2100 M Street N.W., Suite 200
Washington DC 20037

Tel: (202) 785-4185
Fax: (202) 466-1286/87/88

general@stewartlaw.com
www.stewartlaw.com

October 22, 2013

Via Electronic Filing
Ambassador Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Request for Public Comments Regarding the National Trade Estimate Report on Foreign Trade Barriers, Docket Number USTR-2013-0027: Written Submission Concerning Argentina on behalf of Titan Tire Corporation

Dear Ambassador Froman:

Titan Tire Corporation ("Titan") appreciates this opportunity to submit comments to assist the Trade Policy Staff Committee in identifying barriers to trade around the world.[1] Titan is a U.S. manufacturer and exporter of off-the-road tires—tires used on agricultural, construction, and mining machinery—headquartered in Des Moines, Iowa with plants in multiple locations in the United States. Titan exports tires throughout the world and competes in the U.S. market with tires imported from many countries. Titan is concerned with the many trade distorting polices it faces worldwide. This submission focuses on the policies of the Government of Argentina ("GOA"), particularly trade-restrictive import policies that distort the competitive balance between imports and domestically-produced goods in the Argentine market.

[1] These comments are submitted pursuant to the USTR's call for comments for the 2014 NTE in 78 Fed. Reg. 50481 (USTR Aug. 19, 2013).

P *Member, International Society of Primerus Law Firms*

I. Background

In 2012, the United States exported over $10 billion worth of goods to Argentina, including almost $19 million worth of new pneumatic rubber tires. However, Argentina has imposed trade-restrictive import policies on numerous products, including tires, for years, and these trade-restrictive policies are making it increasingly difficult to export goods to Argentina. The impact of these policies is two-fold. First, these policies make it more difficult, costly, and/or time consuming to import. Second, these policies encourage the use of domestically produced tires rather than imported tires, notwithstanding whether the latter offer better value to purchasers. The combined effect of such policies is to make it increasingly difficult for U.S.-produced tires to compete in the Argentine market. Indeed, Argentina's Industrial Strategy 2020 identifies the replacement of imports with domestic production as one of its goals.[2] The policies that Titan considers most problematic are reviewed below.

II. Import Licensing Procedures

Starting in 2008, Argentina began drastically increasing the number of products subject to its non-automatic import license ("NAL") regime,[3] including the addition of multiple categories of tires in 2009.[4] As USTR recognized in the 2013 NTE Report, by 2011, over 600 Harmonized Tariff Schedule lines were subject to NALs.[5] As a result of the large number of goods subject to these procedures, license applications became backlogged and U.S. companies

---

[2] *See* Report by the Secretariat, *Trade Policy Review – Argentina*, WT/TPR/S/277/Rev.1 (June 14, 2013) at 79 ("*TPR*").

[3] *See, e.g.*, *Argentina's Notification Under Article 5* (G/LIC/N/2/ARG/15) (19 January 2009); *Argentina's Notification Under Article 5* (G/LIC/N/2/ARG/14) (19 January 2009); *Argentina's Notification Under Article 5* (G/LIC/N/2/ARG/12/Add.1) (19 January 2009); *Argentina's Notification Under Article 5* (G/LIC/N/2/ARG/7/Add.3) (19 January 2009).

[4] Specifically, goods classified under the MERCOSUR Common Nomenclature tariff lines 4011.10.00, 4011.20.90, 4011.61.00, 4011.92.10, and 4011.92.90. *See Argentina's Notification Under Article 5* (G/LIC/N/2/ARG/16/Add.1) (5 May 2009). Prior to that, all goods imported under chapter 40 of the harmonized schedule were subject to automatic import licenses. *See* Report by the Secretariat, *Trade Policy Review – Argentina*, WT/TPR/S/176 (January 8, 2007) at 50, Table III.4.

[5] USTR, 2013 National Trade Estimate Report on Foreign Trade Barriers, at 21.

reported that approval times were typically between 60 and 180 days, but were sometimes even longer.[6]

Following objections by numerous WTO Members to the NAL requirement,[7] as well as the initiation of dispute settlement proceedings by the United States, the European Union, and Japan,[8] Argentina eliminated its NAL regime. However, this process was essentially replaced (and expanded) by a new requirement—known as the Advanced Sworn Statement on Imports ("DJAI")—that applies to all imports (with few exceptions). Pursuant to the DJAI requirement, all importers must file a sworn statement that provides information on the goods they wish to import and await government approval before importation. The DJAI requirement, which went into force on February 1, 2012, has been described by the U.S. Government as follows:

> In order to place a purchase order or initiate a foreign exchange transaction to purchase foreign goods, importers into Argentina must first electronically submit a DJAI, which at least seven Argentine governmental agencies then have an opportunity to review. If any of the governmental agencies registers an "observation" (*observación*) of the DJAI, then the importer may not proceed with the import transaction until the relevant agency (or agencies) decides that it is satisfied with the importer's response. The legal framework for the DJAI system imposes virtually no constraints on the government agencies' discretion in registering or resolving "observations," and in practice, DJAIs often remain in an "observed" (*observada*) status for long periods of time without explanation, or until an import complies with [restrictive trade-related requirements].[9]

[6] *Id.*

[7] For example, in March 2012, 14 WTO Members co-sponsored a statement voicing their concerns about Argentina's trade-restrictive import policies, including the NAL requirement. *See* Press Release, Office of the United States Trade Representative, Joint Statement on Argentina's Import Restricting Policies and Practices (Mar. 30, 2012), *available at* http://www.ustr.gov/about-us/press-office/press-releases/2012/march/joint-statement-argentinas-import-restricting-polici.

