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SUBJECT: Final Results of Changed Circumstances Reviews Regarding Belarus' Status as a Non-Market Economy Country

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I. EXECUTIVE SUMMARY

The Department of Commerce (Commerce) concludes that Belarus is a non-market economy (NME) country, based on the fact that its economy does not primarily operate on market principles. The Belarusian government's role in the economy and its relationship with markets and the private sector not only lead to fundamental distortions and allocative efficiency problems, but also affect Belarusian costs or pricing structures that are necessary for Commerce's antidumping analyses.

Commerce's overall conclusion is based upon its analysis of six factors established in U.S. law. In determining whether a country is an NME under section 771(18)(A) of the Tariff Act of 1930, as amended (the Act), section 771(18)(B) requires that Commerce take into account: (1) the extent to which the currency of the foreign country is convertible into the currency of other countries; (2) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (4) the extent of government ownership or control of the means of production; (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (6) such other factors as the administering authority (*i.e.*, Commerce) considers appropriate.

Under Factor 1, Commerce observes that restrictions on participation in foreign exchange markets by the Government of Belarus (GOB) prevent the full convertibility of the Belarusian ruble (BYN) and result in a lack of variation of prices at currency exchanges throughout the country. Despite these sustained restrictions, the GOB has begun noteworthy currency reforms, such as its recent allowance of the BYN to float, which is in line with market principles.

Under Factor 2, Commerce notes that wages in Belarus still generally follow the Tariff System[1] for administrative wage setting, as evidenced by the divergence between growth in wages and labor productivity across sectors and regions that closely matches GOB targets. Furthermore, protection of labor rights is limited, and restrictions on unionization and organized gatherings impede the fair treatment of workers and actively discourage a level of bargaining between employees and management conducive to any fully liberalized labor market.

Under Factor 3, Commerce finds that the implementation gap between *de jure* and *de facto* investment requirements creates an environment heavily tilted towards the state sector in which private investors, including foreign investors, exercise limited control over their investment and business decisions. Recent reforms intended to attract foreign investment and to reduce restrictions on starting a business have failed to produce significant increases in foreign direct investment (FDI) inflows.

Under Factor 4, Commerce observes that the GOB owns and exercises control over a majority of Belarus' economic assets, including those in key sectors such as agriculture, mining, manufacturing, and banking. Regulations mandating privatization have not led to significant GOB divestment from SIEs,[2] and the largest enterprises in Belarus are still state-owned and have access to a range of government-sponsored benefits not available to their private sector counterparts.

Under Factor 5, Commerce finds that the GOB plays a significant role in resource allocation by setting prices of goods and services in sectors across the economy. Despite significant price liberalization in recent years, roughly 20 percent of the goods represented in the consumer price index (CPI) have regulated prices. A decentralized monetary framework for price regulation and

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[1] The Tariff System of Remuneration sets wages in multiple industries at a fixed rate in line with targets for wage and economic growth set by the GOB. *See* Factor 2 (page 31) for details.

[2] This determination uses the term "state-invested enterprise" or "SIE" when referring to an enterprise in which the GOB has any ownership stake. Though the term generally has the same meaning as "state-owned enterprise" or "SOE," the definition of "SOE" sometimes varies depending on the context in which it is used, and Commerce has adopted the term "SIE" to avoid confusion. This determination will use the term "SOE" when citing others' use of that term. Commerce used the same approach in its *Memorandum on Public Bodies, Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China* (WTO/DS437), October 15, 2015.

stabilization, which is carried out by GOB bodies across sectors, further weakens effective resource allocation and transmission.

Under Factor 6, Commerce finds that the weak rule of law and prevalence of corruption are consistent with other indications that markets do not function effectively in Belarus. In addition, Belarus' recent bid to accede to the World Trade Organization (WTO) has been prolonged by the GOB's lack of transparency and reluctance to implement necessary market reforms.

In considering the *de jure* and *de facto* conditions characterizing the Belarusian economy as a whole and in the context of the six criteria summarized above, Commerce determines that Belarus remains an NME country for the purposes of U.S. antidumping and countervailing duty laws.

II. LIST OF ABBREVIATIONS

AREAER	Annual Report on Exchange Arrangements and Exchange Restrictions
BCSE	Belarusian Currency and Stock Exchange
Belstat	National Statistical Committee of the Republic of Belarus
BKDP	Belarusian Congress of Democratic Trade Unions
BelAZ	Belarusian Automobile Plant
BMZ	Byelorussian Steel Works
BYN	Belarusian Ruble
CCR	Changed Circumstances Review
CMC	Commercial Metals Company
CoE	Council of Europe
CPI	Consumer Price Index
EAEU	Eurasian Economic Union
EBRD	European Bank for Reconstruction and Development
EUR	Euro
FDI	Foreign Direct Investment
FEZ	Free Economic Zone
FPB	Federation of Trade Unions of Belarus
GDP	Gross Domestic Product
GOB	Government of Belarus
GRECO	Group of States against Corruption
GSIP	Great Stone Industrial Park
HTP	High Technology Park
ICSID	International Centre for Settlement of Investment Disputes
ILO	International Labor Organization
IMF	International Monetary Fund
ISDS	Investor-State Dispute Settlement
ITUC	International Trade Union Confederation
MART	Ministry of Antimonopoly Regulation and Trade
MCP	Multiple Currency Practice
NBFI	Non-Bank Financial Institution
NME	Non-Market Economy

NPL	Non-Performing Loan
NBRB	National Bank of the Republic of Belarus
OJSC	Open Join Stock Company
OSCE	Organization for Security and Co-operation in Europe
PSED	Program for Social and Economic Development
REER	Real Effective Exchange Rate
RTAC	Rebar Trade Action Coalition
RUB	Russian Ruble
SEZ	Special Economic Zone
SIE	State-Invested Enterprise
SOCB	State-Owned Commercial Bank
SOE	State-Owned Enterprise
SUE	State Unitary Enterprise
UNCITRAL	United Nations Commission on International Trade Law
UNECE	United Nations Economic Commission for Europe
UNCTAD	United Nations Conference on Trade and Development
USD	United States Dollar
USW	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
VAT	Value Added Tax
WTO	World Trade Organization

III. BACKGROUND

On December 16, 2019, the GOB, citing changes in the Belarusian economy in recent years, requested that Commerce review Belarus' status as an NME country within the context of Changed Circumstanced Reviews (CCRs) of the antidumping orders on steel concrete reinforcing bars and alloy steel wire rod.[3] On February 6, 2020, Commerce published in the *Federal Register* the initiation of CCRs of Steel Concrete Reinforcing Bars from Belarus and Carbon and Alloy Steel Wire Rod from Belarus.[4]

This inquiry is being conducted pursuant to section 771(18)(A) of the Act, which defines the term "non-market economy country" as any foreign country determined by Commerce not to "operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." Section 771(18)(B) of the Act lists six factors (*see* below) Commerce must consider in any inquiry made under section 771(18)(A), and under section 771(18)(C)(i), a country's NME country status remains in effect until revoked.

Upon the dissolution of the Union of Soviet Socialist Republics (Soviet Union) in December 1991, each of the newly independent states, including Belarus, retained the NME status of the

[3] *See* GOB's Letter, "Steel Concrete Reinforcing Bars from Belarus and Alloy Steel Wire Rod from Belarus: Request for the Department of Commerce to Initiate a Changed Circumstance Review on Behalf of the Republic of Belarus," dated December 16, 2019 (GOB's Letter).

[4] *See Steel Concrete Reinforcing Bars from Belarus and Carbon and Alloy Steel Wire Rod from Belarus: Initiation of Antidumping Duty Changed Circumstances Reviews*, 85 FR 6893 (February 6, 2020).

former Soviet Union.[5] Since then, Commerce has continued to treat Belarus as an NME country.[6]

On March 9, 2020, Commerce received comments and information from Liberty Steel USA, Optimus Steel LLC, and Charter Steel (collectively, Domestic Wire Rod Producers),[7] Nucor Corporation (Nucor) and Commercial Metals Company (CMC), domestic producers of carbon and alloy steel wire rod (wire rod), and the Rebar Trade Action Coalition (RTAC) and its individual members, Nucor, Gerdau Ameristeel US Inc., CMC, Steel Dynamics, Inc., and Byer Steel Group, Inc., domestic producers of steel concrete reinforcing bar (rebar) (collectively "Domestic Steel Producers")[8] and the GOB.[9] On March 13, 2020, Commerce received comments and information from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW).[10]

On April 6, 2020, Commerce received rebuttal briefs from Domestic Wire Rod Producers,[11] Domestic Steel Producers,[12] and the GOB.[13]

On September 30, 2020, Commerce held a public hearing via videoconference.[14]

IV. DISCUSSION OF INTERESTED PARTY COMMENTS

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[5] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan*, 57 FR 23380 (June 3, 1992).

[6] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From Belarus*, 67 FR 62015, 62016 (October 3, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus*, 68 FR 9055, 9056 (February 27, 2003); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from Belarus*, 66 FR 8329, 8330 (January 30, 2001), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus,* 66 FR 33528 (June 22, 2001), and accompanying Issues and Decision Memorandum at Comments 1-3 (treating Belarus as an NME country).

[7] *See* Domestic Wire Rod Producers' Letter, "Steel Concrete Reinforcing Bars from Belarus and Carbon and Alloy Steel Wire Rod from Belarus - Comments on Changed Circumstances Reviews re: Belarus Non-Market Economy Status," dated March 9, 2020 (Domestic Wire Rod Producers' Brief).

[8] *See* Domestic Steel Producers' Letter, "Steel Concrete Reinforcing Bars from Belarus and Alloy Steel Wire Rod from Belarus: Comments Pursuant to 19 USC. § 1677(18)(B)," dated March 9, 2020 (Domestic Steel Producers' Brief).

[9] *See* GOB's Letter, "Changed Circumstances Reviews - Belarus Nonmarket Economy Graduation: Government of Belarus Case Brief and Hearing Request," dated March 9, 2020 (GOB's Brief).

[10] *See* USW's Letter, "Steel Concrete Reinforcing Bars from Belarus and Carbon and Alloy Steel Wire Rod from Belarus: Refiling of Comments," dated March 13, 2020 (USW's Brief). The USW's brief was timely filed on March 6, 2020. However, it omitted certain certifications. Commerce requested the USW to refile with the proper certifications by March 13, 2020. Therefore, we consider this brief to be timely filed.

[11] *See* Domestic Steel Producers' Letter, "Steel Concrete Reinforcing Bars from Belarus and Carbon and Alloy Steel Wire Rod from Belarus – Domestic Interested Parties' Rebuttal Comments on Belarus' NME Graduation Comments" dated April 6, 2020 (Domestic Wire Rod Producers' Rebuttal Brief).

[12] *See* Domestic Steel Producers' Letter, "Steel Concrete Reinforcing Bars from Belarus and Alloy Steel Wire Rod from Belarus: Rebuttal Comments," dated April 6, 2020 (Domestic Steel Producers' Rebuttal Brief).

[13] *See* GOB's Letter, "Steel Concrete Reinforcing Bar and Carbon and Alloy Steel Wire Rod from Belarus: Government of Belarus Rebuttal Comments," dated April 6, 2020 (GOB's Rebuttal Brief).

[14] *See* Public Hearing Transcript regarding "Antidumping Duty Changed Circumstances Reviews of Steel Concrete Reinforcing Bars from Belarus and Carbon and Alloy Steel Wire Rod from Belarus," dated September 30, 2020.

Factor One: The extent to which the currency of the foreign country is convertible into the currency of other countries.

Domestic Steel Producers' Comments

- The BYN "is not a fully convertible currency," and can generally only be exchanged for U.S. dollars (USD), Euros (EUR), or Russian rubles (RUB).[15]
- The National Bank of the Republic of Belarus (NBRB), is actively engaged in managing the rate at which the BYN can be converted. The NBRB has adopted a managed floating exchange rate regime, wherein the BYN's value is allowed to fluctuate only within limited bounds and is subject to a complex set of rules.[16]
- The International Monetary Fund (IMF) has found the BYN is overvalued by 10 percent.[17] Such overvaluation is only possible because the NBRB sells foreign currency reserves (USD or EUR) to buy the local currency, thereby propping up the BYN's value.
- Belarus' lack of capital account openness is inconsistent with market economy principles. Belarus maintains restrictive macro-prudential policies such as differentiated reserve requirements to keep its fragile monetary and financial system intact.[18]

GOB's Rebuttal Comments

- Based on the website of Minsk National Airport, the following currencies can be exchanged for the BYN at the airport: U.S. dollars, euros, Russian rubles, Swedish kronor, Swiss francs, Polish złote, Lithuanian litai, Latvian lati, Ukrainian hryvni, Chinese renminbi, and British pounds.[19]
- The NBRB does not impose limits on exchange rates.[20] The NBRB maintains a policy to limit the daily volatility of the exchange rate by selling or buying certain amounts of foreign currencies at market prices when the exchange rate fluctuates too much.[21]
- The IMF has stated that "in practice use is made of an operating rule limiting the possibility of NBRB to influence the determination of the exchange rate. Currency interventions are, in fact, used to reduce the daily volatility of the exchange rate, and not for regulating its level."[22]

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[15] *See* Domestic Steel Producers' Brief at 26, citing GOB, "Money in Belarus," attached at Exhibit 38.
[16] *Ibid.*, citing National Bank of the Republic of Belarus (NBRB), "Exchange Rate Policy of the National Bank of the Republic of Belarus," attached at Exhibit 39.
[17] *Ibid*., citing IMF, (Country Report No. 19/9), "Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Republic of Belarus," (Belarus Article IV Report), January 2019 at 17, excerpts attached at Exhibit 21.
[18] *Id.* at 29, citing IMF, (Country Report No. 19/10), "Republic of Belarus – Selected Issues," January 2019 at 4, 7, attached at Exhibit 42.
[19] GOB's Rebuttal Brief at 4, citing Minsk National Airport, "Information on Foreign Exchange Service," attached at Exhibit I-3.
[20] *Ibid.*, citing IMF, "Belarus: Annual Report on Exchange Arrangements and Exchange Restrictions," (Belarus AREAER), August 31, 2018, attached at Exhibit I-4 at 321.
[21] *Id.* at 4-5, citing Domestic Steel Producers' Brief, March 9, 2020, attached at Exhibit 39.
[22] *Id.* at 5, citing IMF, "Belarus AREAER," August 31, 2018, attached at Exhibit I-4 at 319.

