP is jointly owned 51 percent by a Malaysian consortium (including 30 percent ownership by the Malaysian government) and 49 percent by Chinese SEs under State-owned Assets Supervision and Administration Commission (SASAC) control.242 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.243

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.244 and Guangxi Shenglong Metallurgical Co. Ltd., which are “jointly established by the two governments.”245 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,246 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.247

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

244 Guangxi Beibu Gulf International Port Group Co Ltd also holds the Chinese Consortium investment in MCKIP and is under SASAC control.
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—a major state-owned Indonesian steel producer—to receive export licenses.

Critically, over the past decade, Krakatau Steel 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, and Krakatau Osaka Steel (KOS) for long products. Both KOS and KNSS have received preferential financing from the Japan Bank for International Cooperation, and Krakatau POSCO has received substantial ongoing support from the Korean government. 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 Exim Bank recently restructured the debt to help Krakatau Steel. At approximately the same time, at the request of

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251 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.

Indonesia, the Korean Exim Bank announced that it “intends to provide untied soft loans under the name of the Economic Development Partnership Facility.”

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 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 begun imposing countervailing duties on imports from third-countries that are subsidized by the Chinese government through One Belt One Road initiatives. 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. 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.

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, 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 “by a government of a country other than the country in which the recipient


255 Id.


257 See id.; WTO Agreement on Subsidies and Countervailing Measures at Art. 1.1(a)(1).
firm is located.” 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. 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.

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

B. Other Subsidies

1. 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. These subsidies include billions of dollars through preferential loans and directed credit, equity infusions, debt-to-equity swaps, land-use discounts, government-mandated mergers, tax exemptions and rebates, and direct cash grants. One economist estimates that “China dedicates about 3 percent of its GDP to direct and indirect corporate subsidies.”

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258 19 C.F.R. § 351.527.
259 See 19 U.S.C § 1671(d).
260 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.
261 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”).
262 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”).
As a result of such subsidies, China’s steel industry has increased production far beyond domestic demand and, in August 2021, accounted for more than half of worldwide crude steel production. 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. While Made in China 2025 singles out ten specific industries for state support, it is intended to upgrade the entire manufacturing sector, including the steel industry.

Moreover, several of the enumerated industries (machine tools, aerospace, maritime transport, rail transport, new-energy vehicles, power equipment, and agricultural equipment) are large consumers of steel products. The latest Steel Industry Adjustment and Upgrading Plan is drafted explicitly to implement the Made in China 2025 plan’s objectives. Indeed, in 2021, the Commerce Department assessed one of its highest ever subsidy rates against subsidiaries of Chinese, state-owned manufacturers

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266 Id.
267 Id.
of intermodal container chassis.\textsuperscript{269} 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 first quarter 2020, there were more than 1,700 of these funds with nearly $700 billion in capital making investments throughout the economy.\textsuperscript{270} Chinese officials hope to grow these funds to at least $1.55 trillion.\textsuperscript{271} 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.\textsuperscript{272}

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 2021 show that China’s capacity utilization quickly returned to pre-pandemic levels (i.e., 78 percent) in the last quarter of 2020.\textsuperscript{273} While China claims it has cut 150 million tons of capacity in the last five years, its crude steel output set a record for the fourth straight year in 2020 at 1.07 billion tons.\textsuperscript{274} Notably, China hit this record number despite capacity utilization decreasing significantly during the pandemic.\textsuperscript{275}

\textbf{a. 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


\textsuperscript{271} Id.

\textsuperscript{272} See, e.g., Emily Feng, \textit{China’s State-Owned Venture Capital Funds Battle to Make an Impact}, Financial Times (Dec. 23, 2018), available at \url{https://www.ft.com/content/4fa2c3aa-f9f0-11e8-af46-2022a0b0a6c}.


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.276

In fact, China’s corporate sector debt alone accounted for 160 percent of its GDP this year.277 The Institute of International Finance estimates that China’s debt rose to 303 percent of its GDP in 2019, with its total debt reaching more than $40 trillion USD.278 China’s debt burden worsened in 2020, with one of the largest increases in debt-to-GDP ratio among emerging markets,279 and has continued to climb.280 Widely publicized examples of massive companies on the verge of imminent collapse, such as real estate giant Evergrande, demonstrate how these practices not only allow Chinese companies to grow to unsustainable sizes, but also threaten the global economic system.