[8] *Request for the Establishment of a Panel by the European Union*, WT/DS438/11 (Dec, 7, 2012); *Request for the Establishment of a Panel by Japan*, WT/DS445/10 (Dec. 7, 2012); *Request for the Establishment of a Panel by the United States*, WT/DS444/10 (Dec. 7, 2012). While Mexico also filed a request for a panel, this request was later withdrawn. *See* The World Trade Organization, *Dispute Settlement: Dispute DS446*, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds446_e.htm.

[9] First Written Submission of the United States, *Argentina – Measures Affecting the Importation of Goods* (DS/438/444/445) (July 3, 2013) at ¶8, *available at* http://www.ustr.gov/node/8349 ("US Brief").

The lack of transparency regarding the factors considered in whether to grant an import license under this system leaves importers at the mercy of the reviewing agencies. Moreover, there are requirements that importers submit information on recent price lists and on expected imports and exports,[10] indicating that this process is being used in conjunction with trade-balancing objectives. Indeed, the DJAI requirement has been described by the GOA as a way to protect the domestic industry,[11] and, as explained by the head of the Argentine Chamber of Importers, "[i]t is clear to us that the government is applying a policy of administering foreign trade to seek to maintain a trade surplus and to stimulate substitution of imports with domestic production."[12] Furthermore, as reviewed in more detail below, reports indicate that the GOA is utilizing the DJAI system as a way to impose additional trade-restrictive measures.

III. One-to-One Policy

The GOA has employed the use of a "one-to-one" policy, through which it requires companies that wish to import to commit to export an equivalent dollar amount; similar trade-distortive tactics have involved requirements that importers invest in local manufacturing, incorporate local content into domestically produced goods, reduce imports, and/or refrain from repatriating funds.[13] Reports indicate that this policy has generally been enforced through Argentina's import licensing scheme (*i.e.*, the DJAI requirement), such that the GOA will not approve import licenses unless and until the importer agrees to an export and/or other trade-balancing commitments. In fact, in a survey by the U.S. Chamber of Commerce, over 75% of

---

[10] *See id.* at ¶¶35-36.
[11] *See id.* at ¶¶38-41 & nn. 95-101 (reviewing press releases and government statements discussing the DJAI system).
[12] *Mercosur Members Wary of New Argentina Import Controls*, 16 Bridge Weekly Trade News Digest (Feb. 8, 2012), *available at* http://ictsd.org/i/news/bridgesweekly/124681/.
[13] *See* US Brief at ¶9.

responding companies indicated that the GOA tied approval of import licenses under the DJAI system to separate requirements, including commitments pursuant to the one-to-one policy.[14]

Although the GOA has denied that such a policy exists when questioned at the WTO,[15] press reports indicate that the Government has been pursuing, and continues to pursue, such measures. In fact, in 2012, it was reported that the Argentine Secretary of Trade, Guillermo Moreno, met with 150 top importers and demanded that they match their imports with exports, dollar-for-dollar.[16] Argentine officials have also made various statements describing such a requirement, including Secretary Moreno stating that "[f]or each dollar used to acquire goods abroad, you will have to generate another in this country[]" and the head of the Ministry of Industry explaining that, for the auto industry, "imports must be compensated by exports . . . ."[17]

Tire companies that have investments in Argentina have agreed to such requirements. In fact, USTR reports that President Fernández has discussed the importance of expanding tire production in Argentina and has explained that, because domestic production cannot cover demand, the GOA has "permanent agreements and permanent discussions with all of the companies . . . to achieve this balance in trade . . . ."[18] Indeed, in 2012 Pirelli & C. SpA agreed to export $100 million in honey and to invest $300 million building a new tire factory in Argentina.[19] There are also reports that Michelin agreed to export requirements in 2012 to offset its imports.[20] As a predicate to this agreement, various small and medium enterprises travelled

---

[14] US Brief at ¶44.
[15] *See* Replies by Argentina to Questions from Canada, China, the European Union, Japan, Mexico, Peru and the United States, G/LIC/Q/ARG/11 (2 May 2010) at 1.
[16] Ian Mount, *Argentina trade: nothing to celebrate*, FINANCIAL TIMES, Feb. 24, 2012, http://blogs.ft.com/beyond-brics/2012/02/24/argentinas-trade-surplus-few-cause-for-celebration/?#axzz2hyxlf6kX.
[17] US Brief at ¶¶52-54.
[18] *Id.* at ¶73.
[19] *See* Ken Parks, *Argentina Misses Out As Foreign Investors Balk At Policies*, 4-TRADERS (May 8, 2012), http://www.4-traders.com/YPF-SA-9908956/news/Argentina-Misses-Out-As-Foreign-Investors-Balk-At-Policies-14317741/.
[20] US Brief at ¶74.

to Michelin's headquarters to offer their goods—including textiles, toys, footwear, and industrial machinery—to Michelin for export from Argentina.[21] These meetings reportedly resulted in an agreement between Michelin and eight small and medium enterprises for $32 million.[22]

As noted above, in addition to one-to-one requirements, the GOA has apparently tied imports to other commitments aimed at promoting domestic production. For example, as a condition to import products, in 2012 Bridgestone committed to not repatriate profits until 2015 and to reinvest profits into Argentine production.[23] Moreover, as these policies appear to be directed at all imports, tire producers have also been indirectly affected as a result of companies that purchase tires being subject to similar requirements. For example, as part of its agreement with the GOA, Renault Trucks committed to increase the local content of its products by shifting its tire purchases from Brazilian imports to an Argentine producer.[24] In short, these policies have had, and will continue to have, serious adverse effects on the ability of U.S. tire manufacturers to compete in the Argentine market.