- Although one IMF staff assessment found that the real effective exchange rate (REER) of Belarus is overvalued by about 10 percent, IMF staff acknowledges that a different approach indicates a REER gap of 0.2 percent.[23] The NBRB's latest assessment indicates a REER gap of 1.8 percent for the last quarter of 2019.[24] Thus, there is no basis to conclude that the BYN is overvalued due to government interventions.
- Various economic indicators confirm the free convertibility of the BYN. The increasing volume of domestic foreign exchange market supports the free convertibility with respect to current account transactions. Convertibility for capital account transactions is demonstrated by the increasing FDI, net capital inflow, and foreign capital participation in the domestic banking sector.[25]

GOB's Comments

- Belarus' currency is freely convertible for all current account transactions. The *Law on Currency Regulation and Currency Control* (*Law on Currency*) of July 22, 2003, as amended, provides in Article 10, that all current currency transactions are carried out between residents and non-resident without any limitations.[26]
- Belarus' currency is freely convertible for most capital account transactions. Based on Article 10 of the *Law on Currency*, foreign exchange operations of residents associated with the movement of capital can be carried out via permit, registration and notification.[27]
- There are limited capital account restrictions in Belarus: (1) the requirement to obtain permission from the NBRB for certain capital account transactions, and (2) the requirement to repatriate export proceeds.[28]
- Belarus is no different from many countries that were previously determined to be market economy countries. Commerce revoked its NME designations of Hungary, Latvia, Slovakia, the Czech Republic, and Kazakhstan, even though those countries maintained significant capital account restrictions at the time.[29]
- Belarus' currency is convertible at the exchange rate set by market forces. Article 12 of the *Law on Currency* provides that the NBRB "can establish the marginal rates of the exchange rates under which the sale and purchase and (or) conversion of foreign currency is carried out at the internal currency market of the Republic of Belarus."[30]
- The exchange rate policy in Belarus is based on the floating regime. The NBRB does not set any targets for the level of the exchange rate or the rates of its change.[31]
- Belarus became a member of the IMF in 1992 and assumed the obligations under Article VIII (Sections 2, 3 and 4) of the IMF Articles of Agreement on November 5, 2001. The

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[23] *Ibid.*, citing Domestic Steel Producers' Brief, March 9, 2020, attached at Exhibit 21.
[24] *Id.* at 5-6, citing NBRB, "Real Effective Exchange Rate Assessment," attached at Exhibit I-8.
[25] *Id*. at 14, citing NBRB, "Financial Stability in the Republic of Belarus for 2018," 2019, attached at Exhibit I-16; NBRB, "Financial Stability in the Republic of Belarus for 2017," 2018 at 69, attached at Exhibit I-17.
[26] *See* GOB's Brief at 8, citing GOB, *Law No. 226-Z on Currency Regulation and Currency Control* (*Law on Currency*), (July 22, 2003), attached at Exhibit 1.
[27] *Id*. at 9, citing GOB, *Law on Currency*, (July 22, 2003), Article 10, attached at Exhibit 1.
[28] *Id*. at 10.
[29] *Id.* at 12.
[30] *Id.* at 13, citing GOB, *Law on Currency*, (July 22, 2003), Article 12, attached at Exhibit 1.
[31] *Ibid*., citing NBRB, "Exchange Rate Policy of the National Bank of the Republic of Belarus," 2020, attached at Exhibit 7.

provisions prohibit, among other things, restrictions on current payments, discretionary currency arrangement or multiple currency practices (MCPs).[32]

Domestic Steel Producers' Rebuttal Comments

- The IMF classifies Belarus' foreign exchange as an "other managed arrangement," a category used to describe exchange arrangements that are not free or floating, and which are subject to "frequent shifts in policies."[33]
- Belarus' capital account restrictions are substantial and pervasive. The IMF's Annual Report on Exchange Arrangements and Exchange Restrictions (AREAER) reveals that the country's restrictions act as a one-way valve on capital flows. The most recent AREAER for Belarus details some 62 categories of exchange restrictions, regulations, and bank or government permission requirements.[34]
- While there are seemingly few legal restrictions regarding the inflow of capital by non-Belarusians, Belarusian residents that wish to obtain foreign assets are subject to extensive restrictions. For example, Belarusian residents may transact in foreign currency only in highly limited circumstances.[35]

Domestic Wire Rod Producers' Rebuttal Comments

- The BYN is softly pegged to a basket of currencies (50 percent RUB, 30 percent USD and 20 percent EUR).[36] The exchange rate is only allowed to fluctuate in a small band around the central value of the currency basket.
- The BYN's exchange rate does not exhibit the properties of a floating regime in practice. It trades in a certain narrow range on a daily basis controlled by the GOB and it therefore exhibits less volatility than other floating currencies. This is a direct result of the NBRB's interference with market forces.[37]
- When a country with a high inflation rate links its currency to other currencies, it can result in overvalued currency and loss of competitiveness. An example of such a currency crisis occurred in 2014-2015 in Belarus when the NBRB ran out of reserves to defend its currency.[38]
- Although the NBRB does not require permits for resident individuals to open accounts in foreign banks, placing money into these bank accounts or transferring monetary funds to

[32] *Id.* at 13-14, citing the IMF Provisions at Exhibit 8.
[33] *See* Domestic Steel Producers' Rebuttal Brief at 37, citing IMF, "Belarus AREAER," August 31, 2018 at 56, excerpts attached as Tab 7, and at 46, excerpts attached at Exhibit A24A.
[34] *Id.* at 35, citing IMF, "Belarus Article IV Report," January 2019 at 1, 6, excerpts attached to Domestic Steel Producers' Brief at Exhibit 21.
[35] *Ibid.*, citing IMF, "Belarus AREAER," August 31, 2018 at 5, IV.A.2.
[36] *Id.* at 7, citing European Central Bank, "The International Role of the Euro – Statistical Annex," June 2019, A3.
[37] *See* Wire Rod Producers' Rebuttal Brief at 8.
[38] *Id.* at 9, citing IMF, (Country Report No. 19/10), "Republic of Belarus: Selected Issues," January 2019 at 3.

non-residents still requires a permit from the NBRB.[39] Furthermore, an NBRB permit is still required for Belarusian companies to open accounts and invest in foreign banks.[40]

- Belarus maintains capital controls on 10 of the 11 categories the IMF tracks in its reports.[41]

Factor Two: The extent to which wage rates in the foreign country are determined by free bargaining between labor and management.

Domestic Steel Producers' Comments

- Belarus' economy is not characterized by conditions in which wage rates are determined by free bargaining between labor and management. In 2019, the International Trade Union Confederation (ITUC) described Belarus as one of the worst nations in the world for labor rights, describing it as not simply a systematic violator of labor rights, but as providing "{n}o guarantee of rights" at all.[42]
- Despite a constitutional guarantee of the right to strike, Belarusian law ultimately provides the GOB with control over whether strikes are permitted to take place.[43]
- The GOB has undertaken activities to suppress union activists in recent years. According to Freedom House: "{i}ndependent labor unions face harassment, and their leaders are frequently fired and prosecuted for engaging in peaceful protests. No independent unions have been registered since 1999, when {President Alexander} Lukashenko issued a decree setting extremely restrictive registration requirements."[44]
- The GOB intervenes directly to affect Belarus' labor wage rate. As noted above, aggressive wage targets are set for both SOEs and private industry through the government's five-year plans.[45]
- The extensive support that the GOB provides to SOEs translates into a misallocation of labor and overemployment relative to the private sector.[46]

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[39] *Id.* at 11, citing NBRB, *Resolution of the Board of the National Bank of the Republic of Belarus No. 72*, (*NBRB Resolution No. 72*), (April 30, 2004), Chapter 3, 18.5.
[40] *Ibid.*, citing *NBRB Resolution No. 72*, (April 30, 2004), Chapter 8 at 40; Deloitte, "International Tax Belarus Highlights 2019," March 2019 at 1.
[41] *Id.* at 12, citing IMF, "Belarus AREAER," August 31, 2018 at 56.
[42] *See* Domestic Steel Producers' Brief at 20, citing International Trade Union Confederation, "2019 ITUC Global Rights Index" at 9-10, excerpts attached at Exhibit 31.
[43] *Id*. at 20, citing Yaraslau Kryvoi, "Labour Law in Belarus," (The Netherlands: Kluwer Law International, 2012-1st edition), Paragraphs 554-555, excerpts attached at Exhibit 33.
[44] *Id.* at 21, citing Freedom House, "Belarus: Freedom in the World 2019" at 11, attached at Exhibit 4.
[45] *Id.* at 22, citing IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 3-4, excerpts attached at Exhibit 11.
[46] *Id.* at 23, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 75-76, excerpts attached at Exhibit 10.

Domestic Wire Rod Producers' Comments

- The U.S. Department of State notes that the Belarusian government places serious restrictions on (1) the exercise of workers' rights, (2) the ability to form and join independent unions, and (3) the ability to strike.[47]

USW's Comments

- Belarus has a poor record on labor rights. The country received a rating of "5" from ITUC, which classifies Belarus as providing "no guarantee of rights." That rating puts Belarus on par with countries like China.[48]
- The GOB limits workers' right to strike, and there are concerns that independent unions are targets of retaliatory prosecution. The lack of an effective right to strike, along with impediments to collective bargaining, distorts wages.[49]

GOB's Rebuttal Comments

- The GOB takes all complaints about labor violations very seriously and has undergone definitive steps over the past decades to address issues. In September 2019, Belarus again submitted its regular report on the application of International Labor Organization (ILO) Conventions No. 87 and No. 98. The European Union, after confirming the improved interaction between Belarus and the ILO, agreed to resume discussions on the platform of the Belarus-EU Trade Dialogue.[50]
- The GOB has continued to show its commitment to respecting trade unions and workers' rights through the passage of new laws and dialogue with international organizations.
- Much of the evidence presented by the ITUC in its description of Belarus relies on rumors and unverified accounts. Such anecdotes should not be considered permissible evidence against free bargaining between labor and management.[51]
- The regional disparity in employment and wages has widened since the shift away from the old-Soviet style system, with the average wages in Minsk City significantly higher than the rest of the country. According to statistics from the Ministry of Labor, the average monthly wage for Minsk in January 2020 was 42.2 percent higher than the average for the rest of the country.[52] Inter-regional wage variations in Belarus reflect each region's relative bargaining positions of labor and management.

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[47] *See* Domestic Wire Rod Producers' Brief at 7, citing U.S. Department of State, "Belarus 2018 Human Rights Report" at 38.
[48] *See* USW's Brief at 3.
[49] *Ibid.*
[50] *See* GOB's Rebuttal Brief at 16.
[51] *Ibid.*
[52] *Id.* at 17-18, citing GOB (Ministry of Labor), "Wage Statistics for 2020," attached at Exhibit I-18.

GOB's Comments

- Wage rates in Belarus are not controlled by the government and are set through a process of bargaining based on the financial possibilities of companies. The governmental regulation of wages was abolished by *Presidential Edict No. 181* on May 10, 2011.[53]
- The rights of citizens to freedom of association and collective bargaining are guaranteed by applicable law. Article 41 of the *Constitution of the Republic of Belarus* grants citizens the right to protect their economic and social interests, which includes the right to join trade unions, enact collective agreements, and strike.[54]
- Pursuant to Article 356 of the *Labor Code*, Belarus guarantees fundamental rights to workers – such as the right to bargain freely for wages and the right to strike – thereby ensuring them adequate bargaining power in negotiating wages.[55]
- Trade unions cover approximately 95 percent of the employed population in Belarus.[56]
- The GOB does not directly intervene to dictate wage rates. The only constraint on the freedom to set wages by the GOB is a minimum monthly wage for workers. The existence of a tariff schedule that provides recommended wages should not be considered a substantive barrier to free bargaining.[57]

Domestic Steel Producers' Rebuttal Comments

- Wage rates in Belarus are affected by government "wage targets" that act as *de facto* wage controls.[58]
- The GOB's wage "recommendations" significantly distort underlying wage determinants, given that at least 40 percent of working Belarusians are employed by the state, resulting in severe misallocations of labor.[59]
- The ILO has described numerous GOB actions taken to undermine unions, pointing to burdensome restrictions on union registration and activities, as well as GOB actions aimed at repressing organizers.[60]
- Although Belarus' *Constitution* and *Labor Code* guarantee workers the right to organize and strike, the *Constitution* also "vests power in the President, stating that presidential

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[53] *See* GOB's Brief at 15, citing GOB, *Presidential Edict No. 181*, (May 10, 2011), attached at Exhibit 9.
[54] *Id.* at 17, citing GOB, *Constitution of the Republic of Belarus*, (March 15, 1994, with alterations and amendments adopted at the republican referendums of November 24, 1996 and of October 17, 2004), attached at Exhibit 10.
[55] *Id*. at 16, citing GOB, *Law 1605 on Trade Unions*, (April 22, 1992), attached at Exhibit 12.
[56] *Id.* at 17.
[57] *Id.* at 19.
[58] *See* Domestic Steel Producers' Rebuttal Brief at 5; IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 2, 8, excerpts attached to Domestic Steel Producers' Brief at Exhibit 1.
[59] *Id.* at 25, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019, excerpts attached to Domestic Steel Producers' Brief at Exhibit 10 and IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 6, excerpts attached to Domestic Steel Producers' Brief at Exhibit 1.
[60] *Id.* at 28, citing International Labor Organization (ILO), "Trade Union Rights in Belarus," July 2004 at 163-179, excerpts attached as Tab 5; ILO, "Special Supplement: Trade Union Rights in Belarus," 2004 at 12-122, attached as Tab 6; ILO, "Belarus: Follow-up given to the recommendations of the 2004 Commission of Inquiry," March 3, 2014 at 3-4, attached as Tab 4.

decrees have higher legal force than legislation."[61] As such, any "rights" that the *Constitution* purports to provide are entirely subject to presidential whim.

- While Belarus' *Constitution* provides workers with the right to strike in principle, Article 393 of the *Labor Code* gives the President (and thereby, the Ministry of Labor and Social Protection) arbitrary power over whether strikes can be suspended or prevented. Strikes must be registered in advance and are subject to a variety of cumbersome permission processes.[62]
- Independent observers have concluded that the right to strike is "practically unrealizable" in Belarus, because it is both "fully dependent on the permits of the authorities," and impeded by a biased, non-independent judiciary.[63]

Domestic Wire Rod Producers' Rebuttal Comments

- The caveat "unless otherwise specified by the President of the Republic of Belarus" in *Presidential Edict No. 181*, renders useless the provisions the GOB claims protect its workers and allow for free bargaining between labor and management.[64]
- Independent sources note that wage targets set by the government appear to be the driver of wage growth, that there is close adherence to government "targets" and a high degree of government control, and that wage targets should be phased out to make way for more market-oriented wage-setting mechanisms.[65]
- Belarusians may organize and bargain, but they have no protection from antiunion discrimination, no right to reinstatement, and no right to challenge their dismissal in court.[66]

Factor Three: The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country.

