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# Global Forum on Steel Excess Capacity: Subsidies, Capacity, and Decarbonization


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29 September, 2023

Disclaimer: This presentation is intended to provide an overview of legal developments and should not be construed as providing legal advice or legal opinions. You should consult an attorney for any specific legal questions. The discussion we are having today represents my personal views on the subject matter and is not intended to represent the views of Wiley Rein LLP or its clients.

At the last OECD Steel Committee session:

> Participants "{a}greed to strengthen their work on the impacts of market-distorting subsidies and other government support on excess capacity, trade and the viability of the steel industry, while encouraging decarbonisation of the steel sector under conditions of fair competition."

OECD Steel Committee Vice-Chairs Statement (93rd Session, Mar. 2023)

# Subsidies Labelled Green Contribute to Overcapacity and Excess Emissions – The China Example

- For several decades, China has been justifying its significant non-market capacity on an environmental basis
- Industrial subsidies have encouraged new capacity under the auspices of "eliminating outdated capacity" and developing a "circular economy"
- In reality, Chinese efforts to reduce polluting capacity add significantly to excess capacity and increase total global emissions

- For example…
  - Policies claimed to rely on heightened environmental and industry entry standards but were limited to small, outmoded, or "zombie" capacity not actually in operation
    - 2006 and 2013 plans to remove blast furnaces only eliminated furnaces < 300 $m^3$ and 400 $m^3$
    - 2010 policy supported upgrades to "outdated" capacity for alleged environmental reasons
  - Policies replacing obsolete capacity resulted in new, more energy efficient mills but with far greater capacity
  - "Circular economy" policies couched in environmental terms but have resulted in significant capacity increases

Sources: Guo Fa, *Several Opinions of the State Council Regarding Hastening the Development of the Circular Economy,* No. 22 (July 2, 2005); Guo Fa, *Notice of the State Council Regarding Further Strengthening Work on Eliminating Outdated Capacity*, No. 7 (Feb. 6, 2010); Guo Fa, *Opinion of the State Council Regarding Resolving Overcapacity in the Steel Industry and Realizing Development that Relieves Hardship*, No. 6 (Feb. 1, 2016); Lingling Wei & Bob Davis, Wall St. Journal, *In China, Beijing Fights Losing Battle to Rein In Factory Production* (July 16, 2014).

# Subsidies Labelled Green Contribute to Overcapacity and Excess Emissions – The China Example

**Under the guise of environmental protection, China's overcapacity initiatives** provide substantial subsidies for technological renovations that result in **replacing outdated capacity with upgraded and expanded capacity** – a net negative for the overcapacity crisis and the environment.

Under the various Chinese government policies issued over the past 15 years, any capacity actually eliminated is extremely outdated. And it is often replaced by new or upgraded, more efficient, and often larger capacity. . . . These policies are therefore not only ineffective – **they actually lead to increases in total capacity (and often total pollution)**.

Wiley Rein LLP, *Unsustainable: Government Intervention and Overcapacity in the Global Steel Industry* (Apr. 2016) at 13-19.

# Subsidies Labelled Green Contribute to Overcapacity and Excess Emissions – The China Example

- New Chinese blast furnaces may be cleaner than before but they are still high emitting blast furnaces that exacerbate the overcapacity crisis
  - China comprises nearly 50% of global steelmaking capacity and its total emissions are the highest in the world
  - To significantly lower emissions, China needs to actually reduce (not replace or build) its capacity