IV. Import Substitution Policies

In addition to policies tied to the importation process, the GOA has imposed a number of import substitution policies, which run counter to Argentina's WTO obligations. Such policies seek to increase the extent to which domestically-produced goods are used to manufacture a number of products and discourage the use of imports, making it more difficult for imported goods to compete in the market. For example, in 2005, the GOA implemented a scheme to "improve the competiveness of local autoparts . . .," which provides a cash refund for the value

[21] First Written Submission of the European Union, *Argentina – Measures Affecting the Importation of Goods* (DS438) (July 3, 2013) at ¶141, *available at* http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151679.pdf ("EU Brief").
[22] *Id.* at ¶142.
[23] *Id.* at ¶234.
[24] *See Renault signed an agreement with the Ministries of Industry and Economic to level the trade balance*, AcercanoNaciones, http://www.acercandonaciones.com/en/negocios/renault-firmo-un-acuerdo-con-las-carteras-de-industria-y-economia-para-nivelar-la-balanza-comercial.html.

of purchases of certain autoparts. To receive the refund, the purchased autoparts cannot contain more than 30% imported content, must be intended for production, and must be purchased by manufacturers of, *inter alia*, cars, certain utility vehicles, and trucks.[25]

More recently, the GOA has been actively encouraging certain sectors to develop import substitution strategies. In February 2011, the head of the Ministry of Industry, Debora Giorgi, instructed the Argentine Association of Agricultural Machinery Manufactures to submit import substitution plans.[26] In announcing this plan, Minister Giorgi identified the trade deficit in that sector and acknowledged that "[i]mport substitution is a key tool for increasing production."[27] By December 2011, John Deere, Case New Holland, Agco Allis, and Class had all submitted plans to invest in Argentine production facilities that would utilize domestically produced goods. While there does not to appear to be any requirement as to what goods should be sourced domestically, Minister Giorgi has reportedly "met with domestic tyre producers to embolden them to participate in the import substitution process for agricultural machinery[,]"[28] and there are also reports that tires are among the inputs that John Deere has focused on to source domestically.[29] The GOA has additionally been pursuing similar requirements for mining sector equipment.[30] As Argentine purchasers of tires seek to increase their use of local content, foreign-produced tires will be increasingly vulnerable to replacement by domestically produced goods simply because of governmental policies.

---

[25] *TPR* at 157.
[26] US Brief at ¶87.
[27] *Id.* at ¶87.
[28] EU Brief at ¶ 213.
[29] *Id.* at ¶217.
[30] *Id.* at ¶¶189-97; *see Argentina targets mining firms in import crackdown*, Reuters (May 28, 2012), http://uk.reuters.com/article/2012/05/28/argentina-mining-imports-idUKL1E8GS42720120528.

V. Conclusion

The multitude of policies that Argentina has in place discouraging the use of imports has significantly tilted the playing field in favor of domestic producers of many products and are threatening U.S. exports of tires, including those for agricultural, construction, and mining equipment. Under such conditions, tire companies such as Titan are faced with many barriers and are unable to fairly compete in the Argentine market. Titan recognizes that the United States is currently challenging many of these policies before the WTO dispute settlement body. Titan commends USTR for taking these steps and urges USTR to continue to examine these policies and use the multilateral and bilateral fora available to it to encourage the GOA to remove such trade-restrictive measures as soon as possible.

Respectfully submitted,

/s/ Eric P. Salonen
Terence P. Stewart
Eric P. Salonen
Stephanie R. Manaker
Nicholas J. Birch
STEWART AND STEWART
2100 M Street, N.W.
Suite 200
Washington, D.C. 20037
(202) 785-4185

2100 M Street N.W., Suite 200
Washington DC 20037

Tel: (202) 785-4185
Fax: (202) 466-1286/87/88

general@stewartlaw.com
www.stewartlaw.com

October 22, 2013

Via Electronic Filing
Ambassador Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Request for Public Comments Regarding the National Trade Estimate Report on Foreign Trade Barriers, Docket Number USTR-2013-0027: Written Submission Concerning Brazil on behalf of Titan Tire Corporation

Dear Ambassador Froman:

Titan Tire Corporation ("Titan") appreciates this opportunity to submit comments to assist the Trade Policy Staff Committee in identifying barriers to trade around the world.[1] Titan is a U.S. manufacturer and exporter of off-the-road ("OTR") tires—tires used on agricultural, construction, and mining machinery—headquartered in Des Moines, Iowa with plants in multiple locations in the United States. Titan exports tires throughout the world and competes in the U.S. market with tires imported from many countries. Titan is concerned with the many trade distorting polices it faces worldwide. This submission focuses on the policies of the Brazilian government, particularly tariffs, subsidies, and non-tariff barriers that distort the competitive balance between imports and domestically-produced goods in the Brazilian market.