Domestic Steel Producers' Comments

- The GOB maintains few formal restrictions on foreign investment. However, the GOB has created a business environment that is inhospitable, overall, to foreign investors.[67]
- FDI in Belarus is low, representing only 2.47 percent of Gross Domestic Product (GDP) in 2018.[68] With the exception of 2011, FDI has remained virtually unchanged on a nominal basis since 2007, at USD 1.25 billion to USD 2.25 billion annually.[69]

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[61] *Id*. at 29, citing Freedom House, "Belarus, Freedom in the World 2019," attached to Domestic Steel Producers' Brief at Exhibit 4.
[62] *Ibid.*, citing Yaraslau Kryvoi, "Labour Law in Belarus," (The Netherlands: Kluwer Law International, 2012-1st edition), Paragraphs 554-555, excerpts attached to Domestic Steel Producers' Brief at Exhibit 33.
[63] *Id.* at 29-30, citing Siarhei Alfer and Aliaksei Kazlou (Eastern Europe Studies Centre), "Are the Independent Democratic Trade Unions of Belarus the Engine of Social Reforms," February 2012 at 5.
[64] *See* Domestic Wire Rod Producers' Rebuttal Brief at 13.
[65] *Id.* at 13, citing IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 2.
[66] *Id.* at 14-15, citing U.S. Department of State, "Belarus 2018 Human Rights Report" at 38.
[67] *See* Domestic Steel Producers' Brief at 30.
[68] *Id.* at 30, citing World Bank, "Foreign direct investment, net inflows (percent of GDP)," attached at Exhibit 44.
[69] *Ibid.*, citing World Bank, "Foreign direct investment, net inflows (BoP, Current US$)," attached at Exhibit 44.

- The U.S. State Department has found that, despite maintaining programs supposedly aimed at attracting FDI, investment in sectors or industries dominated by SOEs is highly limited in practice.[70]
- The GOB approves foreign investments individually, and, on an *ad hoc* basis, there is a significant lack of legal and regulatory certainty around the process. In practice, Belarus' Ministry of Antimonopoly Regulation and Trade (MART) maintains total (and arbitrary) authority over whether to approve investments.[71]
- Risk of government expropriation without adequate compensation is high; the courts handling commercial disputes are not independent; regulators act arbitrarily; and public administration is not viewed as impartial, undermining transparency and predictability.[72]

GOB's Rebuttal Comments

- According to the World Bank, the percentage of Belarus' FDI inflows relative GDP (2.47 percent) is near the medium of all reported countries and is significantly higher than the world percentage, which is 1.39 percent.[73]
- The increase in Belarusian FDI from USD 1.25 billion to USD 2.25 billion, nearly double, has been substantial compared to the 48 percent increase in the world economy since 2007. Belarus' 2018 GDP was slightly less than that in 2008, indicating the nominal increase in FDI was even more pronounced in relation to the changes in Belarus' economic output.[74]
- Belarus is ranked in the top 1/6th of the world in terms of the ease of starting a business (30 out of 190). Belarus is rated by the World Bank around the top quartile of the world (49 of 190) in overall ease of doing business.[75]

GOB's Comments

- Belarus' 2013 *Law on Investments* established the legal framework and basic principles for investing within the territory of the Belarus.[76] Its provisions are aimed at attracting investments into the economy of Belarus and ensuring certain guarantees, rights, legitimate interests, and the equal protection of investors.
- Article 12 of the *Law on Investments* provides for the protection of property from nationalization and requisition while Article 13 establishes a procedure for resolving disputes between an investor and the Republic of Belarus.[77]

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[70] *Id.* at 31, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus" at 2, attached at Exhibit 46.
[71] *Id.* at 32, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," attached at Exhibit 46
[72] *Ibid.*, citing World Bank, "Systematic Country Diagnostic: Towards a Competitive, Inclusive and Dynamic Belarus" (Country Diagnosis of Belarus), February 20, 2018 at 52-54, excerpts attached at Exhibit 20.
[73] *See* GOB's Rebuttal Brief at 19, citing World Bank, "Foreign Direct Investment, percent of GDP – Country Rankings," 2018, attached at Exhibit I-20.
[74] *Id.* at 24.
[75] *Id.* at 23-24, citing select pages of World Bank, "Ease of Doing Business," 2020, attached at Exhibit I-23.
[76] *See* GOB's Brief at 23, citing *Law of the Republic of Belarus No. 53-Z on Investments* (*Law on Investments*), (July 12, 2013), attached at Exhibit 2.
[77] *Id.* at 22-23.

- Belarus is a full member of the Multilateral Investment Guarantee Agency (MIGA), an institution of the World Bank Group that allows investors to insure ongoing projects against political and non-commercial risks. Belarus and MIGA have several agreements on the legal protection of guaranteed foreign investments and on the use of local currency.[78]
- Belarus has signed more than 65 bilateral agreements on mutual promotion and protection of investments. The agreements require internationally recognized best practices including, but not limited to, national treatment; most favored nation treatment; and just compensation for expropriation.[79]
- As of July 1, 2019, accumulated foreign investment accounted for more than half of Belarus' GDP.[80]

Domestic Steel Producers' Rebuttal Comments

- The U.S. Department of State has found that the reality of investment in Belarus is far different than the country's laws would suggest. Despite "officially" welcoming foreign investment, the GOB enforces "existing laws and unwritten practices" so as to discriminate against the private sector.[81]
- FDI is prohibited in "many key sectors," and foreign investments are assessed and approved by the GOB on an *ad hoc* basis, making them highly subject to partiality and discrimination.[82]
- The World Bank in 2018 noted an "implementation gap between *de jure* rules and the *de facto* experience of investors, which forms an impediment to investment."[83]
- Investors in Belarus face the risk of government expropriation without adequate compensation. There is a lack of predictability in regulatory and legal enforcement, as the courts are not independent, and public bodies are known to act arbitrarily and even to impose conflicting requirements.[84]

Domestic Wire Rod Producers' Rebuttal Comments

- The *Law on Investments* notes that the President singularly determines the state investment policy, determines the body responsible for regulating investment, and determines "condition{s} for {the}conclusion of investment contracts of the Republic of Belarus."[85]

[78] *Id*. at 23.
[79] *Id.* at 23-24.
[80] *Id.* at 25.
[81] *See* Domestic Steel Producers' Rebuttal Brief at 40, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus" at 3-4, attached to Domestic Steel Producers' Brief at Exhibit 46.
[82] *Id.* at 40, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus" at 3-4, attached to Domestic Steel Producers' Brief at Exhibit 46.
[83] *Id*. at 42, citing World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 53, excerpts attached to Domestic Steel Producers' Brief at Exhibit 20.
[84] *Ibid.*, citing World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 52-53.
[85] *See* Domestic Wire Rod Producers' Brief at 17, citing GOB's Brief at Exhibit 2, Article 9.

- The GOB establishes foreign ownership and control limits on a case-by-case basis,[86] which increases uncertainty for investors and discourages investment in general.

Factor Four: The extent of government ownership or control of the means of production.

Domestic Steel Producers' Comments

- The role of the state in Belarus' economy is entirely inconsistent with market economy principles, and private sector participation in the economy is growing slowly and unevenly - if at all.[87]
- Belarus' economy is uniquely dependent on SOEs and State-Owned Commercial Banks (SOCBs). As reported by the U.S. State Department, "seventy percent of {Belarus'} economy is under government control."[88]
- One hundred percent of the Belarusian steel industry is state controlled. Specifically, Byelorussian Steel Works (BMZ), the country's only producer of wire rod and rebar, is the "property of the state," according to its own website.[89]
- The vast majority of Belarus' agricultural land is owned by the state, dominated by large-scale farms several times the size of private farms. State-owned firms also dominate the chemicals, machinery and equipment, construction materials, and food processing industries.[90]
- Belarus has renationalized previously privatized companies and thus has gone backward in terms of reducing the government's presence in the market.[91]
- SOCBs account for a majority of the Belarusian banking sector, typically holding between 60-65 percent of the country's banking assets.[92] Of the 24 banks currently operating in Belarus, the largest two state-owned commercial banks alone account for more than 50 percent of assets and retail deposits.[93]

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[86] *Id.* at 20, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," Executive Summary, Section 1.
[87] *See* Domestic Steel Producers' Brief at 15.
[88] *Id.* at 8-9, citing U.S. Department of State, "U.S. Relations with Belarus," January 29, 2020.
[89] *Id.* at 9, citing BMZ (website), "About BMZ: Structure of BMZ," attached at Exhibit 9 of Domestic Steel Producers' Brief.
[90] *Id*. at 13, citing World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 47, attached at Exhibit 20.
[91] *Id*. at 10, citing Maria Akulova, "Foreign Investment: ICT Sector As An Example to Follow," in *Belarusian Yearbook 2019*, eds. Anatoly Pankovski and Valeria Kostyugova, (Vilnius: Expert Community of Belarus *Nashe Mnenie*, 2019) at 226-227, excerpts attached at Exhibit 14 (Belarusian Yearbook).
[92] *Id.* at 11, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 6-7, excerpts attached at Exhibit 10; *see also* Luca Gattini and Sofia Borysko, (European Investment Bank (EIB)), "Financial Sector Review and Private Sector Financing," June 2018 at 3, excerpts attached at Exhibit 15; Elena Polyakova, (S&P Global), "Belarus Banking Outlook: A Fragile Stability," September 12, 2019, attached at Exhibit 16.
[93] *Id.* at 11, citing Elena Polyakova, (S&P Global), "Belarus Banking Outlook: A Fragile Stability," September 12, 2019, attached at Exhibit 16. These banks are JSC Savings Bank Belarusbank and Belagroprombank JSC.

- World Bank economists have indicated that Belarus' state-owned companies account for the majority of the country's GDP,[94] and the IMF indicates that Belarus is "still very much a state-dominated economy."[95]

Domestic Wire Rod Producers' Comments

- Pervasive state involvement in and control of the economy hamper growth and development in Belarus.[96]
- Eighty percent of industry remains in state control, many businesses have been renationalized, and SOEs account for 70-75 percent of Belarusian GDP.[97]
- Independent sources report that state banks account for 65-75 percent of assets in the banking sector.[98]

USW's Comments

- Belarus' sole steel producer, BMZ, is an SOE. The company describes itself on its own website as the "property of the state." As an SOE, BMZ benefits from a range of preferences provided by the GOB. Further, the company's financial reporting reveals an emphasis on exports - and demonstrates that such exports benefit from government support.[99]

GOB's Rebuttal Comments

- BMZ is a non-state legal entity. Being an open joint-stock company (OJSC), BMZ has governing bodies in the form of a general meeting, as well as a supervisory board, which carries out the management of its activities. In 2015 BMZ OJSC was provided state assistance in the amount of 8.1 million USD, which accounts for 0.85 percent of the volume of production of goods, works, and services at the current prices minus accrued revenue taxes and charges for the whole enterprise. As of February 29, 2020, the share of debt for BMZ to state banks (Belarusbank, Belagroprombank, Belinvestbank) totaled 56.4 percent of all debt.[100]
- Although the SOCBs maintain an important role in managing assets in the Belarusian economy, the banking sector in Belarus has undergone significant changes and is more open than in the past. As of January 1, 2020, the banking sector of the Republic of Belarus included 24 operating banks. Foreign capital was present in the authorized funds

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[94] *Id.* at 15, citing World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 47, attached at Exhibit 20.
[95] *Id.* at 12, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 10, excerpts attached at Exhibit 10.
[96] *See* Domestic Wire Rod Producers' Brief at 6, citing Heritage Foundation, "2019 Index of Economic Freedom" at 100.
[97] *Id.* at 6-7, citing U.S. Central Intelligence Agency (CIA), "World Factbook-Belarus," 2020.
[98] *Id.* at 7, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus;" Luca Gattini and Sofia Borysko, (EIB), "Financial Sector Review and Private Sector Financing," June 2018; CIA, "World Factbook-Belarus," 2020.
[99] *See* USW's Brief at 3.
[100] *See* GOB's Rebuttal Brief at 26.

of 19 banks, while in 14 banks the share of foreign investors in the authorized fund exceeded 50 percent (in four of them it was 100 percent).[101]

- The legal regime in Belarus prevents the government from exercising significant control over the means of production. Government spending in Belarus as a proportion of GDP has been in decline over the past decades. In Belarus, the GOB's spending constituted only 20.8 percent of the nation's GDP in 2005, which declined further to 15.6 percent by 2018.[102]
- Belarusian laws have led to much success for so-called "small-scale" privatization (in the trading sector, catering, household services sector, light industry, food industry, wood-working and construction industry, agricultural production and agricultural services sectors). Between 1991 and 2015, over 5,146 SOEs were privatized or "commercialized."[103]
- Large SOEs, including Minsk Automobile Plant (MAZ), Belarusian Automobile Plant (BelAZ), Belarus Optical & Mechanical Association (BELOMO), the Minsk Motor Works, Integral, and Belaruskali, were transformed into OJSCs, and 131 deals have been made involving the sale of state-owned shares. Belarus' legislation does not provide for special privileges for economic entities with state ownership.[104]
- The special right ("golden share") of the state to participate in the management of business entities ceased to exist on March 5, 2008.[105]

GOB's Comments

- Belarus has already privatized a significant portion of its manufacturing economy. Belarus' legislation provides for equal rights of foreign and domestic investors with regard to participation in the privatization of State-owned property.[106]
- Between 2011-2018, Belarus nearly completed the transformation of large SOEs into OJSCs, with a view to their subsequent privatization, including in the petrochemical, machine-building and instrument-manufacturing industries. Transformation referred to a change in ownership structure, *i.e.*, into OJSCs, with regard to enterprises where it was deemed that the most appropriate way to attract private investment was to sell a part of the shares, rather than the business in its entirety.[107]
- As a result of these efforts, the participation of State-controlled organizations in the economy has significantly decreased. As of January-September 2019, only 43.5 percent of Belarus' GDP was derived from this sector.[108]

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[101] *Id.* at 27.
[102] *Id.* at 29.
[103] *Ibid.*
[104] *Ibid.*
[105] *Ibid.*, citing *Edict of the President of the Republic of Belarus of March 1, 2004 No. 125 "On Special Right ("golden share") of the State to Participate in the Management of Business Entities,"* attached at Exhibit I-29.
[106] *See* GOB's Brief at 30.
[107] *Id.* at 32.
[108] *Ibid.*