The surge in lending to support industrial policy objectives is a primary driver of the Chinese overcapacity problem. As the U.S.-China Economic and Security Review Commission recognized, “[b]anks play an outsized role in China’s financial system, and the Chinese government exerts pervasive influence across the full spectrum of China’s banking sector.”281 Six state-owned banks hold 40.3 percent of all banking assets in China, which “instills a lending bias towards SOEs”.282 Comparatively inefficient SOEs receive a disproportionate share of state-directed financing in China,283 and SOEs

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280 Yenee Lee, These charts show the dramatic increase in China’s debt, CNBC (June 28, 2021), available at https://www.cnbc.com/2021/06/29/china-economy-charts-show-how-much-debt-has-grown.html.
282 Id. at 247.
receive interest rates that are three percent lower on average than private borrowers.\(^\text{284}\) 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.\(^\text{285}\)

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.\(^\text{286}\) 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.\(^\text{287}\) 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.”\(^\text{288}\)

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.\(^\text{289}\) CBRC’s notice instructs the creditors’ committees to “support the development of the real economy” and “guarantee the normal operations of enterprises.”\(^\text{290}\) 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*.\(^\text{291}\) Among other debt-relief measures, the State Council *Opinions* called on

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\(^{285}\) *Id.* at 248.

\(^{286}\) *DOC China Financial System Memo* at 9.


\(^{288}\) *Id.*

\(^{289}\) *Id.*

\(^{290}\) Han Yi et al., *Debt Defaults Prompt Call for Creditor Committees*, Caixin (Sept. 12, 2016).

\(^{291}\) *CBRC Promulgates the Notice Regarding Carrying Out Banking Industry Financial Institution Creditors’ Committees Work*, CBRC Website (Sept. 9, 2016).
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. Large, overextended companies such as Evergrande continue to rely on government creditor committees to receive reduced borrowing rates, additional financial support, and debt restructuring.

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.” 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. 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. The deal was then completed in December 2016 after the debt-to-equity swap cleaned up WISCO’s balance sheet. In March of this year, Baoshan announced that it was going to issue bonds worth up to $430 million, in part to repay debt. This year, Chinese state-owned steel producer Ansteel Group entered into a merger with Ben Gang as part of a government-backed restructuring. This move will make Ansteel the world’s third-largest steel producer.

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292 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), available at https://www.reuters.com/article/us-china-debt-restructuring/china-tries-cure-by-committee-for-corporate-debt-hangover-idUSKBN16F0AF.


294 Id. at 54.

295 Christian Shepherd, China Deal to Create World’s Second-Largest Steelmaker, Financial Times (Sept. 21, 2016), available at https://www.ft.com/content/b01a1d28-7fbf-11e6-bc52-0c7211ef3198 (describing the deal as the “poster child” of the Chinese government’s industry restructuring plans).


300 Id.
AISI remains 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.

b. 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.”\(^\text{301}\) 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.\(^\text{302}\) In 2020, although its official medium- and long-term export credits decreased, China still issued more export support than any other major country.\(^\text{303}\) Furthermore, the true extent of Chinese export support is unknown because its activities are increasingly opaque.\(^\text{304}\)

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.\(^\text{305}\) The practices are also inconsistent with certain aspects of the OECD’s Arrangement on Guidelines for Officially Supported Export Credits.\(^\text{306}\) 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)


\(^{304}\) Id. at

\(^{305}\) See The EU may initiate a WTO dispute settlement over Chinese export credits, Trade Perspectives (May 6, 2011).

\(^{306}\) Id.
Arrangement seeks to limit.” 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.”

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. However, China has consistently refused to join other countries in addressing the aggressive use of export credits. 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.”

c. 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 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

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307 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://www.uscc.gov/sites/default/files/2019-11/2019%20Annual%20Report%20to%20Congress.pdf (“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.”).
308 Id.
311 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.”
make it more expensive for its trading partners to export.\textsuperscript{312} The effects of China’s currency manipulation have been profound.\textsuperscript{313} 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,\textsuperscript{314} 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.\textsuperscript{315} 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. AISI respectfully disagrees with the decision to remove China’s currency manipulator designation, instead moving it to only a Monitoring List\textsuperscript{316} The Chinese government’s manipulation of its currency has not ceased. Indeed, even this year, the People’s Bank of China has taken overt measures to weaken the yuan.\textsuperscript{317}

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 China as its economy recovers from the pandemic. We also commend the Commerce

\begin{footnotes}
\item 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.
\item 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).
\item 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.
\end{footnotes}
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 this action could, particularly on imports of Chinese steel products, allow for U.S. steelmakers to petition for relief.