[1] These comments are submitted pursuant to the USTR's call for comments for the 2014 NTE in 78 Fed. Reg. 50481 (USTR Aug. 19, 2013).

I. Background

Brazil has several trade-restrictive policies and practices that injure the U.S. off-the-road tire industry, Titan in particular. These policies and practices include unstable tariff rates, industrial policies that subsidize domestic producers and exporters, discriminatory tax policies, and a non-automatic import license scheme. The impact of these policies is two-fold. First, these policies make it more difficult, costly, and/or time consuming to import into Brazil. Second, these policies artificially promote the use of domestically-produced tires over tires imported from other countries, such as the United States. The combined effect of such policies is to make it increasingly difficult for U.S.-produced tires to compete in the Brazilian market. The policies discussed below are those Titan considers most problematic.

II. Tariffs

Brazil's applied tariff rates on the different categories of OTR tires have ranged between 6.7% and 16% since before 2010.[2] Brazil's simple average applied tariff over all HTS categories was 11.7% in 2012.[3] Brazil's rates tend to increase at the higher stages of value addition, which acts as a higher protection for local industries and thus a "disincentive to improve international competitiveness" at higher levels of manufacturing.[4] In addition, as USTR has reported, Brazil's external tariff rates are higher than those of other members of MERCOSUR.[5]

While the practice is not inconsistent with Brazil's WTO obligations, the uncertainty that stems from the gap between the high bound rate—35% for OTR tires—and the applied rates, in

---

[2] WTO Tariff Download Facility, http://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm. Applied rates by 6-digit HTS number:

- 4011.20, .61, .62, .92, .93 = **16%**
- 4011.63, .94 = **6.7%**
- 4011.69 = **9.0%**

[3] Trade Policy Review Body, *Trade Policy Review Report by the Secretariat Brazil,* WT/TPR/S/283/Rev.1 (July 26, 2013) at ¶3.34 ("*TPR*").

[4] *Id.* at ¶3.35.

[5] USTR, *2012 National Trade Estimate Report on Foreign Trade Barriers – Brazil* at 1.

addition to the wide range of applied rates, is problematic for U.S. tire exporters and becomes a barrier to trade. The Government of Brazil has a practice of raising tariffs to protect domestic industries and then lowering them as it pleases. In the fall of 2012, Brazil implemented stiff tariff rate increases on 100 products as an exception to the Common External Tariff of MERCOSUR, including steel, glass, chemicals, textiles, paper, petroleum derivatives, rubber, food products, and machines and equipment, including certain types of tires.[6] The rates were increased, according to Brazil's Finance Minister Guido Mantega, in order to protect local industries from the effect of the exchange rate appreciating and difficult trade conditions abroad.[7] Though the government was expected to raise tariffs again in early 2013, including on more types of tires, it instead allowed the earlier increases to expire in order to help ease inflationary pressures.[8] Mr. Mantega stated that the weakening exchange rate gave local manufacturers a "natural defense" against international competition,[9] which suggests that when the exchange rate is less favorable to local manufacturers increased tariff rates will return. The unpredictability of Brazil's tariff policies makes it difficult for a U.S. exporter such as Titan to predict its costs of doing business in Brazil.

III. Subsidies

Brazil has several tax and financing programs that provide incentives for domestic producers to export their products or use local or MERCOSUR content as opposed to imports. The programs run counter to Brazil's WTO obligations to refrain from imposing measures that

[6] *Government Hikes Tariffs on 100 Products*, Brazil-U.S. Business Council, September 5, 2012 http://www.brazilcouncil.org/news/government-hikes-tariffs-100-products; EU Trade Barriers Report at 12.
[7] *Brazil to Cut Import Tax on 100 Industrial Items*, http://online.wsj.com/article/BT-CO-20130801-715499.html.
[8] Craig A. Lewis, et. al., *Brazil considering large tariff increases on 100 additional products*, Lexology (Feb. 12, 2013), http://www.lexology.com/library/detail.aspx?g=7c37b32b-5096-47e6-b448-f42689ad2dbc; *UPDATE 1 – Brazil's Mantega says drop in import duties to help industry*, Reuters (Aug. 1, 2013) http://www.reuters.com/article/2013/08/01/brazil-economy-mantega-idUSL1N0G222720130801.
[9] *Brazil to Cut Import Tax on 100 Industrial Items*, http://online.wsj.com/article/BT-CO-20130801-715499.html.

provide benefits contingent upon exportation or the use of local content. One of the biggest programs is REINTEGRA, part of Brazil's Plano Brasil Maior industrial policy. Under this program, exporters of industrial goods may receive a tax refund equal to 3% of the value of their exports, as well as exemptions from contributions to PIS (the social integration program) and COFINS (social security) taxes, as long as the imported content of the exported good does not exceed 40%.[10] While this policy was initially expected to extend only to the end of 2012, it was renewed through December 2013. According to Brazilian Deputy Finance Minister Dyogo de Oliviera, it was not further extended due to a tight budget and a weaker local currency;[11] however, the government's prior willingness to extend this policy indicates that it could be extended again if there are changes in Brazil's economic environment, creating additional uncertainty for U.S. exporters.