Domestic Steel Producers' Rebuttal Comments

- Belarusian governmental statistics regarding the role of SOEs in the Belarusian economy are misleading because Belarus does not consider joint stock companies, even those with 100 percent government ownership of the stocks, to be state-owned.[109]
- Privatization efforts have been halting and modest, and the GOB has long resisted calls to quicken its pace. The conversion of SOEs to joint-stock companies is of little significance if the firms remain state-owned, unprofitable, and off-limits to private investment. The U.S. State Department has confirmed that the GOB will allow private investors to purchase shares in such companies only "on the condition that the purchasing investors preserve existing jobs and production lines."[110]
- Only one SOE was bought by private investors from 2016-2018, with no other share purchases made during this period, making the GOB's privatization program "in practice extremely limited."[111]
- Ninety two percent of all land in Belarus is state-owned. While Belarus' *Land Code* provides for the right to private land ownership in the abstract, the government maintains tight control over land in practice, despite the fact that privatization of the state's holdings would attract much-needed capital.[112]

Domestic Wire Rod Producers' Rebuttal Comments

- A comparatively large number of sectors in the Belarusian economy are dominated by government monopolies.[113] For example, and especially relevant to this proceeding, the GOB controls the entire steel industry.[114]
- There is also a long list services that only the state can perform: land management; registration of real estate, titles and transactions with real estate; extraction, processing ores of precious and radioactive metals, rare earth elements, and precious stones; import of alcohol; import of raw tobacco and tobacco products; export in mineral or chemical fertilizer (including potash); purchase of precious metals and strong and scrap; and "other activities specified in the legislation."[115]

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[109] *See* Domestic Steel Producers' Rebuttal Brief at 12, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," attached to Domestic Steel Producers' Brief at Exhibit 46.
[110] *Id.* at 15, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," attached to Domestic Steel Producers' Brief at Exhibit 46.
[111] *Ibid.*, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," attached to Domestic Steel Producers' Brief at Exhibit 46.
[112] *Id.* at 15-16, citing Ulrich Graute, "Country Profiles on Housing and Land Management: Belarus," (New York: United Nations Economic Commission for Europe (UNECE), October 2019) at 70, 78, excerpts attached as Tab 13.
[113] *See* Domestic Wire Rod Producers' Rebuttal Brief at 22, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," Executive Summary, Section 1.
[114] *Id.* at 4, citing *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine*, Inv. Nos. 731-TA-873-0875, 878-880, and 882, USITC Pub. 4838, November 2018, (Third Review) at I-26 and *Carbon and Certain Alloy Steel Wire Rod from Belarus, Russia, and the United Arab Emirates*, Inv. Nos. 731-TA-1349, 1352, and 1357, USITC Pub. 4752, January 2018, (Final), VII-3, excerpts attached to Domestic Steel Producers' Brief at Exhibit 8.
[115] *Id.* at 22-23, citing GOB's Brief at Exhibit 21 (mislabeled as Exhibit 22).

- No SOEs were privatized in 2018, and only one was purchased by private investors in 2017.[116] The low demand stems from the inefficiencies of the enterprises, exorbitant prices, and unreliable legal system.[117]

Factor Five: The extent of government control over the allocation of resources and over the price and output decisions of enterprises

Domestic Steel Producers' Comments

- Belarus' economy is characterized by significant government control over resource allocation, and over companies' price and output decisions.[118]
- Price regulation is a pervasive - and distortive - feature of the Belarusian economy. In its own request for a CCR, the GOB concedes that state price regulations remain applicable to goods across sectors.[119]
- The GOB has repeatedly relied on price controls to combat inflationary pressure in recent years, but to such a degree that the monetary channel for inflation targeting has been considerably weakened.[120]
- Price controls are part and parcel of the GOB's systemic orchestration of the Belarusian economy, which distorts resource allocation and output decisions. The GOB issues comprehensive five-year plans for the Belarusian economy, setting wage and production targets for both SOEs and private enterprises.[121]
- The GOB maintains a suite of industrial and financial policies that provide SOEs with low-interest lending programs, debt guarantees and assumption of liabilities, budget loans, recapitalization of balance sheets, loan restructuring, and nonperforming loan resolution - all of which significantly reduce SOEs' financing costs compared to private firms.[122]
- The GOB also favors its state-owned sector over private enterprise by subsidizing activities that generate losses, providing SOEs with rent-free land, and through preferential sectoral, tax, and procurement policies.[123]
- The Belarusian economy is characterized by government control and direction over the allocation of resources, and government control over pricing and output. The effects of such control have been to direct resources and labor toward unprofitable ends, in ways that are wholly unlike what would be expected from an economy that operates on market principles.[124]

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[116] *Id.* at 23, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," Section 7.
[117] *Ibid*., citing Belarusian Yearbook 2019 (*See* Footnote 91) at 226.
[118] *See* Domestic Steel Producers' Brief at 15.
[119] *Id.* at 15, citing GOB's Letter at 5.
[120] *Id.* at 16, citing IMF, "Belarus Article IV Report," January 2019, excerpts attached at Exhibit 21.
[121] *Id.* at 17, citing IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 3-4, excerpts attached at Exhibit 11.
[122] *Id.* at 18, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 64-65, excerpts attached at Exhibit 10; *see also* World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 28-29, excerpts attached at Exhibit 20.
[123] *Id.* at 19, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 64-65, excerpts attached at Exhibit 10.
[124] *Id.* at 20.

GOB's Rebuttal Comments

- Pursuant to Chapter VII of Annex No. 19 to the *Treaty on the Eurasian Economic Union* (*EAEU Treaty*), the GOB can introduce price controls on certain commodities in emergency situations. As a rule, such measures cannot be introduced for a period exceeding 90 days and can only be extended in exceptional circumstances.[125]
- Belarus' level of price controls covers approximately 20 percent of the Belarus CPI and is actually on par with the rest of the world. Many other countries in the world which have already graduated as market economies regulate prices on commodities and services representing at least one fifth of their consumer index.[126]
- The GOB is not using price controls to curb inflation. According to the NBRB, the inflation rate for goods and services subject to price regulation is much higher than the inflation rate for goods and services not subject to price regulation.[127] Therefore, price regulation is inefficient to control inflation.
- The role of MART is to identify abuses of dominant position of individual market players and strengthen competition in the country. For example, monitoring is required to ensure that dominant companies are not imposing minimum resale prices which would be a violation of antitrust law of Belarus.[128]

GOB's Comments

- Pursuant to Chapter VII of Annex No. 19 to the *EAEU Treaty*, the state can introduce price controls on commodity markets other than those characterized by the presence of natural monopolies, in exceptional circumstances such as natural disasters, emergencies, when the imposition of measures is required to safeguard national security interests, and for a limited number of socially significant goods, primarily for household consumption. In that latter case the measures should not be introduced for a period exceeding 90 days.[129]
- Industries characterized by the presence of natural monopolies in Belarus are subject to price regulation.[130] Price regulation is carried out by the relevant government bodies within their statutory powers, with MART holding overall responsibility for price regulation. MART analyzes changes in the CPI and the state of competition in various commodity markets on a regular basis. There is no state intervention if prices in markets characterized by the presence of natural monopolies are set by reference to free market forces.[131]

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[125] *See* GOB's Rebuttal Brief at 31-32.
[126] *Id.* at 32.
[127] *Id.* at 31-32, citing NBRB, "Inflation Review," February 2020, attached at Exhibit I-35.
[128] *Id.* at 34, citing Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus (MART), "Antimonopoly Regulation and Competition," 2020, attached at Exhibit I-36.
[129] *See* GOB's Brief at 35.
[130] *Id.* at 38, citing GOB, *Law No. 162-Z on Natural Monopolies*, (December 16, 2002), Article 3, attached at Exhibit 25.
[131] *Ibid.*

Domestic Steel Producers' Rebuttal Comments

- The GOB's pricing interventions extend into dozens of industries that, in a market economy, would typically be served by multiple suppliers. Many of these industries, moreover, are dominated by SOEs. The very fact that Belarus has so many industries that are predominately served by state-owned suppliers is itself an indication of the pervasiveness of the GOB's price controls. In a market dominated by state-run firms, prices are essentially set by the state.[132]
- Price controls apply to "socially significant goods" — the definition of which appears to be entirely in the GOB's hands, as well as any product in which a Belarusian legal entity has "a dominant position" in the market, construction materials, ferrous and nonferrous scrap, *etc*.[133]
- State control characterizes all industries in Belarus that depend on land, including agriculture. The GOB owns all agricultural land within the country,[134] operates large-scale farms, acts as supplier, purchaser, and regulator for a large number of agricultural goods.[135]
- The GOB also controls bodies of water and mineral resources, including iron ore deposits and prohibits foreign investment in these areas.[136]
- The banking sector in Belarus is subject to overwhelming governmental ownership and contro1. Not only does the GOB hold 60-65 percent of banking assets in Belarus, but state-directed lending accounts for one-third of total bank credit to nonfinancial corporates.[137]

Domestic Wire Rod Producers' Rebuttal Comments

- In addition to the goods and services under complete government control, the GOB also maintains price controls and monopolies. The steel industry in Belarus, for example, consists of just one SOE.[138]
- The list of "socially significant goods and services" currently includes mostly food products such as butter, pasta, vegetables, meat, seafood, sugar, wheat, and cheese, among others.[139]

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[132] *See* Domestic Steel Producers' Rebuttal Brief at 18.
[133] *Id.* at 18, citing GOB's Brief at Exhibits 23 and 24.
[134] *Id.* at 21, citing GOB's Brief at Exhibit 22, Article 7.1 (detailing types of land assets "only owned by the state," including "agricultural lands").
[135] *Ibid.*, citing Domestic Steel Producers' Brief at 16-17; *see also* World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 31-32, excerpts attached to Domestic Steel Producers' Brief at Exhibit 20; Ella Mihajlovna Bodrova, Waldemar Izdebski, Vladimir Mihajlovich Sinielnikov, Jacek Skudlarski, Stanislaw Zajac, (Teka Commission of Motorization and Energetics in Agriculture), "State and Perspectives of Milk Production in the Republic of Belarus in Comparison with the Condition of the Polish Dairy," January 19, 2015 at 3, excerpts attached to Domestic Steel Producers' Brief at Exhibit 24.
[136] *Ibid.*, citing Belarusian National Agency of Investment and Privatization, "Legal framework," attached as Tab 2.
[137] *Ibid.*, citing IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 65, excerpts attached to Domestic Steel Producers' Brief at Exhibit 10.
[138] *See* Domestic Wire Rod Producers' Rebuttal Brief at 24.
[139] *Id.* at 25, citing GOB's Brief at 37.

- The "dominant position" list currently contains 727 entries containing everything from pigs and livestock, to pharmaceuticals, to gambling machine repair and maintenance.[140]

Factor Six: Such other factors as the administering authority considers appropriate.

Domestic Steel Producers' Comments

- Commerce should here take into account the degree of corruption in the country, and as well as the lack of definitive progress in the country's bid for WTO accession.[141]
- The GOB's efforts at reining in corruption have not been able to dispel the significant power of state regulators and authorities over private economic actors, or to prevent laws and regulations from being selectively enforced to the detriment of private investment and private economic activity.[142]
- In 2019, the Council of Europe's anti-corruption body, the Group of States Against Corruption (GRECO), made the "unprecedented move" of publicly declaring Belarus "non-compliant with GRECO's anti-corruption standards," noting that "corruption is considered to be systemic in this country."[143]
- A working party for the country's WTO accession was first established in 1993. More than a quarter-century later, the country has yet to undertake needed reforms.[144]
- Last year, after Belarus expressed its desire to accede to membership as early as June 2020, the WTO warned that "significant progress will be needed if such an ambitious target is to be met." The WTO explained that "Belarus' appetite for trade liberalizing reforms, such as implementing market-oriented policies, increasing transparency and public participation, and offering new commercially meaningful market access, appeared limited."[145]

GOB's Rebuttal Comments

- Authorities in Belarus have stressed that third-party indicators and independent assessment show corruption in Belarus is low compared to other countries in the area and not at a critical level. Public pronouncements at the highest level in Belarus along with multiple judicial rulings have made it clear there is zero tolerance against corruption.[146]

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[140] *Ibid.*, citing MART, "State Register of Economic Entitles Dominating in Product Markets of the Republic of Belarus," updated on March 21, 2019, available at https://www.mart.gov.by/en/sites/mart/home/activities/antimonopoly_reg/gosreestr.html (last accessed 4/3/2020).
[141] *See* Domestic Steel Producers' Brief at 33.
[142] *Id.* at 34, citing World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 52-54, excerpts attached at Exhibit 20.
[143] *Id.* at 35, citing Council of Europe (CoE), "Council of Europe's anti-corruption body GRECO publicly declares the country noncompliance with the CoE anti-corruption standards," March 19, 2019, attached at Exhibit 51, and GRECO, "Public declaration of non-compliance in respect of Belarus," March 19, 2019, attached at Exhibit 52.
[144] *Id.* at 36.
[145] *Ibid.*, citing World Trade Organization (WTO), "Belarus sets out ambitious target of WTO accession by next Ministerial Conference," February 15, 2019, attached at Exhibit 54 and WTO, "Belarus reaffirms intent to complete WTO accession by next Ministerial Conference," July 11, 2019, attached at Exhibit 55.
[146] *See* GOB's Rebuttal Brief at 35, citing select pages from WTO Accessions, "2019 Annual Report by the Director-General," attached at Exhibit I-24.

- Global corruption rankings from Transparency International rank Belarus as the 66th least corrupt country out of 180 countries included, which is far better than other countries that have recently graduated from NME status (*e.g.*, Russia 137th, Ukraine 126th, Kazakhstan 113th).[147]
- Although it is true that Belarus has taken a gradual approach to reforms for stability reasons, the GOB believes it has arrived at the final stage for WTO accession. In the WTO 2019 annual report on WTO accessions, the staff appraisal reported that the GOB "announced its intention to successfully complete the ongoing negotiations on Belarus' accession to the World Trade Association in 2020."[148]
- Belarus has taken a number of important steps and measures to comply with the requests of key WTO members, including the United States. Belarus has also fixed specific transition periods with concrete deadlines, which is a common practice within the WTO, to implement further commitments agreed with its negotiating partners in order to fully conform to the WTO norms and rules.[149]

GOB's Comments

- Belarus uses internationally recognized accounting standards. Under the recommendation of the IMF, Belarus has been introducing international reporting standards in the country since 2010. International Financial Reporting Standards (IFRS) were legally introduced in Belarus following the passage of the *Law on Accounting and Reporting*. The law established the obligation to publicly important organizations, such as insurance companies, public corporations, and banks, to report within IFRS starting in 2016.[150]
- Enterprises in Belarus can freely access relevant information on which to base their business decisions. The right of citizens to receive and disseminate complete, reliable, and timely information is fully enshrined in the *Constitution of Belarus*. Furthermore, the *Law on Mass Media* guarantees the freedom of opinion, belief, and express in mass media. Critically, the *Law on Mass Media* prohibits the monopolization of media by the government, public associations, or individual citizens. Censorship is also strictly forbidden under law.[151]

Domestic Steel Producers' Rebuttal Comments

- The GOB does not explain why adoption of international accounting standards is indicative of market-orientation in the Belarusian economy. While the IMF urged the adoption of such standards, the adoption of international accounting standard is not, in itself, evidence that Belarus' economy is organized consistently with market principles.[152]

[147] *Id.* at 34, citing Transparency International, "Corruption Perceptions Index 2019," attached at Exhibit I-37.
[148] *Ibid.*, citing select pages from WTO (Accessions), "Annual Report by the Director-General," 2019, attached at Exhibit I-24.
[149] *Id.* at 35, citing WTO, "Aide-Memoire on liberalization steps of Belarus in the context of Belarus' Accession to the WTO," March 11, 2020, attached at Exhibit I-38.
[150] *See* GOB's Brief at 41, citing GOB, *Law 57-Z on Accounting and Reporting*, (July 12, 2013), attached at Exhibit 32.
[151] *Id.* at 42, citing GOB, *Law 427-Z on Mass Media*, (July 17, 2008), attached at Exhibit 35.
[152] *See* Domestic Steel Producers' Rebuttal Brief at 45.