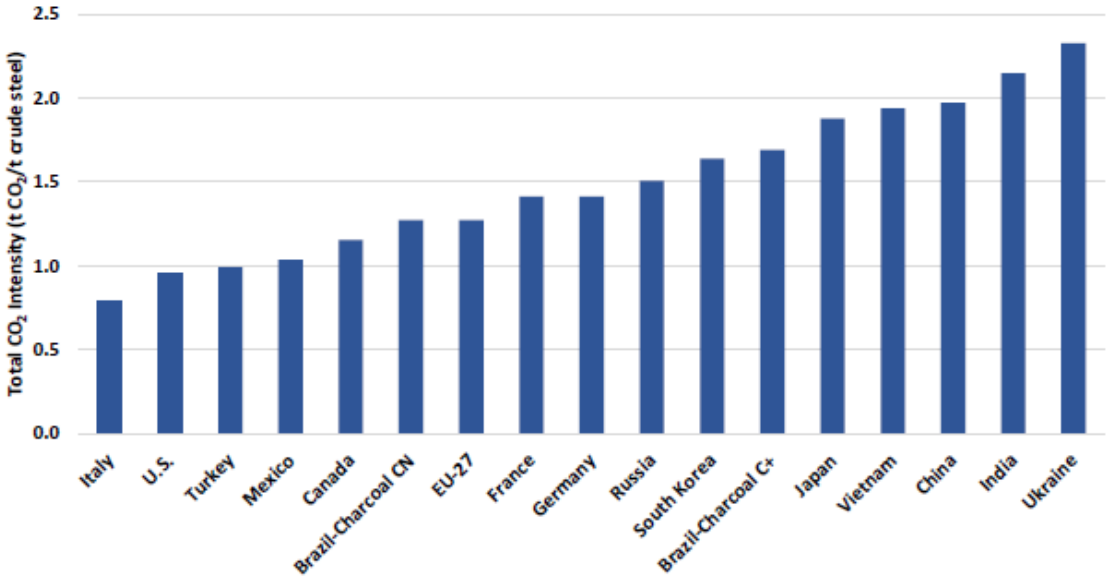
While China is the largest source of excess capacity and emissions, the problem is not limited to China

Many countries will need to continue to reduce capacity and emissions going forward

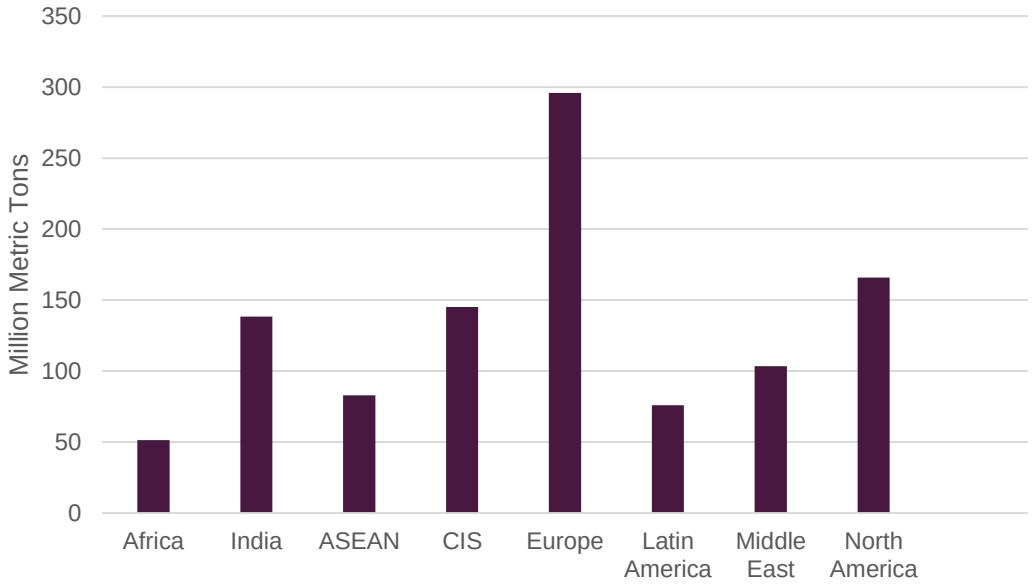
Sources: OECD Steel Committee, *Latest developments in steelmaking capacity* (Sept. 2023) at 3; Ali Hasanbeigi, Global Efficiency Intelligence, *Steel Climate Impact: An International Benchmarking of Energy and CO2 Intensities* (Apr. 2022) at 3.