Likewise, FINAME, run by Brazil's National Bank for Economic and Social Development ("BNDES"), is a program that favors local products over foreign. It offers long-term financing with substantially lower interest rates than market for firms to purchase Brazilian-made machinery and equipment, and capital goods with a high level of domestic content.[12]

In addition, RECAP, the Special Regime for the Acquisition of Capital Goods by Exporting Enterprises, incentivizes exports. RECAP suspends PIS and COFINS taxes on the importation of new machines, instruments, and equipment when a company pledges that at least

---

[10] *TPR* at ¶¶3.115-3.116; *Brazil: REINTEGRA incentive for Brazilian exporting companies*, Ernst & Young TradeWatch (September 2013) Volume 11, Issue 3, at 5.
[11] Brazil: Special tax refund programme REINTEGRA for exporters of locally produced manufactured goods, http://www.globaltradealert.org/measure/brazil-special-tax-refund-programme-reintegra-exporters-locally-produced-manufactured-goods; *Brazil Won't Renew Reintegra Export Incentive in 2014 – Official*, http://online.wsj.com/article/BT-CO-20130815-710711.html.
[12] USTR, *2012 National Trade Estimate Report on Foreign Trade Barriers – Brazil*, at 42.

80% of its overall gross income will come from exports for at least 3 years.[13] Brazil also employs a drawback scheme that suspends or exempts import tariffs and indirect taxes levied on inputs used in the production of goods for export.[14] This program has been expanded in the last few years. Finally, BNDES has several export financing programs under BNDES-EXIM that provide access to credit on attractive conditions, such as terms similar to international market rates.[15] Some of these programs are targeted at specific sectors such as automobiles.[16]

Under Article 27.4 of the WTO Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), Brazil was considered a developing country Member and as such was required to phase out its export subsidies during an eight-year period ending in 2002.[17] Because it continues to employ programs that benefit producers based on their export activities, Brazil is not in compliance with its WTO obligations. Titan urges USTR to look closely at whether these programs are available to or being used by OTR tire producers in Brazil, as public information available to Titan does not specify.

IV. Non-tariff barriers

In addition to discriminatory subsidies and tariff barriers, Brazil also employs several non-tariff barriers that affect Titan and the U.S. OTR tire industry. These include a 1-2% increase in the COFINS tax rate for imports that fall under 3,300 tariff lines, under the Plano Brasil Maior.[18] Further, Brazil uses a system of non-automatic import licenses on many types of

[13] USTR, *2012 National Trade Estimate Report on Foreign Trade Barriers – Brazil* at 42; *see also TPR* at ¶3.126 (stating that the required local content as only 50%).
[14] *TPR* at ¶¶3.117-3.118.
[15] *Id.* at ¶3.133.
[16] *Id*. at ¶3.134.
[17] Article 27.4, Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 14.
[18] *Id.* at ¶3.349.

goods, including vehicles.[19] This system has been criticized by USTR for its lack of transparency in granting import licenses.[20] Such discretionary granting of licenses can hide discriminatory import practices. Finally, Brazil's domestic tax system is so complex and burdensome that it hinders U.S. investment and trade in Brazil.[21] While Brazilian companies have experience with the system and can be reasonably expected to know its ins and outs, foreign companies such as Titan are less familiar with it and are less likely to know how to navigate its extensive burdens.

V. Conclusion

The multitude of policies that Brazil has in place discouraging the use of imports has significantly tilted the playing field in favor of domestic tire producers. Under such conditions, tire companies such as Titan are faced with many barriers and are unable to fairly compete in the Brazilian market. We urge USTR to continue to examine these policies and use the multilateral and bilateral fora available to it to encourage the Brazilian government to remove such trade-restrictive measures.

Respectfully submitted,

/s/ Eric P. Salonen
Terence P. Stewart
Eric P. Salonen
Stephanie R. Manaker
Nicholas J. Birch
STEWART AND STEWART
2100 M Street, N.W.
Suite 200
Washington, D.C. 20037
(202) 785-4185

[19] USTR, *2012 National Trade Estimate Report on Foreign Trade Barriers – Brazil*, at 40-41.
[20] *Id.*
[21] *Id*. at 40.

2100 M Street N.W., Suite 200
Washington DC 20037

Tel: (202) 785-4185
Fax: (202) 466-1286/87/88

general@stewartlaw.com
www.stewartlaw.com

October 22, 2013

Via Electronic Filing
Ambassador Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Request for Public Comments Regarding the National Trade Estimate Report on Foreign Trade Barriers, Docket Number USTR-2013-0027: Written Submission Concerning India on behalf of Titan Tire Corporation

Dear Ambassador Froman:

Titan Tire Corporation ("Titan") appreciates this opportunity to submit comments to assist the Trade Policy Staff Committee in identifying barriers to trade around the world.[1] Titan is a U.S. manufacturer and exporter of off-the-road tires—tires used on agricultural, construction, and mining machinery—headquartered in Des Moines, Iowa with plants in multiple locations in the United States. Titan exports tires throughout the world and competes in the U.S. market with tires imported from many countries. Titan is concerned with the many trade distorting polices it faces worldwide. This submission focuses on the policies of the Indian government, particularly export subsidies that distort the competitive balance between exports from India and products manufactured in the United States.