- Freedom House reports that after some attempts at liberalization, the GOB has more recently sought to increase control of the public sphere through restrictions on journalists, online media, and demonstrations.[153]
- Belarus' 2008 *Law on Mass Media* "secures a state monopoly over information about political, social, and economic affairs." Further, "the government owns the only internet service provider and controls the internet through legal and technical means."[154]

Domestic Wire Rod Producers' Rebuttal Comments

- The presence of corruption in an economy that has sought or is seeking to transition from one of central control to one determined by market forces can thwart both the intention and the effect of many market reform measures. There is little evidence to suggest that Belarus is making sustained and certain progress against corruption in the public sector, especially at the highest levels.[155]
- The U.S. Department of State continues to sound warnings about the impact of corruption on doing business in Belarus, noting "{i}nvestments in sectors dominated by SOEs have been known to come under threat from regulatory bodies... the enforcement of existing laws and unwritten practices can discriminate against the private sector, including foreign investors, regardless of their country of origin."[156]
- Serious concerns remain about the independence of the judiciary and its ability to objectively adjudicate cases rather than favor the powerful central government. This is especially problematic given that presidential edicts and decrees generally carry more force than acts adopted by the legislature.[157]
- Accounting standards are merely a means of recordkeeping. The manner in which records are kept have no bearing on how the Belarusian economy functions.[158]
- The GOB continues to censor the media and intimidate and jail those speaking out against it. Individuals cannot criticize the president or GOB without fear of suffering reprisal, giving information that the GOB deems false or derogatory is criminalized, the GOB limits access to information, and regulations give the GOB arbitrary power to censor or prohibit reporting.[159]

V. ANALYSIS OF SECTION 771(18)(B) FACTORS

For purposes of the U.S. antidumping law, an NME country is defined in section 771(18)(A) of the Act as "any country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect

[153] *Id.* at 46, citing Freedom House, "Belarus: Freedom in the World 2019," attached to Domestic Steel Producers' Brief at Exhibit 4.
[154] *Id.* at 47, citing Freedom House, "Belarus: Freedom in the World 2019," attached to Domestic Steel Producers' Brief at Exhibit 4.
[155] *See* Domestic Wire Rod Producers' Rebuttal Brief at 28.
[156] *Id.* at 30, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," Executive Summary.
[157] *Ibid.*, citing U.S. Department of State, "2019 Investment Climate Statements: Belarus," Executive Summary and Section 3.
[158] *Ibid.*
[159] *Id.* at 31, citing U.S. Department of State, "Belarus 2018 Human Rights Report" at 12-13.

the fair value of the merchandise." In making an NME country determination under section 771(18)(A) of the Act, section 771(18)(B) requires that Commerce examine an economy as a whole, as opposed to individual industries or companies, and take into account:

1. The extent to which the currency of the foreign country is convertible into the currency of other countries;
2. The extent to which wage rates in the foreign country are determined by free bargaining between labor and management;
3. The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;
4. The extent of government ownership or control of the means of production;
5. The extent of government control over the allocation of resources and over the price and output decisions of enterprises; and
6. Such other factors as the administering authority considers appropriate.

Factor 1: THE EXTENT TO WHICH THE CURRENCY OF THE FOREIGN COUNTRY IS CONVERTIBLE INTO THE CURRENCY OF OTHER COUNTRIES

A country's integration into world markets is dependent upon the convertibility of its currency. Currency convertibility, as defined by the IMF, is the extent to which a currency is "freely usable for settlements of international transactions."[160] This factor examines Belarus' exchange rate regime. Part A briefly describes the legal and institutional framework governing Belarus' exchange rate regime. Part B examines Belarus' foreign exchange market and practices affecting currency transactions. Part C discusses Commerce's assessment of the extent to which the BYN is freely convertible.

A. Legal and Institutional Framework

Regulatory and Administrative Law on Currency. Since May 1994, the sole official currency of Belarus has been the Belarusian Ruble[161] (denoted BYN since 2016 after re-denomination at a ratio of 10,000 BYR:1 BYN).[162] The primary legal instrument governing foreign exchange administration is the 2003 *Law on Currency Regulation and Currency Control* (*Law on Currency*), which grants Belarus' central bank, the NBRB, the sole authority to regulate and administer foreign exchange transactions within Belarus.[163] Specific provisions detailing the NBRB's role in the foreign exchange regime and its scope of operation (including the authority to regulate capital flows and restrict certain foreign currency transactions) were further codified in *Resolution of the Board of the NBRB on Approval of Rules of Conducting Currency Operations* issued the following year.[164] According to its latest Annual Report, the NBRB

[160] IMF, "Balance of Payments and International Investment Position Manual - Sixth Edition (BPM6)," 2009 at 113, Paragraph 6.72.
[161] NBRB, "Banknotes and Coins of the National Bank of the Republic of Belarus," citing *Resolution of the Board of the NBRB No.5 on the Payment Means of the Republic of Belarus*, (May 18, 1994).
[162] Economist Intelligence Unit (EIU), "Belarus Country Report," generated on February 10, 2020.
[163] GOB, *Law on Currency*, (July 22, 2003), Article 12.
[164] NBRB, *Resolution of the Board of the National Bank of the Republic of Belarus No 72. on Approval of Rules of Conducting Currency Operations*, (April 30, 2004).

operates "independently" from other government entities and is accountable to the President of Belarus.[165]

Official Exchange Rate. Belarus' official exchange rates are set and published daily by its central bank, the NBRB, against 26 other currencies.[166] The valuation of the BYN is based on a weighted geometric average[167] of two-way exchange rates of the BYN against three currencies (USD, EUR, and RUB - with a weight of 0.3, 0.2, and 0.5, respectively, for each of the three currencies in the basket).[168] The daily official exchange rates correspond to the rates from the Belarusian Currency and Stock Exchange (BCSE) observed on the preceding business day.[169] The official exchange rate is required to be used only for transactions in the official sector (*i.e.*, customs charges and duties, other foreign-exchange-linked payments payable in local currency) and for transactions in which sellers do not specify an alternative exchange rate.[170] However, in practice, it is used for most currency transactions in Belarus.[171]

Regulatory Mechanisms on Currency. Belarus' foreign exchange market consists of (1) the BCSE; (2) the interbank foreign exchange market; and (3) operations between banks and individuals, which include cash operations.[172] Currency transactions in the BCSE (which are subject to NBRB intervention[173]) represent a minority of foreign exchange transactions and amounted to 10.5 percent of the domestic foreign exchange market in 2019.[174] As of 2019, the interbank market consists of 24 banks (including four undergoing bankruptcy or liquidation)[175] and three non-bank financial institutions (NBFIs).[176] In 2019, the majority of transactions in the foreign exchange market took place in the spot market (*i.e.*, the interbank market and in exchanges between banks and their customers)[177] and were therefore carried out at the rate set by banks and were not subject to limits or intervention by the NBRB.[178]

Regulatory Mechanisms on Currency Convertibility. According to the *Law on Currency*, non-residents are not required to obtain permits from the NBRB for foreign exchange transactions

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165 NBRB, "Report of the National Bank of the Republic of Belarus for 2019," May 13, 2020 at 70.
166 IMF, "Belarus AREAER," March 31, 2019, III.D.
167 The weighted geometric mean is a measure of central tendency that is often used as a substitute for the more conventional arithmetic mean when there is dependence and considerable volatility in the considered data. It is typically used to measure compound growth and is calculated by taking the n-th root of the product of a series of numbers. If there are three values (one for each bilateral exchange rate in a currency basket), the weighted geometric average is calculated by multiplying these three values (which have already been multiplied by their respective weights), and then taking the cube root of the product of those numbers.
168 IMF, "Belarus AREAER," March 31, 2019, III.D.
169 *Ibid.*
170 *Ibid.*
171 Belarus365, "Currency in Belarus: places to exchange money, rates," March 15, 2019.
172 IMF, "Belarus AREAER," March 31, 2019, III.H.
173 *Id.*, III.H.1.a.
174 NBRB, "Financial Stability in the Republic of Belarus for 2019," 2020 at 54; Stock exchange volume of foreign exchange market = 8.2 billion USD; Total volume of domestic foreign exchange market = 77.7 billion USD; 8.2 / 77.7 = 10.5 percent.
175 IMF, "Belarus AREAER," March 31, 2019, III.H.1.b.
176 NBRB, "Information on Banks and Non-banking Credit and Financial Institutions Operating in the Republic of Belarus and Their Branches," 2020.
177 NBRB, "Financial Stability in the Republic of Belarus for 2019," 2020 at 54.
178 IMF, "Belarus AREAER," August 31, 2018, III.H.

related to capital flows, whereas many such transactions for residents (both natural and legal persons) require an NBRB permit.[179] The law was partially liberalized in 2019 with the entry into force of *Resolution of NBRB Board No. 612* (*Resolution No. 612*), which loosened controls on the following capital transactions (*inter alia*): purchasing foreign securities (*e.g.*, equity[180] and debt[181] securities, money market instruments,[182] and derivatives[183]), purchasing foreign real estate,[184] engaging in outward direct investment,[185] and granting/receiving non-resident loans.[186] Before March 1, 2019, when *Resolution No. 612* entered into force, such transactions for both resident individuals and legal entities required NBRB approval.[187] Since then, NBRB approval is only required for resident individuals.[188]

B. Foreign Exchange Market

The BYN's "Floating" Exchange Rate. The NBRB describes the BYN as a "floating" currency.[189] From 2015 to August 2018, however, the IMF classified the BYN as a "managed float" from a *de jure* perspective, and as an "other managed"[190] currency from a *de facto* perspective. These classifications were based on the fact that the BYN was not permitted to "float," but rather tracked a currency basket through a complex mechanism set by the NBRB.[191] When the NBRB discontinued setting the official exchange rate based on the value of the currency basket in August 2018, the IMF changed its categorization to "floating" for both the *de facto* and *de jure* exchange rates,[192] indicating that it is a "largely market determined exchange rate."[193] However, the IMF still does not characterize Belarus' exchange rate as "free floating" since foreign exchange interventions by the government prevent such a classification. Countries whose exchange rates fall in the "floating" category may intervene directly and indirectly in foreign exchange markets but do so only occasionally,[194] and typically to reduce volatility and prevent undue fluctuations and not to target a specific exchange rate level.[195]

Managing Exchange Rate Volatility Through Intervention. According to the IMF, Belarus' official exchange rate is no longer exclusively based on a weighted geometric average against

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[179] GOB, *Law on Currency*, (July 22, 2003), Article 10.
[180] IMF, "Belarus AREAER," March 31, 2019, XI.A.2.a.1.iii.
[181] *Id.*, XI.A.2.a.2.iii.
[182] *Id.*, XI.A.2.b.3.
[183] *Id.*, XI.A.3.c.
[184] *Id.*, XI.A.7.a.
[185] *Id.*, XI.A.5.a.
[186] *Id.*, XI.A.4.b.1., XI.A.4.b.2.
[187] IMF, "Belarus AREAER," August 31, 2018, XI.A.2.a.1.
[188] IMF, "Belarus AREAER," March 31, 2019, XI.A.2.a.1.ii.
[189] NBRB, "Exchange Rate Policy of the National Bank of the Republic of Belarus," 2020.
[190] IMF, "Belarus AREAER," August 31, 2018, III.C.8.
[191] NBRB, "Exchange Rate Policy of the National Bank of the Republic of Belarus," 2020.
[192] IMF, "Belarus AREAER," March 31, 2019, III.C.9.
[193] IMF, "Annual Report on Exchange Arrangements and Exchange Restrictions" (AREAER Overview), 2018 at 45
[194] The IMF classifies currencies of countries who intervene in currency markets only "exceptionally" and with the "aim to address disorderly market conditions" as "free-floating" (instead of "floating" – the BYN designation). Furthermore, to have their currencies classified as free-floating, countries must provide information confirming that intervention has been limited to at most three instances in the previous six months, each lasting no more than three business days (*See* IMF, "AREAER Overview," 2018 at 17).
[195] IMF, "Belarus AREAER," August 31, 2018 at 45.

three major currencies. However, one of the NBRB's three stated objectives of its exchange rate policy is "smoothing the daily fluctuations of the currency basket value,"[196] indicating that the NBRB still uses the basket value as a benchmark for restricting exchange rate volatility. According to the NBRB, the three elements used to set the official exchange rate and restrict its volatility are: (1) a central value; (2) a neutral range immediately surrounding the central value; and (3) an operational range outside the neutral range.[197] As such, the NBRB intervenes in the foreign exchange market when the value of the currency basket "violates the bounds of the neutral range" and enters what the NBRB calls the "operational interval."[198] To reduce exchange rate volatility, the NBRB increases the volume of interventions as the value of the currency basket moves away from the central value, and once the basket reaches the outer bounds of the operational interval the NBRB buys or sells foreign exchange up to a maximum daily value.[199]

Valuation and the Availability of Foreign Exchange Intervention Data. In its latest Article IV Report for Belarus, the IMF has estimated that the BYN was overvalued by approximately 10 percent.[200] While the IMF provides no indication that this overvaluation is a result of NBRB interventions in currency markets, it has found that the overvaluation is reflected in "inefficiencies and factor misallocation" in the economy.[201] The difficulties the IMF has had in evaluating the extent of government intervention in the exchange rate market is based on the fact that the NBRB does not publish such data, so the true extent and frequency of interventions is unknown.[202] Therefore, a lack of transparency obscures the extent to which market forces affect the rate-setting process.