2. Japan

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

3. India

The Indian government also heavily subsidizes its domestic industries, including its steel industry. 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 and the government continues to play a large role in the industry. The Indian Ministry of Steel,


320 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”).


322 USTR 2019 NTE Report at 245.

323 See Import Administration, U.S. Dep’t of Commerce, Report to the President, Global Steel Trade, Structural Problems and Future Solutions (2000).
a branch of the Indian government, “deals with coordination and planning of the
growth and development of Iron and Steel Industry in the country.” 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.

In 2020, India was the world’s second-largest steel producer. 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.
steeleakers 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. 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.

- **Duty Drawback Rebate Program (DDB).** In 2018, the Indian government
  increased the duty drawback on 102 products, including several traditional
  exports. The DDB offsets customs duties on inputs used for exported products

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325 2021 World Steel in Figures, World Steel Association at 9.
326 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”).
327 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.
328 Kirtika Suneja, Duty drawback rates increased for 102 products in bid to boost exports, The Economic Times
and is offered at fixed rates independent of tax levied on inputs. The Indian government uses the program as a tool to boost exports.329

- **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.330 Like the AAP, the DFIA Scheme lacks a reliable system to determine the type of inputs (and amount) that are consumed in the production of the exported product.331

- **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.332

- **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.333 In April 2015, the export obligation under the EPCGS was reduced for capital goods procured from indigenous manufacturers.334 Steel firms in India have benefited from the EPCGS and have recently sought an extension in the export obligations under the program.335

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329 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.”).


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


• 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.” Under the MEIS, duty credits are granted for use to pay duties on imports of inputs or goods, excise duties on domestic procurement of inputs or goods, or service taxes on the procurement of services. Export items with a higher level of domestic content can receive a higher reward, and entities that have “excelled in international trade and have successfully contributed to country’s foreign trade” can receive special treatment and privileges to facilitate their trade.

In April 2015, India’s Commerce Ministry announced the country’s latest FTP, which continues to include subsidies targeted at boosting exports. The FTP seeks to increase India’s exports to $900 billion by 2019-2020, and to increase India’s share of world exports from 2 percent to 3.5 percent. The FTP was recently extended to March 31, 2022.

Indian steel producers also receive significant subsidies at the subnational level. Individual Indian states, including Maharashtra, Gujarat, Haryana, Karnataka, Jharkhand, Orissa, Andhra Pradesh, and Chhattisgarh, have ambitious plans to leverage government support into an enormously expanded steel industry. These include state-level “industrial policies” that provide packages of incentives, including tax reductions and rebates, grants, preferential loans and goods and services for less

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336 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.


342 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).
than adequate remuneration. Many of these policies explicitly call for Indian state governments to provide customized subsidies to certain sectors or large companies (including in the steel industry) at the discretion of state officials. When the Goods and Services Tax was instituted in 2017, 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.”

4. 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 seventh largest steel producer in both 2019 and 2020. Last year alone, Turkey exported 18.5 million MT of steel products, 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 ten countervailing duty orders following investigations on steel products from Turkey. Several of the most significant Turkish government subsidies that contributed to its steel industry’s growth are described below.

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347 20201World Steel in Figures, World Steel Association at 9.

348 Id. at 27.

349 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
• **Development Investment Bank of Turkey Loans:** The recently-renamed Development Investment Bank of Turkey (DIBT), a direct extension of the Turkish government, 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. The bank’s funding increased to nearly TL 16.0 billion in 2019.

• **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. In 2020, the bank provided financing worth $45.6 billion, which was up 3.6 percent from 2019 financing levels. In February 2021, Turk Eximbank pledged to increase its export support by 11 percent year-over-year to $50 billion this year, or 27.7 percent of Turkey’s exports. Turk Eximbank also offers short-, medium-, and long-term export insurance programs for Turkish companies, 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) and Sectoral Foreign Trade Companies. The Commerce Department has also found this program to 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).