[1] These comments are submitted pursuant to the USTR's call for comments for the 2014 NTE in 78 Fed. Reg. 50481 (USTR Aug. 19, 2013).

Member, International Society of Primerus Law Firms

I. Background

India has been widely recognized as providing trade-distorting export subsidies. In its most recent *Trade Policy Review* on India, the WTO Secretariat recognized a multitude of Indian government programs that subsidize Indian exporters.[2] India had not submitted a notification to the WTO Secretariat of its subsidy programs, as required by international agreements, for many years until it submitted a notification in 2011 identifying only one preferential tax incentive program as an export subsidy. Because this notification was known to be incomplete, USTR counter-notified the WTO Secretariat of fifty known Indian subsidy programs in 2011.[3]

Under the WTO Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"), India, as an Annex VII(b) (Developing Country) member, was not bound under the SMC Agreement to eliminate export promotion schemes until its per capita Gross National Income ("GNI") is above US$1,000 in constant 1990 dollars for three consecutive years.[4] The WTO Secretariat last calculated India's GNI in 1990 dollars for 2011 at US$966.[5] Between 2011 and 2012, the World Bank reports that India's per capita GNI in current dollars has grown by 5.5%.[6] A 5.5% growth in per capita GNI in constant 1990 dollars would have put India over the US$1,000 mark beginning in 2012, with the three-year period in Annex VII(b) of the SCM Agreement ending in 2014 (unless India's GNI should decline during that period). It is therefore

---

[2] Report by the Secretariat, *Trade Policy Review: India*, WT/TPR/S/249/Rev.1 at 81-90 (Oct. 20, 2011) [hereinafter *Trade Policy Review*].

[3] *See* OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2013 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 181 (March 2013) [hereinafter 2013 NTE].

[4] *See Trade Policy Review* at 81.

[5] Committee on Subsidies and Countervailing Measures, *Subsidies, Annex VII(B) of the Agreement on Subsidies and Countervailing Measures, Updating GNP Per Capita For Members Listed in Annex VII(B) as Foreseen in Paragraph 10.1 of the Doha Ministerial Decision and in Accordance with the Methodology in G/SCM/38*, G/SCM/110/Add.10 at 2 (July 11, 2013).

[6] *See* http://data.worldbank.org/indicator/NY.GNP.PCAP.CD/countries/IN-8S-XN?display=graph.

likely that beginning in 2014 India will be obliged to meet all the obligations under the SCM Agreement to discipline its use of subsidies.

In the 2013 NTE Report, the USTR also noted that the Indian government provides many programs to subsidize exports.[7] Additionally, many Indian government programs have been found by the U.S. Department of Commerce to be export subsidies countervailable under U.S. trade law.[8] And the Indian government has recently recommitted to subsidizing Indian exports through these programs, increasing and expanding some export subsidy programs in response to declining world demand and a plummeting rupee.[9]

Indian subsidy programs are of particular concern to tire producers such as Titan, who already face competition in the U.S. market from imported Indian tires, due to the size of the Indian tire industry. According to one report, the capacity of Indian plants producing the type of tires that are produced in Titan's plants, for agricultural, construction, industrial and mining use, is over 12 times the capacity of the comparable U.S. industry.[10] The types of programs discussed below, supporting unfairly traded exports to the U.S., could have a devastating impact on the survival of U.S. producers such as Titan. The programs discussed below represent only some of the larger export subsidy programs provided to Indian exporters; there are many other

[7] 2013 NTE at 181-82.

[8] *See, e.g.*, *Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; 2010*, 78 Fed. Reg. 22845 (Dep't Commerce April 17, 2013) (finding fourteen Indian government programs providing countervailable subsidies to Indian paper producers); *Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 Fed. Reg. 19192 (Dep't Commerce March 30, 2012) (finding over 30 Indian subsidy programs); *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 75 Fed. Reg. 43488, 43489 (Dep't Commerce July 26, 2010) (listing subsidy programs provided by the Indian central government and various state governments).

[9] *India Raises Interest Subsidy to Prop Up Weak Exports*, REUTERS, July 31, 2013, *available at* http://in.reuters.com/article/2013/07/31/india-trade-idINDEE96U05820130731.

[10] *The World's Tire Production Facilities-by Region,* 2013 Global Tire Report, TIRE BUSINESS, Sept. 2, 2013 at 26, 31 (comparing plants producing Agricultural, Earthmover/OTR, and Industrial tires).

programs that also subsidize Indian exports, both provided by the central government and by regional Indian governments.[11] While public information available to Titan does not allow identification of specifically which of the programs reviewed herein are used by which Indian tire exporters, Titan urges USTR to look closely at the issue in order to seek ways in which fair competition can be improved throughout the global market.

II. Special Economic Zones (SEZs)

India provides a collection of benefits to exporters who locate their production in designated Special Economic Zones ("SEZs"). SEZs are governed by the SEZ Act of 2005 and SEZ Rules of 2006.[12] One of the central goals of the SEZ program is to promote Indian exports.[13]

At the end of 2010, 374 SEZs were reported in India with over 3,200 establishments operating in the SEZs.[14] From 2007/08 to 2009/10, exports from India's SEZs increased over 230%, from US$14.8 billion to US$49.0 billion, representing over 27 percent of all of India's exports in 2009/10.[15]

While many countries have foreign trade zones, the issue with India's SEZ programs is whether these programs provide benefits to exporters beyond those benefits widely accepted as legitimate such as avoiding import duties on components imported into the foreign trade zone. Producers located in SEZs receive multiple benefits and subsidies, such as:[16]

---

[11] *See, e.g.*, the Department of Commerce countervailing duty determinations listed in note 8 *supra*, listing other central and regional government programs.