Official and Private Exchange Rate Differentials. The official exchange rate determined in the BCSE and set by the NBRB applies to all transactions in the "official" sector (*e.g.*, for customs duties or other "foreign-exchange-linked payments payable in local currency," and in transactions where an alternative exchange is not specified).[203] Furthermore, the *Law on Currency* gives the NBRB the power to regulate the exchange rates used by licensed exchanges throughout the country by "establishing the marginal rates of the exchange rates" used throughout the domestic currency market.[204] This *de jure* role of the NBRB, coupled with the fact that most currency exchange transactions are commission-free (which reduces variation in rates),[205] provides the basis for the existing foreign exchange market, and although Belarusian banks can legally set their own exchange rates for currency transactions, in practice exchange rates at licensed institutions throughout the country (*e.g.*, at Minsk Airport, at banks, or other licensed exchanges) are generally almost identical and do not differ significantly from the official exchange rate set by the NBRB.[206]

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[196] NBRB, "Exchange Rate Policy of the National Bank of the Republic of Belarus," 2020.
[197] *Ibid.*
[198] *Ibid.*
[199] *Ibid.*
[200] IMF, "Belarus Article IV Report," January 2019 at 17.
[201] *Id.*, Annex V at 1.
[202] IMF, "Belarus AREAER," March 31, 2019, III.C.9.
[203] *Id.*, III.D.
[204] GOB, *Law on Currency*, (July 22, 2003), Article 12.
[205] BelarusFeed, "Belarusian Ruble - Everything You Need to Know About Belarusian Currency," October 30, 2018
[206] Belarus365, "Currency in Belarus - places exchange money, rates," March 15, 2019; Belarus Feed, "Belarusian Ruble–Everything You Need to Know About Belarusian Currency," October 30, 2018.

Currency Convertibility Through Licensing. Many of the restrictions for participation in the foreign exchange market were abolished in 2017 and 2018, which resulted in a 23.1 percent increase in spot market transactions from 2017 to 2018.[207] Measures that have been recently abolished include the requirement for individuals to present a passport at financial institutions when purchasing foreign exchange (abolished in June 2017[208]) and the requirement for legal entities to formally state their intended use of purchased foreign currency (abolished in August 2018[209]). However, other restrictions that limit participation in the currency market and impede its growth are still in place. For example, a license from the NBRB is required to engage in currency exchange operations.[210] In addition, unlicensed foreign exchange transactions are illegal according to the *Law on Currency*.[211] Therefore, the exchange market is limited to transactions at the BCSE or at banks/NBFIs and currency exchange is not possible between individuals or entities outside the formal financial system.

Currency Convertibility in Trade and Banking. Belarus' IMF Article VIII membership since 2001 represents a development toward foreign exchange liberalization, as it indicates that restrictions on current international transactions (*i.e.*, "current account controls," or restrictions affecting trade in goods and services) have ceased to exist.[212] However, such membership does not imply full currency convertibility as such restrictions are still possible with IMF approval.[213] In addition to the capital account controls discussed in Factor 3, restrictions remain that still limit the convertibility of currency. For example, although residents are allowed to open accounts in foreign banks without NBRB approval, enterprises still require NBRB permits to open such accounts and transfer foreign currency into them.[214] In addition, there are still restrictions on exchanging foreign currency from export proceeds, although they have been liberalized in recent years.[215] For example, although the requirement for individual residents to repatriate a percentage of foreign exchange acquired through export proceeds into a Belarusian bank within seven days of receipt at the BCSE exchange rate was eliminated in July 2018,[216] the requirement that residents complete foreign trade operations under export contracts no later than 180 days from the date of shipment remains (and any extension requires NBRB approval).[217]

Currency Convertibility Abroad. In part due to the existing restrictions discussed in the preceding paragraphs, BYN are not widely available outside Belarus, and government travel

[207] NBRB, "Financial Stability in the Republic of Belarus for 2018," 2019 at 45.
[208] GOB, *Decree of the President of the Republic of Belarus No. 192*, (May 29, 2017); IMF, Belarus AREAER, (August 31, 2018), III.H.1.
[209] NBRB, *Resolution of NBRB Board 538*, (December 28, 2017).
[210] IMF, "Belarus AREAER," March 31, 2019, III.H.
[211] GOB, *Law on Currency*, (July 22, 2003), Article 12.
[212] IMF, "AREAER Overview," 2018 at 17.
[213] IMF Article VIII membership implies that member countries refrain from restrictions on payments and transfers for current international transactions, or from engaging in discriminatory currency arrangements or multiple currency practices without IMF approval. *See* IMF, "Selected Decisions and Selected Documents of the IMF, Fortieth Issue -- Articles VIII and XIV," April 30, 2019; s*ee also* IMF, "Public Information Notice: IMF Concludes 2001 Article IV Consultation with the Republic of Belarus," February 19, 2002; IMF, "AREAER Overview," 2018 at 17.
[214] IMF, "Belarus AREAER," March 31, 2019, V.A.2.a.
[215] *Id.*, VIII.
[216] *Id.*, VIII.A.1.b., citing *Decree of the President of the Republic of Belarus No. 301 on Abolition of the Foreign Exchange Surrender Requirement*, (July 31, 2018).
[217] IMF, "Belarus AREAER," March 31, 2019, VIII.A.

websites, as well as major travel agencies within Belarus, have even advised travelers that buying or selling BYN outside of Belarus is "almost impossible."[218] The GOB has confirmed that the BYN "is not a fully convertible currency, so you won't be able to get any before you arrive in the country."[219] In its rebuttal, the GOB further clarified that it is "not easy" to buy BYN abroad,[220] while also confirming the existence of current regulations mandating that buying BYN inside Belarus is only possible at licensed and authorized currency exchange centers (*i.e.*, banks and NBFIs).[221]

<u>*Currency Convertibility Effects from De-Dollarization.*</u> The level of financial dollarization[222] in Belarus is one of the highest in Europe,[223] even though payment by residents in the domestic market in foreign currency is mostly prohibited by law (there are a few exceptions).[224] Recent de-dollarization initiatives by the GOB, including March 2019 reforms aimed at implementing *Resolution of NBRB Board No. 612*, further narrowed the list of transactions that could be made in foreign currency. According to PricewaterhouseCoopers, this made executing transactions in foreign currency between domestic companies "almost impossible."[225]

C. Assessment of Factor

The BYN is convertible into foreign currencies for trade purposes. Belarus has made market-oriented modifications to its exchange rate-setting process. The IMF's categorization of Belarus' exchange rate regime as "floating" in its latest AREAER update signifies that the NBRB allows the BYN's value to fluctuate with market forces and implies limited NBRB involvement in the BYN's value. However, the extent to which the NBRB directly intervenes in the foreign exchange market is unknown since the GOB does not publish information on the frequency or volumes of its foreign exchange interventions. The exchange rate is also still dependent, to some extent, on the valuation of the BYN vis-à-vis three major currencies, which restrains market determined supply and demand factors.

Despite the recent liberalization of the currency market, the existing restrictions on foreign exchange applicable to legal and natural persons prevent the BYN from being completely convertible. Significant restrictions remain on participation in Belarus' foreign exchange market that limit the BYN's availability both abroad and within Belarus and create an absence of variation in exchange rates among the participants of the currency market. Commerce therefore finds that the existing limits on convertibility prevail to such an extent that they distort market-determined supply and demand factors in the currency market.

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[218] Government of the United Kingdom, "Money: Belarus Travel Advice," 2020; Minsk Tours, "Places to exchange money in Minsk," 2020.
[219] GOB, "Money in Belarus," 2020.
[220] GOB's Rebuttal Brief at 4.
[221] *Ibid.*
[222] The IMF defines dollarization as "the holding by residents of a significant share of their assets in the form of foreign-currency-denominated assets." *See* IMF, "Monetary Policy in Dollarized Economies," 1999.
[223] IMF, "Belarus Article IV Report," 2019 at 4.
[224] IMF, "Belarus AREAER," March 31, 2019, IV.A.2.; *see Law on Currency*, Article 11.
[225] PricewaterhouseCoopers, "Changes in Currency Legislation in Belarus," 2019.

Factor 2: **THE EXTENT TO WHICH WAGE RATES IN THE FOREIGN COUNTRY ARE DETERMINED BY FREE BARGAINING BETWEEN LABOR AND MANAGEMENT**

Wages are an important component of a producer's costs and prices. This factor examines the extent to which wage rates in Belarus are determined by free bargaining between labor and management. The statutory language concerning "free bargaining between labor and management" reflects concerns about the extent to which wages in an economy are market-based, *i.e.*, about the existence of a market for labor services in which workers and employers are free to bargain over the terms and conditions of employment.

Part A of this section describes the legal and institutional framework governing labor relations in Belarus, including the principal labor laws and trade unions, and also analyzes the Tariff System of Remuneration that sets the value of wages in most sectors. Part B analyzes current labor market conditions in Belarus, focusing on how wage levels match productivity across sectors, regions, and levels of state ownership. Part C discusses Commerce's assessment of the extent to which wage rates are determined by free bargaining.

A. Legal and Institutional Framework

Labor Rights Laws. The 1999 *Labor Code* affirms the rights of workers to "protection of their economic and social interests" guaranteed by Belarus' *Constitution*[226] and provides the *de jure* basis for the current regulatory framework concerning labor rights in Belarus. These include, *inter alia*, the right of all workers to choose their place of work and to apply for any job through direct appeal to an employer,[227] the right to bargain freely for wages,[228] the right to negotiate a collective contract (concerning, *e.g.*, salaries, working hours and time off) with employers,[229] and the right to strike.[230] Belarusian workers are also allowed to join trade unions as guaranteed by the 1992 *Law on Trade Unions*.[231]

Limitations on the Right to Strike. Despite the regulatory framework guaranteeing basic employment rights, the GOB acknowledged on its website that trade unions in Belarus are subject to "strict requirements,"[232] and existing regulations limit the ability of the workforce to strike or engage in organized protests. For example, the *Labor Code* gives the President of Belarus the right to postpone or suspend a strike for national security or public health reasons or in order to maintain the public order.[233] Furthermore, the *Labor Code* lists a number of administrative procedures required to hold a strike, such as the requirement for strike participants to convey their intent to strike to employers in writing at least two weeks in advance of the strike,[234] and the requirement for workers to propose to their employers a minimum level of

[226] GOB, *Constitution of The Republic of Belarus* (*Constitution*), (March 15, 1994), Article 41.
[227] GOB, *Labor Code of the Republic of Belarus* (*Labor Code*), (July 26, 1999), Article 6.
[228] *Id.*, Article 356.
[229] *Id.*, Article 364.
[230] *Id.*, Article 11.
[231] GOB, *Law 1605 on Trade Unions*, (April 22, 1992), Article 2.
[232] GOB, "Employment Law in Belarus," 2020.
[233] GOB, *Labor Code*, (July 26, 1999), Article 393.
[234] *Id.*, Article 390.

"necessary work" that will be maintained at the place of employment during the strike.[235]

Regulations pursuant to the *Labor Code* serve to limit the frequency of and participation in strikes and employment-related protests by restricting the funding that can be used for them and their organization. For example, the 2003 *Presidential Decree on the Receipt and Use of Free Foreign Aid* (*Decree on Free Foreign Aid*) prohibits union organizers from using foreign funds in any "public meetings, rallies, street processions, demonstrations, pickets, strikes."[236] Furthermore, the same decree stipulates that even a single violation of this regulation would result in a substantial fine[237] as well as possible termination of the trade union's activities.[238] Recent legislation has imposed additional burdens on strike organizers. For example, the *Ordinance on the Procedure for Paying for Services for the Protection of Public Order*, issued in January 2019, requires strike organizers to pay a fee when organizing a "mass event" and to cover expenses of "specialized bodies" at the event (which include, *e.g.*, salaries of medical and cleaning staff engaged in the provision of services at the event, as well as mandatory insurance contributions).[239] The numerous restrictions on and requirements for unions and strikes discussed above are consistent with the U.S Department of State's finding that there are a "high" number of legal requirements necessary for conducting a strike in Belarus.[240]

<u>*Wage Regulation.*</u> The IMF states in its 2014 *Country Report* that wage formation in Belarus is "heavily regulated."[241] Although the *Labor Code* guarantees that "no restriction shall apply to the maximum amount of wages,"[242] it also establishes a "Tariff System of Remuneration," which allows the GOB to set salaries using a wage scale based on a base wage multiplied by specific coefficients accounting for the "difficulty of a job and the level of qualification of employees."[243] The *Labor Code* mandates that wages of employees of "budgetary organizations" (SIEs that provide education, health, and social services) come from the value calculated in the tariff system.[244] The tariff system is also used to set wages of all civil service employees.[245] In 2012, employment in budgetary organizations and the civil service made up 19.3 percent and 3.6 percent of the workforce, respectively.[246]

Regulation of wages for employees outside of budgetary organizations and the civil service was abolished in 2011 by *Presidential Edict No. 181*, and since then employers in all other sectors are only required to use the tariffs calculated for wages in their sector as a minimum guarantee of

[235] *Id.*, Article 392.
[236] GOB, *Presidential Decree No. 24 on the Receipt and Use of Free Foreign Aid*, (November 28, 2003), Paragraph 4.
[237] *Id.*, Paragraph 5.2.
[238] *Id.*, Paragraph 5.1.
[239] ILO, "Belarus- Follow-up report to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO," 2019, citing *Ordinance of the Council of Ministers No. 49 on the Procedure for Paying for Services for the Protection of Public Order*, (January 24, 2019).
[240] U.S. Department of State, "Belarus 2019 Human Rights Report," Section 7: Worker rights.
[241] IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 4.
[242] GOB, *Labor Code*, (July 26, 1999), Article 57.
[243] *Id.*, Article 60.
[244] *Ibid.*
[245] IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 3.
[246] *Ibid.*; These were the latest available figures from an official source.

remuneration.[247] According to the GOB, by law, "businesses in Belarus are free to decide on their own form, system, and size of labor remuneration depending on the collective labor agreement, the labor remuneration agreement, and the labor contract."[248] The only existing wage regulation applicable to all sectors is the law that provides the GOB with the authority to establish an annual minimum wage,[249] which was most recently set at 375 BYN per month effective January 1, 2020.[250] However, Belarus' five-year plans, officially called Programs for Social and Economic Development (PSED), include specific provisions setting economy-wide wage growth targets.[251] For example, in the current PSED, which covers 2016-2020, the GOB states that it plans to increase disposable income per capita by 9.5 to 11.6 percent over the five-year period (with 2015 as the benchmark) while also increasing wages in budgetary organizations to 80 percent of the average wage in the economy.[252]