# Significant Global Capacity and Emissions

## 2019 Emissions of Largest Steel Producers




## 2023 Estimated Steelmaking Capacity by Region (non-China)




Sources: Ali Hasanbeigi, Global Efficiency Intelligence, *Steel Climate Impact: An International Benchmarking of Energy and CO2 Intensities* (Apr. 2022) at 3; OECD Steel Committee, *Latest developments in steelmaking capacity* (Sept. 2023) at 6.

# Overcapacity Threatens Decarbonization

- Global steel excess capacity has increased 54 million MT in 2023 to more than 612 million MT
- Every ton of excess capacity contributes to excess emissions
  - China by far has the greatest overcapacity and is one of the highest emitters both on a per-ton basis and in total emissions
  - Significant excess and obsolete capacity is not limited to China or countries that receive Belt and Road subsidies
- Global emissions targets cannot be reached without reducing excess and obsolete capacity in all countries

Sources: OECD Steel Committee, *Latest developments in steelmaking capacity* (Sept. 2023) at 6-7, Annex D; Ali Hasanbeigi, Global Efficiency Intelligence, *Steel Climate Impact: An International Benchmarking of Energy and CO2 Intensities* (Apr. 2022) at 3.

# Decarbonization Cannot Be a Blanket Excuse for Subsidies that Build Non-Market Capacity

- While some subsidies may play a constructive role, governments should not use subsidies to build excess capacity or prevent failing businesses from exiting the market
- Some subsidies may serve a positive function
  - To develop truly experimental and cutting-edge technologies
  - To make new technologies commercially available and viable in their early stages (*e.g.*, green hydrogen, CCS)
- Subsidies for companies to implement proven and existing technologies simply prop up existing capacity and unlevel the playing field
- Governments should be mindful of the distortive effects of using subsidies (*e.g.*, financing) to rebuild incumbents when their past returns have been unsustainable

The Committee agreed to begin analysis of the **impacts of government interventions on the health of the steel industry, including their market-distorting effects**, as a basis for developing guidelines on government support during the course of 2024. This work will also examine the role of support measures to **promote decarbonisation** of the steel industry while **maintaining a level playing field and fair competition**.

OECD Steel Committee Vice-Chairs Statement (93rd Session, Mar. 2023)

# Rightsizing Capacity Reduces Emissions

- Subsidies for non-market capacity prevent market forces from rightsizing capacity and reducing emissions
- If a company cannot justify investing in or maintaining capacity using conventional technologies (*e.g.*, EAF), perhaps that capacity should not be subsidized and it should exit the market
- Other industries face similar challenges (*e.g.*, aluminum)

# Maintaining Trade Discipline Is Key For A Level Playing Field and Fair Competition

- Governments invariably misuse subsidies, and trade disciplines on exports will be crucial (even for green subsidies)
- Countries cannot be allowed to overbuild capacity in the name of decarbonization only to export it elsewhere
  - Greenlighting climate subsidies encourages countries to build and export excess capacity
  - Excess production and exports harm non-subsidized producers
- If they lead to injury, subsidies should be countervailed under the ASCM
  - Subsidies are countervailable if there is a (1) financial contribution, (2) by a government or public body, (3) that confers a benefit, and (4) is specific
  - No exceptions for climate subsidies
  - Benefits to workers (as opposed to companies) are typically not countervailable

# Supporting Workers in Transition

- Decarbonization will impact how and where steel is made
  - As economies mature, less capacity will be needed in certain regions
  - Different types of steels will be required due to market shifts (*e.g.*, autos)
  - Restructuring will not be easy on the industry or its workers
- Need to support workers (*e.g.*, unemployment, training)
  - Rightsized capacity and new technologies will require fewer steelworkers
  - Workers will need to be redeployed, including to clean energy jobs
- Subsidies that distort steel markets are not the solution

# Conclusion

Decarbonization requires both reducing per-ton emissions and rightsizing capacity

Decarbonization cannot become an excuse for countries to subsidize capacity not supported by the market

Trade remedy laws are a necessary tool to offset injurious exports resulting from subsidies that supported the building and maintaining of excess capacity

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# Questions?


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