[12] State governments and private/state joint ventures can also set up SEZs. *Trade Policy Review* at 82.

[13] *See* Introduction - SEZ India, http://www.sezindia.nic.in/about-introduction.asp (last visited Oct. 8, 2013).

[14] *Trade Policy Review* at 82.

[15] *Id.* at 83, Table III.19.

[16] *See Trade Policy Review* at 83, Table III.18; Facilities and Incentives, http://www.sezindia.nic.in/about-fi.asp (last visited Oct. 8, 2013).

- Duty-free imports of goods and materials into the SEZ, including raw materials for production, capital goods, consumables, and packing materials;[17]
    - Goods from India may likewise enter the SEZ duty-free;
- Income tax exemption for SEZ units: 100% exemption for the first five years, 50% for the second five, then a 50% exemption on ploughed-back export profits for another five years;
- Exemptions from other taxes: minimum alternative tax, central sales tax, service tax, state sales taxes and other regional taxes and levies including electricity duties;
- Commercial borrowing through established external banking channels of up to US$500 million in one year with no maturity restrictions;
- 100% foreign direct investment allowed automatically;
- Single-window clearance for central and state government approvals;
- Exports from SEZs are exempt from compulsory preshipment inspection.

Other benefits, including discounted land, may also be provided to businesses locating in the SEZs.[18] These benefits are subject to SEZ units generating net foreign exchange earnings

---

[17] *See Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 Fed. Reg. 19192, 19210 (Table) (Dep't Commerce March 30, 2012).

[18] *See Trade Policy Review* at 82; *Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Countervailing Duty New Shipper Review*, 75 Fed. Reg. 81574, 81582 (Dep't Commerce Dec. 28, 2010) (finding land was provided in an SEZ at a 75 percent discount).

within five years.[19] The U.S. Department of Commerce has recognized India's SEZ programs as countervailable export subsidies.[20]

At least one producer of off-the-road tires that is actively exporting tires to the U.S. market, Alliance Tire Group ("ATG"), has taken advantage of the benefits offered by Indian SEZs. ATG currently has a plant in the SEZ at Tirunelveli in southern India[21] and has announced construction of a second plant in the SEZ at Dahej in western India.[22]

III. Export-Oriented Units (EOUs)

Export-Oriented Units ("EOUs") provide many of the same benefits as SEZs to Indian exporters, again subject to export performance, but may be located anywhere in the country. EOUs are business units licensed to manufacture or provide services for export. EOUs face minimum capital requirements (which may be 100% foreign investment) and must generate net foreign exchange earnings within five years.[23] Like SEZ units, EOUs can import all types of goods, including raw materials and capital goods, duty free. EOUs are also exempt from various taxes and duties and from standard customs procedures when importing or exporting.[24] Over 2,500 EOUs were reported in India in 2010.[25]

---

[19] *Trade Policy Review* at 82.

[20] *See e.g.*, *Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 Fed. Reg. 19192, 19205-06 (Dep't Commerce March 30, 2012).

[21] Factory, http://www.atgtire.com/Factory.aspx (last visited Oct. 8, 2013).

[22] Profile, http://www.atgtire.com/ProfileWW.aspx (last visited Oct. 8, 2013).

[23] *Trade Policy Review* at 84.

[24] *See Trade Policy Review* at 84; About EOU-Salient Features, http://www.eouindia.gov.in/eou_facilities.htm (last visited Oct. 8, 2013); *Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 Fed. Reg. 19192, 19210 (Table) (Dep't Commerce March 30, 2012) (listing countervailable subsidies found to be provided to EOUs).

[25] *Trade Policy Review* at 85.

IV. Export Concession Schemes

The Indian government also has in place a number of programs to exempt exporters from import duties or to refund duties to exporters.[26]

Duty Exemption Schemes

Under India's duty exemption schemes, exporters are allowed to import product inputs, including fuel and oil consumed in production, duty free. Under the Advance Authorisation / Advance License Scheme, authorization is granted to import specific quantities of inputs exempt from basic and additional customs duties as well as India's education cess.[27] The resultant exports must have a value added of at least 15%,[28] and the importer remains liable for the unpaid duty until export requirements have been fulfilled.[29] Similar duty-free importation is also available under the Duty Free Import Authorisation Scheme for products where standard input/output norms have not been established.[30]

Duty Drawback Schemes

India also provides exporters with a number of programs to receive refunds of duties paid on imports. In addition to refunds of customs and additional duties paid, exporters can receive refunds of services taxes paid on imports or on local materials used to produce exports.[31] Under the "all industry rate" drawback program, exporters can receive refunded amounts based on

---

[26] In the 2013 NTE, USTR stated, "Rather than liberalizing its import tariffs, India instead operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. Eligibility to participate in these schemes is usually subject to a number of conditions, including an export obligation." 2013 NTE at 178.