351 The Development and Investment Bank of Turkey, Annual Report 2018 at 32.
352 The Development Investment Bank of Turkey, Annual Report 2019 at 118.
357 An FTCC is a company whose export performance was at least $75 million in the previous year.
constitute a countervailable subsidy. Similar credits are available for smaller companies.

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

- **The Purchase of Electricity for More Than Adequate Remuneration (MTAR):** 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, which consume vast amounts of power. Some major Turkish steel producers operate their own cross-owned cogeneration power plants. While these producers consume much of the power they generate, they also sell excess power to the government, which dominates the Turkish power sector for above-market prices. Thus, the power producers, and by extension their cross-owned steel producers, receive a significant government subsidy through these purchases of electricity at above-market prices. 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. The

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

361 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.

362 2020 World Steel in Figures, World Steel Association at 10.


366 *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.
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.  

- **The Provision of Natural Gas for Less than Adequate Remuneration (LTAR):** Turkish steel producers also generate power with natural gas, which is subsidized by the Turkish government in the form of discounted natural gas prices. As the WTO Secretariat has explained, natural gas prices in Turkey are not determined by the market, but rather by Turkey’s Energy Market Regulatory Authority. In addition, the Turkish government has full ownership of petroleum pipeline corporation BOTAS and petroleum corporation TPAO. Significantly, BOTAS controls more than 80 percent of Turkey’s entire gas import market. 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.

- **Inward Processing/Duty Drawback:** The Turkish government provides import duty rebates or duty drawback assistance to Turkish manufacturers under the country’s Inward Processing Regime. 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.

- **Government-Directed Policy Loans from State-Owned Banks:** 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

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369 See id. at 102.
370 See USTR 2018 NTE Report at 457.
371 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.
order to incentivize manufacturing, generally, and encourage expanding steel
exports, specifically. 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.” In particular, the
Plan explains that “[i]n the iron and steel sector, importance will be given to
expanding exports and export markets.” Encouraging manufacturing exports
is largely facilitated in the Plan through encouraged and preferential lending to
the manufacturing sector. The Plan sets several financial targets for the Turkish
banking sector with respect to the manufacturing industry. The provision of
preferential financing to Turkish steel producers is possible because Turkey’s
banking system is heavily influenced by state-owned banks (SOBs). In 2019,
three of the four largest banks in Turkey, by total asset value, were SOBs:
Türkiye Cumhuriyeti Ziraat Bankası, Türkiye Vakıflar Bankası T.A.O and A.Ş.,
Türkiye Halk Bankası A.Ş.. These three SOBs comprise more than one-third of
Turkey’s deposit bank assets, 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.

373 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
countries-5-sectors-for-sustainable-exports; Export Master Plan to raise Turkey’s export targets: Official,
Hurriyet Daily News (Sept. 13, 2019), available at https://www.hurriyetdailynews.com/export-master-
plan-to-raise-turkeys-export-targets-official-146530.
374 Id.
375 Id. at 61-94.
376 Id. at 63.
377 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).
378 See The Banks Association of Turkey, Turkish Banks – Ranked by Total Assets (2020).
379 See The Bank Association of Turkey, Banks in Turkey 2020 at 19.
380 Turkish state-owned banks weaker than private ones – Fitch, Avhal News (Oct. 4, 2019).
5. 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. BNDES FINAME loans provide capital financing to companies in Brazil for the acquisition of Brazilian machinery or equipment. 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.

6. Korea

For several years, the Korean government has provided subsidies for favored local industries, including its steel industry. Over the past five years, the United States government issued six 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; (v) large diameter welded pipe and (vi) seamless carbon and alloy steel standard, line, and pressure pipe in response to several of these subsidies. These subsidies include: preferential loans from government banks, export loans, equity infusions, tax exemptions, and grants.

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383 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
385 Id. at 320.
387 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.
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, yet through government subsidies has developed and sustained a pipe and tube production industry as an offtake for its excess hot-rolled coil capacity. 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. 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.

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 other markets, including the U.S. market. According to the Commerce Department’s Global Steel Trade Monitor, China exported 5.5 million MT steel to Korea in 2020. In 2020, Korea imported 11.5 million MT of steel, while at the same time exporting 27.6 million MT of steel, resulting in Korea becoming the fifth largest net exporter of steel at 16.1 million MT last year.

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. In 2016, in the 2014–2015 administrative review of OCTG from Korea, the Commerce Department confirmed that unfairly-traded Chinese hot-rolled steel inputs were used in OCTG production.