B. Labor-Market Practices

Participation in Unions. According to the GOB, as of 2020, over four million workers in Belarus (approximately 95 percent of the employed population) are members of trade unions.[253] However, independent organizations have not corroborated this figure and existing data from the ILO suggest that it is an overstatement of the true level of workforce participation in trade unions.[254] The vast majority of unionized workers (about four million[255]) are members of a union under the umbrella of the Federation of Trade Unions of Belarus (FPB), which serves as the quasi-official trade union association in Belarus and comprises 28 sector specific trade unions plus seven regional trade unions.[256] FPB leadership has close links to the GOB and the organization has been under *de facto* government control since 2002 when it was put under the leadership of a former deputy head of the presidential administration.[257] The other registered labor union association in Belarus, the Belarusian Congress of Democratic Trade Unions (BKDP), operates with a greater level of independence from the GOB,[258] although it has far

[247] Yaraslau Kryvoi, "Labour Law in Belarus," (The Netherlands: Kluwer Law International B.V., 2017-2nd edition), Paragraph 228.
[248] GOB, "Employment Law in Belarus," 2020.
[249] GOB, *Law No. 124-Z on the Establishment and Procedure of Increase of Minimum Wage*, (July 17, 2002).
[250] GOB, *Council of Ministers Resolution No. 582 on the Establishment of the Size of Monthly Minimum Wage*, (August 29, 2019).
[251] GOB, *Presidential Decree No. 466 on Confirming the Program of Social Economic Development of the Republic of Belarus in 2016-2020* (*2016-2020 PSED*), (December 15, 2016), Article 8.3.
[252] *Ibid.*
[253] GOB, "Employment Law in Belarus," 2020.
[254] Although the ILO does not provide union membership estimates for Belarus, it lists Iceland as the country with the highest level of unionization at 90 percent union membership among the workforce, which imply that, if the GOB claims of 95 percent unionization are accurate, Belarus is the most unionized country in the world (*See* ILO, "Statistics on union membership," 2020).
[255]Belarus Digest, "Belarusian Workers Leave the Official Trade Unions," January 30, 2012.
[256] GOB, "Employment Law in Belarus," 2020.
[257] Freedom House, "Nations in Transit 2004: Democratization in East Central Europe and Eurasia" (Rowman & Littlefield Publishers, 2004) at 111; Wesley Shoemaker, "Russia and the Commonwealth of Independent States," (Stryker Post, 2012) at 146; U.S. Department of State, "Belarus 2019 Human Rights Report," Section 7: Worker rights.
[258] Eastern European Studies Center, "Are the Independent Democratic Trade Unions in Belarus the Engine of Social Reforms," February 2012.

fewer members (approximately 10,000 workers).[259] The BKDP counts an additional three unions among its affiliates,[260] bringing the total number of trade unions registered in Belarus in 2020 to 38, though Commerce notes that this figure is significantly higher than the number (25) cited by the GOB in its case brief.[261]

Trade Union Restrictions. Other entities also contest the GOB's claim that trade unions operate freely and are not affected by the existing restrictions outlined in the previous section. The European Union, for example, has since 2007 refused to trade with Belarus at the preferred rate under the Generalized Scheme of Preferences due to Belarus' "violations of the core principles of the ILO," and has pledged to continue to do so until Belarus demonstrates that it "respects basic trade union rights."[262] Furthermore, ITUC, the world's largest trade union federation, whose membership includes the BKDP,[263] gave Belarus the worst possible rating of "5" in its 2019 *Global Rights Index*, indicating a regime providing "no guarantee of rights" to workers.[264] The adverse classification was based on the observation that through 2019 the GOB maintained its "repression" of independent unions and routinely prosecuted and sentenced trade union leaders on "trumped up charges"[265] as well as on the fact that unions often faced numerous difficulties and obstacles in the registration process with government authorities.[266]

Striking. According to the U.S. Department of State's latest *Human Rights Report* for Belarus, the legal restrictions on organizing strikes in Belarus contribute to "a persistent atmosphere of repression and fear of imprisonment," and result in few public demonstrations taking place each year.[267] In practice, strikes are frequently declared illegal by local authorities and workers participating in unauthorized public demonstrations are subject to arrest and detention.[268] Citing the *Decree on Free Foreign Aid*, a 2019 ILO report on worker rights in Belarus noted that the ability to strike and participate in work-related protests in Belarus was "extremely limited, if not impossible."[269] The same report noted that the ILO's concerns over the past two decades regarding obstacles to participation in strikes and protests had not been fully addressed, and described a number of restrictions in trade union rights that still exist in Belarus, including many of the regulations noted in section A.[270]

Official Wage Setting. Although the reforms in 2011 allow the private sector to set their own

[259] Belarusian Congress of Democratic Trade Unions, "Website: General Information," 2020.
[260] *Ibid.*
[261] The number of trade unions registered in Belarus mentioned in the GOB's Brief on page 17 is uncited, yet likely comes from the Ministry of Justice, which cites that figure (*See* GOB, "Political Parties, Public Associations, and Other Non-Profit Organizations," 2020). Therefore, the exact number of trade unions registered in Belarus is unclear.
[262] European Commission, "Countries and Regions-Belarus," 2020.
[263] Belarusian Congress of Democratic Trade Unions, "Website: General Information," 2020.
[264] The ITUC Rating Scale ranges from "1: Sporadic violations of rights" to "5: No guarantee of rights." A rating of "5+" also exists but is only assigned for countries that provide "no guarantee of rights due to the breakdown of the law."
[265] ITUC, "Global Rights Index," 2019 at 20.
[266] *Id.* at 38.
[267] U.S. Department of State, "Belarus 2019 Human Rights Report," Section 7: Worker rights.
[268] *Ibid.*
[269] ILO, "Belarus- Follow- up Report to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO," 2019.
[270] *Ibid.*

wages,[271] the IMF in 2014 found that the GOB still influences wages in privately owned enterprises.[272] Due to "inertia" and a slow pace of change in the labor market, many private sector employers still use the tariff system and GOB wage targets outlined in the PSED as benchmarks for setting wages.[273] The IMF 2014 Selected Issues report further states that economy-wide wage targets set in the PSEDs "appear to be a key driver" of wage growth.[274] According to the IMF, to achieve the growth targets, the GOB restricts[275] "managers' wages to no more than eight times the average wage in the company," which effectively gives it significant control over wage formation in all economic sectors.[276] In 2020, the GOB confirmed the IMF's earlier findings by acknowledging that, in practice, the "vast majority" of enterprises operating within Belarus set wages according to the tariff system administered by the GOB.[277]

Income Distribution by Region. Data from the National Statistical Committee of the Republic of Belarus (Belstat), the GOB's official statistics agency, show that real disposable income per capita in Belarus increased by 9.6 percent from 2016-2019, which falls within the range of 9.5 to 11.6 percent outlined in the PSED.[278] This indicates, with one year remaining, general compliance with the wage growth targets outlined in the current PSED (2016-2020).[279] The latest Belstat data, presented in Table 1 below, also show that average wages in the capital, Minsk, were 60.6 percent higher than the average remuneration across Belarus' five provinces that lie outside of the Minsk region in 2017.[280] However, outside the capital region, the same data show that wages in Belarus are quite similar, with average wages in Gomel region (where wages are highest) only 5.2 percent higher than wages in Vitebsk Region (where wages are lowest),[281] as shown in Table 1 on the next page. This minimal variation in wages across Belarus' provinces outside the capital region is noteworthy, since labor productivity differentials between those same provinces were as high as 16.2 percent in 2017.[282] The disparity between the wage and labor productivity levels outside the capital region in Belarus are suggestive of sustained allocative efficiency challenges in Belarus, which would typically be corrected by freer market activity.[283]

[271] IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 4.
[272] *Ibid.*
[273] *Ibid.*
[274] *Id.* at 3.
[275] Commerce identified no legal document enforcing this policy, so the extent to which it qualifies as a *de jure* or *de facto* restriction is unclear.
[276] IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 4.
[277] GOB, "Employment Law in Belarus," 2020.
[278] National Statistical Committee of the Republic of Belarus (Belstat), "Main Indicators of Population Money Incomes," 2020; 2015 = 100%; 100% x 93.1% x 102.8% x 107.9% x 106.1% = 109.6%.
[279] Belstat, "Main Indicators of Population Money Incomes," 2020; 2015 = 100%; 100% (2015) x 93.1% x 102.8% x 107.9% x 106.1% = 109.6%.
[280] Belstat, "Labor and Employment in the Republic of Belarus," 2018 at 253, Table 11.11.
[281] Commerce's calculations based on 2017 wage and productivity data from the GOB (*See* Belstat, "Labour and Employment in the Republic of Belarus," 2018 at 253, Table 11.11).
[282] Labor productivity differentials are estimated by GDP per worker. The 16.2 percent productivity differential was derived by taking the percent difference between the productivity levels in Grodno (where productivity outside the capital region was highest) and Vitebsk (where productivity outside the capital region was lowest).
[283] Commerce's calculations based on 2017 wage and productivity data from the GOB. *See* Belstat, "Labour and Employment in the Republic of Belarus," 2018 at 83, Table 4.15, and at 253, Table 11.11; Belstat, "Employment Statistics By Region," 2019; Belstat, "GRPs of regions and Minsk city and their percentage shares in GDP in 2018," 2019.

Income Distribution by Sector. Table 2 (on the next page) shows 2018 Belstat data on employment, GDP, and wages at the sectoral levels. As can be seen, workers in the highest income sector (information and communication) earned over four times as much as employees in the lowest income sector (accommodation and food service).[284] When using GDP per capita as a proxy for labor productivity, workers in the most productive sector (mining), produced over eight times as much as workers in the least productive sector (education), indicating twice as much variation in worker productivity than variation in wages across sectors. [285]

Table 1: Belarus' Labor Market, by Region

Labor Productivity by Region *Based on Latest Available 2017 Data*							
Region	**Total Employment**	**GDP**		**GDP Per Worker (Labor Productivity Proxy)**		**Average Annual Wages**	
	(Persons)	*(BYN Mil)*	*(US$ Mil)*	*(BYN)*	*(US$)*	*(BYN)*	*(US$)*
National	4,353,600	99,017	51,240	22,744	11,770	9,328	4,827
Minsk City	1,067,600	31,465	16,283	29,473	15,252	13,506	6,989
Minsk Region	683,700	17,547	9,080	25,665	13,281	9,755	5,048
Gomel	594,000	12,051	6,236	20,288	10,499	8,675	4,489
Brest	593,800	11,196	5,794	18,855	9,757	8,389	4,341
Grodno	468,300	9,664	5,001	20,637	10,679	8,438	4,367
Vitebsk	494,600	8,784	4,546	17,760	9,191	8,248	4,268
Mogilev	451,600	8,309	4,300	18,400	9,522	8,285	4,287
Average for 5 Provinces Outside the Capital Region	520,460	10,001	5,175	19,216	9,944	8,412	4,353

Source: Belstat (total employment, GDP, and average monthly wage); NBRB for average BYN/USD exchange rate for 2017 (1.9324) and 2018 (2.0377); and Commerce calculations (GDP per worker, average annual wages).

[284] Commerce's calculations based on 2018 wage and productivity data from the GOB. *See* Belstat, "Nominal gross average monthly earnings by sector since 2016," 2019.
[285] Commerce's calculations based on 2018 wage and productivity data from the GOB. *See* Belstat, "Employment by kinds of economic activity," 2019; Belstat, "Gross domestic product by kinds of economic activity," 2019.

Table 2: Belarus' Labor Market, by Sector

Labor Productivity by Sector *Based on Latest Available 2018 Data*							
Sector	**Total Employment**	**GDP**		**GDP Per Worker (Labor Productivity Proxy)**		**Average Annual Wages**	
	(Persons)	*(BYN Mil)*	*(US$ Mil)*	*(BYN)*	*(US$)*	*(BYN)*	*(US$)*
National	4,337,900	104,787	51,424	24,156	11,855	12,879	6,320
Agriculture, Forestry and Fishery	404,900	8,061	3,956	19,909	9,770	8,216	4,032
Industry	...	...	...	...	...	...	...
Manufacturing	874,800	26,003	12,761	29,724	14,587	11,946	5,862
Mining	10,600	942	462	88,877	43,617	20,138	9,883
Electricity, Gas, Steam, Hot Water and AC Supply	96,700	3,931	1,929	40,646	19,947	13,530	6,640
Water Supply; Waste Management, Remediation	46,500	867	425	18,634	9,145	10,370	5,089
Services	...	...	...	...	...	...	...
Construction	276,200	6,502	3,191	23,542	11,553	11,676	5,730
Transportation, Storage, Postal and Courier	298,100	7,188	3,528	24,114	11,834	11,518	5,652
Accommodations and Food Service	93,900	1,039	510	11,069	5,432	7,831	3,843
Professional, Scientific and Technical	137,300	3,408	1,672	24,820	12,180	15,590	7,651
Real Estate	73,000	6,292	3,088	86,193	42,299	10,488	5,147
Administrative and Support Services	101,400	1,493	733	14,724	7,226	9,100	4,466
Health and Social Work	325,300	4,322	2,121	13,285	6,519	8,868	4,352
Education	452,600	4,891	2,400	10,807	5,304	7,980	3,916
Financial and Insurance Activities	68,000	4,293	2,107	63,132	30,982	18,854	9,253
Public Administration	181,200	4,531	2,223	25,003	12,270	...	...
Information and Communication	113,900	6,571	3,225	57,687	28,310	33,326	16,355
Wholesale and Retail Trade*	617,700	12,258	6,016	19,844	9,739	10,696	5,249
Arts, Sports, Entertainment, Recreation	84,500	1,129	554	13,360	6,556	8,809	4,323
Other Service Activities	73,800	1,067	524	14,462	7,097	...	...
Activities of households as employers **	7,500	...	...	...	...	...	...
Average***	216,895	6,438	3,159	24,156	11,855	11,657	5,721

Source: Belstat (total employment, GDP, and average monthly wage); NBRB for average BYN/USD exchange rate for 2017 (1.9324) and 2018 (2.0377); and Commerce calculations (GDP per worker, average annual wages).

* Includes repair of motor vehicles and motorcycles.
** Includes goods-and services-producing activities of households for own use.
*** Average calculations are based on the following values: the 20 sectors in the table (for employment), the 19 sectors in the table (for GDP and GDP per worker), the national average published by Belstat (for average wage), (*See* Belstat, "Nominal gross average monthly earnings in the Republic of Belarus since 2016," 2020).