[27] GOVERNMENT OF INDIA, FOREIGN TRADE POLICY-27TH AUGUST 2009 - 31ST MARCH 2014 §§ 4.1.3-4.1.4. (Aug. 23, 2010), *available at* http://dgft.gov.in/exim/2000/policy/ftp-plcontentE-1011.pdf [hereinafter FOREIGN TRADE POLICY].

[28] *Id.* at § 4.1.6.

[29] *Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Countervailing Duty New Shipper Review*, 75 Fed. Reg. 81574, 81582, 81577 (Dep't Commerce Dec. 28, 2010).

[30] *See* FOREIGN TRADE POLICY at §§ 4.2.1-4.2.2.

[31] *Trade Policy Review* at 86.

published schedules for various products, typically based on a percent of the value of the export. For products without an industry rate, an exporter may apply for a "brand rate" drawback, based on the ratio of the materials used in the exported product and the duties paid on these materials. If the amount refunded is below four-fifths of the duty actually paid, the exporter may request an upward adjustment of the refund.[32] In 2013, USTR noted that India's duty drawback programs may allow exporters to drawback more than actually paid in duties.[33]

Export Promotion Capital Goods Scheme

In addition to exemptions from duties on inputs, exporters in India can receive exemptions from or reductions for duties on capital goods under the Export Promotion Capital Goods ("EPCG") Scheme. Exporters of "rubber & articles thereof" are among the beneficiaries of the EPCG Scheme.[34] The EPCG Scheme allows the import of "pre-production, production and post production" capital goods at either a zero or concessional duty rate, dependent on the product exported.[35] Benefiting exporters are then obligated to export products with a value some multiple of the unpaid duty within a certain period, the particulars dependent on the amount of duty avoided.[36]

V. Export Financing and Insurance

India also provides preferential and subsidized financing and insurance to exporters. Financing is provided by the Export-Import Bank of India and by foreign banks operating in

[32] *Id.* at 87.

[33] 2013 NTE at 181.

[34] FOREIGN TRADE POLICY at § 5.1,

[35] FOREIGN TRADE POLICY at §§ 5.1, 5.2. The zero-duty EPCG is available for exporters of "rubber & articles thereof." *Id.* at § 5.1.

[36] *Id.*

India, which are required to reserve a portion of their credit for exporters.[37] The Reserve Bank of India also provides short-term, pre-export financing through commercial banks based on confirmed export orders.[38] By law, commercial banks extending export credit must do so at capped interest rates established by the Reserve Bank.[39] Exporters may also receive post-export financing at preferential rates.[40] The Indian government has also provided loan guarantees for exporters.[41] The state-owned Export Credit Guarantee Corporation of India provides guarantees on export credits and also provides exporters commercial and country risk insurance, and currently covers 60% of India's export insurance market.[42]

VI. Export Support Programs

A number of the Indian government's export promotion programs also provide benefits to Indian exporters. Under the Assistance to States for Development of Export Infrastructure and Allied Activities Scheme, the Indian government provides financial assistance to state governments, dependent on export performance, to develop export-supporting infrastructure.[43] This program is aimed at developing infrastructure projects which "have overwhelming export content," such as SEZs.[44]

---

[37] *Trade Policy Review* at 89.

[38] U.S. Department of Commerce, *Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Reviews of the Countervailing Duty Orders on Certain Hot-rolled Carbon Steel Flat Products from India and Indonesia* at 9 (March 5, 2013), *available through* http://www.trade.gov/ia/.

[39] *Id.*

[40] *Id.*

[41] *See, e.g.*, *Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; 2010*, 78 Fed. Reg. 22845, 22846 (Dep't Commerce April 17, 2013).

[42] *Trade Policy Review* at 90.

[43] FOREIGN TRADE POLICY at § 3.1

[44] *Id. See also Trade Policy Review* at 88.

The Indian government also finances export and trade organizations through the Marketing Development Assistance and Market Access Initiative programs. Financial assistance is provided to organizations for projects such as market studies and export promotion campaigns.[45] The U.S. Department of Commerce has determined that these programs provide a countervailable subsidy to Indian exporters.[46] Through the Market Access Initiative, Indian exporters can also receive reimbursement of the costs of complying with import requirements into other countries, including the costs of contesting litigation such as antidumping and countervailing duty cases on Indian products.[47]

* * * *

[45] FOREIGN TRADE POLICY at §§ 3.2 & 3.3.

[46] *See, e.g.*, *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 75 Fed. Reg. 43488, 43489 (Dep't Commerce July 26, 2010)

[47] FOREIGN TRADE POLICY at § 3.4.

VII. Conclusion

The programs described above as well as others provided by the Indian government and Indian state governments subsidize Indian exports and seek to tilt the playing field to the advantage of Indian exporters. As a result, U.S. manufacturers such as Titan are harmed by having to compete with subsidized Indian products at home and abroad. We hope that USTR will include the information provided in these comments in the 2014 National Trade Estimates Report and use the multilateral and bilateral fora available to it to encourage the Indian government to terminate such trade-distorting programs.

Respectfully submitted,

/s/ Eric P. Salonen
Terence P. Stewart
Eric P. Salonen
Stephanie R. Manaker
Nicholas J. Birch
STEWART AND STEWART
2100 M Street, N.W.
Suite 200
Washington, D.C. 20037
(202) 785-4185