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389 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.
394 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)).
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.”\textsuperscript{395} 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.\textsuperscript{396} 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.\textsuperscript{397}

The WTO’s trade policy review of Korea notes that, in addition to provision of below-cost inputs to industrial consumers like the steel industry, “tax incentives are used extensively as an instrument of industrial policy to encourage investment” and “state-owned financial institutions have a major role in assisting Korea’s industrial development.”\textsuperscript{398} 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 percent 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.\textsuperscript{399}

In September 2016, the Korean government issued a detailed industrial policy plan to support the modernization and “price competitiveness” of the domestic steel

\textsuperscript{395} KEPCO Overview, available at http://home.kepco.co.kr/kepco/EN/A/htmlView/ENAAHP001.do?menuCd=EN010101
\textsuperscript{396} Republic of Korea, Trade Policy Review (2016), WT/TPR/346 at 93.
\textsuperscript{397} The paradox of electricity prices in South Korea, The Hankyoreh (July 31, 2012), available at https://english.hani.co.kr/arti/english_edition/e_business/544997.html. In 2019, KEPCO posted a $1.17 billion operating loss. Id.
\textsuperscript{399} Id. at 131.
industry. 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. 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.

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. In November 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. In early October 2020, in an 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.

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." While the Korean won has since appreciated, 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."

401 Id.
405 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).
407 Id.
Despite numerous affirmative countervailing findings, the Korean government has demonstrated a firm resolve to subsidize its steel industry through 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.

7. Russia

Russia remains one of the largest exporters of steel mill products to the global steel market, steadily increasing its exports up to 26.4 million MT of steel in 2020.\(^{408}\) Russia exports globally approximately 41 percent of its crude steel production and, in 2020, was the world’s largest net-exporter of steel mill products worldwide.\(^{409}\)

a. Natural Gas Subsidies

According to the U.S. Energy Information Administration, Russia maintains the largest proven reserves of natural gas in the world.\(^{410}\) As USTR noted in its 2021 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.”\(^{411}\) 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.\(^{412}\) This dual pricing system remains in place and acts as a trade-distortive energy subsidy to Russian industrial producers.\(^{413}\) 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,\(^{414}\) and the Commerce

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412 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.
Department has determined that the Russian government provides natural gas to steel producers for less than adequate remuneration.\textsuperscript{415}

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.\textsuperscript{416} However, as USTR has said, Russia’s progress in even meeting this modest commitment has been "modest and uneven."\textsuperscript{417} 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,\textsuperscript{418} including for its steel producers, which heavily consume natural gas.\textsuperscript{419} 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.”\textsuperscript{420}

To remedy the trade distortions caused by these policies, USTR should work closely with the Russian government to obtain a liberalization of Russia’s licensing requirement, and an end to the dual pricing system for domestic natural gas users.\textsuperscript{421} USTR should also closely monitor any future actions by the Russian government to prohibit some or all natural gas exports.

\textsuperscript{415} 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).


\textsuperscript{417} See USTR, 2019 Report on the Implementation and Enforcement of Russia’s WTO Commitments (Feb. 2020) at 33.

\textsuperscript{418} 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), available at https://www.naturalgasworld.com/russia-mulls-liberalization-of-domestic-gas-markets-analysts-cautious-29824.

\textsuperscript{419} See Management Report, PJSC Gazprom 2015 (2015) at 18 (“Moreover, natural gas is heavily used in the steel-making...industry”).


\textsuperscript{421} 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).
b. Preferential Loans

Last 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. In August, the Russian Ministry of Industry and Trade announced that it planned to increase support for 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. In June, the Russian government extended this program until 2030. While the Russian government did not name specific projects, it indicated it had entered into agreements with the metals industry.

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. Many of these state loans have been granted to support the restructuring of foreign debt. Although Russia committed to ensuring that subsidies provided at the federal and sub-federal level are consistent with its WTO obligations, state-controlled banks have made significant loans to Russian manufacturers despite their declining credit ratings. For example, since at least 2012, state-sponsored funds from Sberbank and other state-controlled banks have essentially kept Russian mining and metals company, Mechel,
from defaulting on its loans by using state-sponsored funds to repeatedly restructure its short-term debt.427

In 2015, the Russian government created a list of 199 companies deemed to be strategic firms eligible for state assistance.428 The list included steelmaker Severstal, aluminum producer Rusal, and the mining company Norilsk Nickel.429 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.430 Russia expanded this group to more than one-thousand companies in response to the COVID-19 pandemic.431 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.432

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 2020,433 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 2020.434 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.435 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 estimated that the new program, “First Car, Family Car” will increase sales by an additional 75,000 vehicles last year.436

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.

8. 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.437 Under Decree No. 75/2011/ND-CP, the Government of

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434 Id.
435 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).
437 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
Vietnam provides investment credit and export credit to companies participating in eligible projects, such as producers of cold-rolled steel. The Vietnamese government also supports small and medium-sized enterprises through payment for consulting services and training programs.

The Vietnamese government also manipulates its currency – the Vietnamese dong – as a means of subsidizing its domestic exporters, which include Vietnamese steel producers. Indeed, last year, 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.”

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. Likewise, the Commerce Department has initiated a subsidy investigation into the undervaluation of the Vietnamese dong in the agency’s ongoing investigation of Passenger Vehicle and Light Truck Tires from Vietnam.

In January of this year, USTR issued its findings in the Section 301 investigation of Vietnam’s currency practices, concluding that acts, policies, and practices including excessive foreign exchange market interventions and other related actions, taken in their totality, are unreasonable and burden or restrict U.S. commerce. In July, the Treasury Department reached an agreement with the State Bank of Vietnam (SBV) that recognized that Vietnam is bound under the Articles of Agreement of the IMF to avoid manipulating its exchange rate to prevent effective balance of payments or gain an unfair competitive advantage and that it will “refrain from any competitive devaluation of the Vietnamese dong.” The joint statement also states that the SBV is “making

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438 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.


ongoing efforts to further modernize and make more transparent its monetary policy
and exchange rate framework.”\textsuperscript{445}

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, AISI encourages USTR to ensure that Vietnam implements the
agreement to ensure that it does not manipulate its exchange rate for the benefit of
Vietnamese exporters and to the detriment of U.S. companies seeking to do business in
Vietnam.

9. 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.\textsuperscript{446} Other subsidies to Krakatau Steel include equity infusions,\textsuperscript{447} local content
requirements, and provision of iron ore and coal for LTAR because 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.

10. Canada

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.\textsuperscript{448} 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.”\textsuperscript{449} As
discussed above, Algoma has also benefited from Ontario and Quebec government’s
local content requirements of renewable energy policies tailored to benefit Algoma.

\textsuperscript{445} Id.
\textsuperscript{446} Krakatau Steel will finish the restructuring of its US$ 2.2 billion debt by the end of 2019, IDN Financials
\textsuperscript{447} 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).
\textsuperscript{448} Daniel Leblanc, Ottawa to provide up to $2-billion in help to steel and aluminum industries, The Globe and
\textsuperscript{449} Billy Yost, Algoma Steel Is Back from the Brink of Bankruptcy and Staying Strong, Hispanic Executive
VI. STATE ENTERPRISES AND GOVERNMENT INTERVENTION

Foreign governments are increasingly using state enterprises (SEs)\textsuperscript{450} 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 percent of global crude steel output in 2016.”\textsuperscript{451} 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. Taken together, these distortions impact U.S. and global steel markets and related upstream and downstream markets, as well as other global industries.

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

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.”\textsuperscript{452} 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;\textsuperscript{453} preferential loans and access to finance;\textsuperscript{454} tax reductions and exemptions; preferential access to raw materials and other inputs; and preferential regulatory treatment.\textsuperscript{455}

\begin{itemize}
  \item \textsuperscript{450} As used in these comments, “state-owned enterprises” includes “state-supported enterprises” and other government-backed entities.
  \item \textsuperscript{451} OECD, \textit{State Enterprises in the Steel Sector} (Dec. 2018) at 4.
\end{itemize}
Because SEs are frequently subsidized and otherwise advantaged by their home
governments, 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. 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 several 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.” The ability to sustain losses for longer periods of time and not
having to earn a commercial rate of return provide SEs with a significant competitive
advantage over their private sector counterparts. These advantages may prevent U.S.
producers from exporting to a market dominated by SEs.

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

456 See, e.g., Scott Cendrowski, China’s Global 500 companies are bigger than ever – and mostly state-owned,
Fortune (July 22, 2015), available at https://fortune.com/2015/07/22/china-global-500-government-
owned/ (“With the government as their largest shareholders, China’s [SOEs] enjoy massive state support,
which fosters growth and insulates them from competition”).
457 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).
458 Competitive Neutrality at 6. See also OECD, SIEs in the Global Marketplace at 14.
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. Other countries with significant SEs include Argentina, Belgium, Colombia, Czech Republic, France, Germany, India, Italy, Korea, Mexico, Netherlands, Norway, Saudi Arabia, South Africa, Spain, Sweden, Thailand, and Turkey. 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. With respect to the steel industry, the Chinese government has ownership interests in 18 of the 20 largest steel producers in China. 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. Instead, over the past year, the CCP has taken new steps to increase its influence over SEs.

Since 2015, the share of private companies investing in factories and major projects in China has declined. 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. 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. 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.” The CCP has in fact moved to expand

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460 OECD, SIEs in the Global Marketplace at 7.
462 See, e.g., DOC China Financial System Memo at 9.
465 Id. at 130.
467 Id.
468 Id.
and formalize its influence over the operations of firms of all ownership structures, \(^{470}\) while also promoting investment by the state sector in non-state firms in key emerging industries. \(^{471}\) As a result, in response to CCP policies, the Chinese government continues to promote, subsidize, and expand the state sector despite warnings from the 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. \(^{472}\) As of 2020, Chinese firms either own equity in or operate 94 ports globally, 59 of which involve a Chinese SE. \(^{473}\) 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.” \(^{474}\)

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


\(^{474}\) Id. at 181.
liberalization of the kind that U.S. companies and policymakers have long advocated.475

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.476

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.477

**Iran:** Backed by the Iranian government, the steel industry in Iran is growing rapidly and is increasingly export-oriented. Iranian steelmaking capacity more than doubled between 2010 and 2020, and further expansion is expected over the next three years.478 The OECD reports that based on current development projects, Iranian steelmaking capacity could increase by an additional 16.4 million MT by 2023.479 Indeed, the Iranian government recently announced plans to increase steel capacity to 55 million MT by 2025, of which 20 million MT is earmarked for export.480 The growth of the Iranian steel industry is critical to Iran. By value, steel represented 8.7 percent of Iran’s total exports in 2018.481 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 2017.482 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.483

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.484 Chinese-financed developments in the Middle East are also often viewed as a way for

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475 Id. at 1.
476 Id. at 30.
477 Id. at 376.
479 Id. at 17.
480 Id. at 19.
482 Id. at 6.
484 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).
China to transfer its steel overcapacity. 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 projects. In 2020, Iran and China signed a 25-year strategic partnership treaty, covering economic, security, and trade issues.

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.” 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.” 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. 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

489 Id.
they are shipped from Iran through other countries, such as Turkey, before reaching Lebanon.\textsuperscript{491}

**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.\textsuperscript{492} Indeed, Russia has “reasserted direct state control over ‘strategic’ industries,” including oil, gas, and transportation,\textsuperscript{493} which are important to the steel industry. According to the U.S. State Department, while the Russian government published a new privatization plan in January 2020, “[t]he Russian government and its SOEs dominate the economy.”\textsuperscript{494} The Russian government still maintains a list of 136 SEs with “national significance” whose privatization is only permitted with a special government decree.\textsuperscript{495} 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.”\textsuperscript{496}

**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.\textsuperscript{497} 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.\textsuperscript{498} 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.\textsuperscript{499} 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

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\textsuperscript{492} See U.S. Department of State, 2021 Investment Climate Statements: Russia.
\textsuperscript{494} See 2020 Russia Investment Climate.
\textsuperscript{495} Id.
\textsuperscript{496} Id.
\end{flushleft}
target of 300 million MT by 2030. 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.” This funding will likely be provided by India’s state-controlled banking system.

**Indonesia:** Indonesia had 114 SEs as of December 2019, which operate in almost all sectors of the economy, including mining, energy, manufacturing, steel, and logistics. According to the State Department, twenty Indonesian SEs account for a quarter of the value of all listed shares on the Indonesian stock exchange. Additionally, many sectors report that “SEs receive strong preference for [Government of Indonesia] projects.” For example, Indonesian President Joko “Jokowi” Widodo has placed SEs at the center of the government’s economic development plans and aims to expand the SE sector rather than make it lean. In fact, in 2015, the Indonesian government injected $3 billion into various SEs. Recipients of the funds include Aneka Tambang, which plans to build an alumina refinery, and Krakatau Steel, which plans to modernize its plants. In 2018, the Indonesian government issued a plan to use state-owned holding companies as a way to stimulate sluggish economic growth in the

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500 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.”).


503 U.S. Department of State, Bureau of Economic and Business Affairs, 2021 Investment Climate Statements: Indonesia (2021); Kyunghoon Kim, Jokowi wakes up the leviathan, New Mandala (Dec. 2, 2016).

504 Id.


507 Id.

country by putting large sums of capital towards supporting the expansion of SEs. In 2020, Krakatau Steel benefited from a government orchestrated debt restructuring.

**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 because 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 Petronas Nasional Berhad. Through its government-linked investment companies, the government owns approximately 42 percent of the value of firms listed on Malaysia’s stock market. 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 international tenders only when domestic goods and services are not available.” 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.” There are approximately 2,200 SEs that are owned by the central government, and an additional 1,100 at the subnational level. As of 2020, Vietnamese SEs account for only 0.6 percent of all registered companies in Vietnam, while accounting for 33 percent of Vietnam’s GDP. 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

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512 See U.S. Department of State, *2021 Investment Climate Statements: Malaysia*.
513 2020 USTR NTE at 346
515 *Multi-dimensional Review of Viet Nam: Towards an Integrated, Transparent and Sustainable Economy, OECD* (July 1, 2020) at 174.
516 See Id. at 175.
517 See Id. at 187.
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. Regardless, Vietnam has continued to set divestment goals in 2020 with Decision 908/2020/QD-TTg requiring divestment of 124 more SEs.

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 steel strip products are completed in Vietnam before being shipped to the United States. Similarly, in December 2019, the Commerce Department completed its investigation into the circumvention of five different steel products shipped from Vietnam. 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. 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.

Brazil: The Brazilian government owns or controls a variety of SEs at both the federal and state levels, with a contributor in Forbes recently calling Brazil “the China of

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523 Id.
525 See U.S. Department of State, 2017 Investment Climate Statements: Brazil (June 29, 2017).
Latin America.” Public reports indicate that the Brazilian government has 203 SEs, of which 46 are directly controlled by the government and 157 are indirectly controlled. SEs in Brazil are prominent in the oil and gas, electricity generation and distribution, transportation, and banking sectors. While the Bolsonaro government in Brazil has taken steps to privatize some SEs, others remain under state control/ownership.

Notably, several of the governments identified above have pursued ownership and control of their steel industries. For example, in India, the government owns 65 percent of SAIL, one of the country’s largest steel producers, while the Vietnamese government owns 93 percent of its largest steel producer, Vietnam Steel. In addition, the following governments own significant shares of the large (if not the largest) steel companies in their countries: Indonesia (PT Krakatau Steel); Libya (Libyan Iron and Steel Company); Venezuela (Siderúrgica del Orinoco and Siderúrgica del Turbio SA); Pakistan (Pakistan Steel Mills Corporation); Saudi Arabia (Saudi Basic Industries Corporation); the United Arab Emirates (Emirate Steel Industries PJSC); Algeria (IMETAL); and Italy (ILVA). In fact, in 2020, four of the ten largest steel companies in the world were SEs. According to the OECD, that same year, “state enterprises accounted for at least 32 percent of global crude steel production.”

In addition to intervening in the market through ownership, many governments around the world have significantly subsidized the growth of their steel industries and

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528 U.S. Department of State, *2021 Investment Climate Statements: Brazil*.
533 See World Steel Association, Top steel-producing companies in 2020 (listing state-owned China Baowu Group, HBIS Group, Ansteel Group, and Shougang Group as top ten steel producers).
534 See Lieven Top, *83rd Session of the OECD Steel Committee – Chair’s Statement* (Sept. 28-29, 2017).
prevented permanent capacity closures in the industry, leading to significant overcapacity in the industry.\textsuperscript{535} Governments often will prevent steel mill closures in order to maintain employment levels and for other non-commercial purposes.\textsuperscript{536} 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.”\textsuperscript{537} 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.

\textbf{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,

\[\text{Kevin M. Dempsey}\]

President and Chief Executive Officer


\textsuperscript{536} 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).

\textsuperscript{537} 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).