Income Disparities between the State and Private Sector. There was also little variation in wages across firms in the state sector (which was "overemployed," according to the World Bank[286]) and the private sector (which, at less than 50 percent of total employment,[287] represented one of the lowest ratios of private sector employment in the region).[288] However, revenues per employee in the private sector were almost twice as high as those in the public sector,[289] (despite lower overall costs of production per worker in SOEs, as noted by the IMF in 2017).[290] These figures mirror earlier wage data from 2014 (*i.e.*, minimal to moderate wage variability across a greater number of sectors, regions, and ownership types that does not correspond to the large differences in productivity), which the IMF noted at the time were "indicative of a close adherence to official targets and a high degree of government control."[291]

[286] World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 26.
[287] GOB, "Labour market in Belarus," 2020.
[288] World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 26.
[289] *Ibid.*
[290] IMF, (Country Report No. 17/384), "Republic of Belarus – Selected Issues," December 2017 at 38.
[291] IMF, (Country Report No. 14/227), "Republic of Belarus – Selected Issues," July 2014 at 5.

C. Assessment of Factor

According to the *Labor Code*, the only companies that are required to use the tariff system to determine wages are state funded enterprises. Nevertheless, wages of employees in all sectors of the economy are influenced by the wage growth targets in Belarus' PSEDs. The IMF, in addition to the GOB itself, reports that in practice almost all organizations set wages according to the tariff schedule. In addition, restrictions on the organization of strikes and protests in Belarus serve as significant institutional constraints that limit the extent to which wage rates are determined through free bargaining between labor and management. These restrictions unnecessarily impede the fair treatment of workers and are indicative of a regime that actively discourages a level of bargaining between employees and management conducive to any fully liberalized labor market.

The level of regulation in the wage market and adherence to wage growth targets described by the IMF is consistent with comparisons of wage variation with revenue per employee across sectors and regions, which show little divergence in wages across regions and sectors, despite large differences in productivity. These data indicate the presence of an employment market driven by administrative interference, and, when analyzed together with the institutional constraints on wage-setting described in the preceding pages, suggest that the labor market in Belarus is not market-based and that wage rates are not freely determined by negotiations between labor and management.

Factor 3: THE EXTENT TO WHICH JOINT VENTURES OR OTHER INVESTMENTS BY FIRMS OF OTHER FOREIGN COUNTRIES ARE PERMITTED IN THE FOREIGN COUNTRY

Opening an economy to foreign investment tends to expose domestic industry to foreign competition, including the latest management, production and sales practices that multinational enterprises bring to the host economy together with their investments. Government restrictions on foreign investment, either in certain sectors or in the economy as a whole, may therefore be indicative of the government attempting to shield the economy from market pressures that the presence of foreign investment would likely bring. Under this factor, Commerce analyzes the GOB's foreign investment regime to assess the extent to which foreign investors can access the domestic market and how government interventions serve as barriers to foreign investment. Part A of this section reviews the legal and institutional framework governing foreign investment, including laws limiting or prohibiting investment in certain sectors. Part B describes the current investment environment and the challenges faced by private sector investors, while highlighting the dichotomy between *de jure* and *de facto* conditions for investment in Belarus. It also analyzes recent trends in FDI into Belarus, including FDI into the free and special economic zones established by the GOB to attract foreign businesses. Part C discusses Commerce's assessment of the extent to which joint ventures or other investments are permitted to operate in Belarus.

A. Legal and Institutional Framework

<u>Foreign Investment Law.</u> Few formal regulations are in place restricting foreign investment in Belarus. The 2001 *Investment Code* and the 2013 *Law on Investments* establish the legal framework and basic principles for investing.[292] Notably, the *Law on Investments* guarantees equal rights for all investors (both foreign and domestic) without discrimination.[293] The requirements for establishing a business are therefore the same for domestic and foreign entities (with minor exceptions).[294] The *Law on Investments* prohibits expropriation or nationalization of investment property, recognizes the exclusive right of investors to their intellectual property, and stipulates procedures for investor-state dispute settlement (ISDS) by Belarusian courts under the conventions of the UN Commission on International Trade Law (UNCITRAL), and the International Centre for Settlement of Investment Disputes (ICSID), both of which Belarus is a party to.[295] Additionally, a 2016 Presidential Edict created the Ministry of Antimonopoly Regulation and Trade (MART)[296] and established the framework for regulating Belarusian monopolies in compliance with international competition and antitrust laws.[297]

<u>Sector-Specific Investment.</u> The *Investment Code* states that all sectors of the Belarusian economy are open to foreign investment, except for (1) defense and national security (without the consent of the President); and (2) the production of narcotics and toxic substances on the list of controlled substances published by the Ministry of Health.[298] The *Law on Investments* lists several areas in which both foreign and domestic investment is restricted, including investments related to "interests of national security (including protection of environment and historic-cultural valuables), public order, protection of morality, health of the population, rights and freedoms of other persons."[299] The absence of a clear definition of these terms in the *Law on Investments* allows the GOB significant scope to determine which investments fall into the restricted categories. Although most sectors are free from *de jure* limits on foreign investment or ownership, notable exceptions are investment in media outlets, the insurance sector, and the banking sector, which are subject to foreign ownership limits of 20 percent,[300] 30 percent[301] and 50 percent,[302] respectively. In addition to the restrictions on foreign investment in sectors listed in the *Law on Investments*, the *Law on Natural Monopolies* prohibits foreign investment in sectors with existing government monopolies.[303] These sectors include but are not limited to the energy sector[304] (which includes electricity, oil, and natural gas and heat supply),[305]

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292 GOB, *Law on Investments*, (July 12, 2013).
293 *Id.*, Article 5.
294 GOB, "Legal requirements for setting up your business," 2020.
295 GOB, *Law on Investments*, (July 12, 2013), Articles 12-14.
296 GOB, "Commentary to Decree No. 188 of 3 June 2016," June 3, 2016.
297 GOB, "Commercial Law in Belarus," 2020.
298 GOB, *Investment Code No. 37-Z,* (June 22, 2001), Article 78; United Nations Conference on Trade and Development (UNCTAD), "Belarus Investment Policy Review," 2009 at 23; GOB, "Investment in Belarus," 2020.
299 GOB, *Law on Investments*, (July 12, 2013), Article 6.
300 Freedom House, "Belarus: Freedom on the net," 2019.
301 GOB, *Resolution of Council of Ministers of the Republic of Belarus No. 1174*, (September 11, 2006).
302 IMF, "Belarus AREAER," August 31, 2018, XI.A.5.b.
303 GOB, *Law No. 162 on Natural Monopolies*, (December 16, 2002), Article 3.
304 UNECE, "The best practices in sustainable energy in Belarus," 2018 at 12.
305 Energy Charter, "In-Depth Review of the Energy Efficiency Policy of the Republic of Belarus," 2013 at 49-50.

telecommunications, and air and railway transportation.[306] In accordance with its official industrial policy for FDI,[307] the GOB actively promotes investment, including foreign investment, in certain sectors, which include, *inter alia*, pharmaceuticals, biotechnologies, nanotechnologies and materials, petrochemicals, and information and communication technologies.[308]

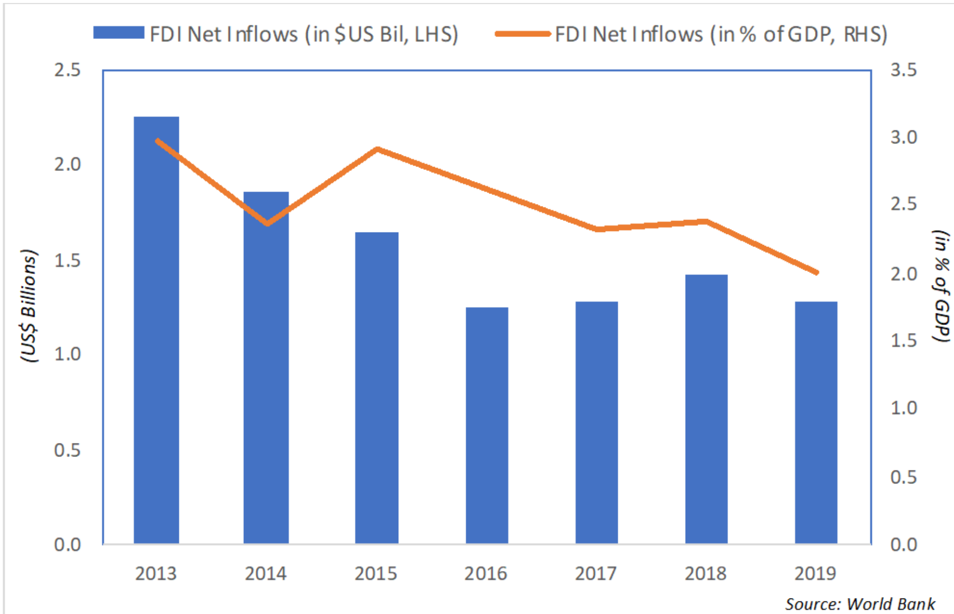
Institutional Initiatives to Attract FDI. A government investment promotion agency, the National Agency of Investment and Privatization, was established in 2010 to attract foreign investment into Belarus,[309] and six free economic zones (FEZs) throughout the country encourage investment by both domestic and foreign enterprises by providing benefits such as value added tax (VAT) discounts and property tax exemptions.[310] Lastly, two special economic zones (SEZs), the High Technology Park (HTP) in Minsk City, established in 2005 for development of the IT and software industry,[311] and the China-Belarus Great Stone Industrial Park (GSIP) in Minsk Region, which was opened in 2014 as part of the Belt and Road Initiative with the goal of attracting "innovative companies with a high export potential,"[312] also offer tax and business incentives to investors. The creation of these investment zones and the existing framework and support system for foreign investment is consistent with the GOB's stated commitment to creating favorable conditions for investment within Belarus.[313] This commitment includes the "liberalization of business conditions, improvement of investment protection mechanisms, and facilitation of the investment activities," all of which are implemented in order to create "equal nondiscriminatory conditions of investment for all investors."[314]

B. Developments in the Economy

Total FDI Inflows. Despite the establishment of the *Law on Investments* in 2013 that was intended to attract investment in Belarus, FDI in Belarus has been on the decline in recent years according to the latest official data. As can be seen in Figure 1, net inflows of FDI have been on the decline in both absolute and relative terms since 2013. Specifically, with respect to absolute terms, FDI has dropped to $1.4 billion in 2019 compared to $2.3 billion in 2013.[315] Relative to overall output, FDI has dropped to 2.0 percent of GDP by 2019 compared to 3.0 percent in 2013.[316]

[306] World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 48.
[307] GOB, "Conditions for Investment in the Republic of Belarus," 2020.
[308] GOB, "Investment in Belarus," 2020.
[309] *Ibid.*
[310] GOB, "The Business Environment in Belarus," 2020.
[311] Belarus High Technology Park, "About HTP Belarus - What is HTP?" 2020.
[312] GOB, "Great Stone Industrial Park," 2020.
[313] GOB, "Conditions for Investment in the Republic of Belarus," 2020.
[314] *Ibid.*
[315] World Bank, "FDI-current USD," 2019.
[316] World Bank, "FDI-percentage of GDP," 2019.

Figure 1. Belarus' FDI Inflows, 2013-2019



While data from the GOB show similar trends, the exact values vary slightly. Specifically, the GOB show a decline in FDI from $2.1 billion in 2013[317] to $1.3 billion in 2019.[318] The most stark differences occurred in the latest reported year, where the NBRB data show a 23.2 percent decrease in FDI between 2018 and 2019.[319] According to the GOB, $700 million of the $1.3 billion was from reinvested income.[320] As such, new FDI inflows stood at $600 million in 2019, which the NBRB characterized as a "low" level of foreign investment.[321]

Inflows to FEZs and SEZs. Investment into Belarus' six FEZs (which, in 2019, accounted for roughly 15.1 percent of overall FDI to Belarus[322]) mirror trends in overall FDI inflows and various metrics in these zones show a lack of significant growth in FDI inflows and investment activity (*e.g.*, number of resident enterprises or number of employees[323]) since 2012, indicating that the FEZs and the benefits they offer to investors have done little to attract investment in Belarus since the last major reforms.[324] Unlike in FEZs, FDI inflows in Belarus' two SEZs (*i.e.*,

[317] NBRB, "Report of the National Bank of the Republic of Belarus for 2013," May 16, 2014 at 62.
[318] NBRB, "Report of the National Bank of the Republic of Belarus for 2019," May 13, 2020 at 118.
[319] Belstat, "FDI Inflows," 2020.
[320] NBRB, "Financial Stability in the Republic of Belarus for 2019," 2020 at 11.
[321] NBRB, "Report of the National Bank of the Republic of Belarus for 2018," May 21, 2019 at 8.
[322] Commerce's calculations using Belstat Data; Belstat, "Main indicators of activity of residents of Free Economic Zones of the Republic of Belarus," 2020: Foreign Direct Investment on a Net Basis = 200.3 million USD; Belstat, "FDI Inflows," 2020, Net Inflow of Foreign Direct Investment = 1.327 billion USD; 200.3 / 1,327 = 15.1%.
[323] Belstat, "Main indicators of activity of residents of Free Economic Zones of the Republic of Belarus," 2020; European Bank for Reconstruction and Development (EBRD), "Belarus: Comparative Research on Industrial Parks and Special Economic Zones," November 2018 at 16, 18.
[324] EBRD, "Belarus: Comparative Research on Industrial Parks and Special Economic Zones," November 2018 at 56.

HTP and GSIP) have increased considerably since 2013[325] with the HTP serving as the catalyst for attracting firms from the IT sector into Belarus,[326] and the GSIP benefiting mostly from investment from Chinese firms.[327] Nevertheless, in 2017, when FDI data for both zones were last published, combined FDI inflows into these two zones accounted for only 17 percent of total FDI into Belarus.[328]

Business Climate. The general absence of *de jure* restrictions on foreign investment into Belarus is reflected in Belarus' ranking in the World Bank's 2020 Doing Business report. Belarus moved from 110 (out of 178 countries) in 2008,[329] the first year it was ranked, to 37th (out of 190 countries) in 2019.[330] However, in 2020 Belarus dropped to 49th place (out of 190).[331] Belarus' ease of doing business score (on which the rankings are based) decreased minimally between 2019 and 2020 and was still slightly above the regional average in the latter report,[332] suggesting that the decrease in the rankings may not be due to significant worsening of the regulatory framework but rather to positive developments in other countries.[333] In another report, the World Bank concluded that Belarus has "advanced dramatically" in reforming its basic business regulations since 2008, citing, in part, progress in areas such as "business and property registration, licensing and inspections, and the costs of tax administration," areas in which Belarus has typically received high marks in the annual Doing Business reports.[334] Nonetheless, the same report concluded that the recent liberalization and favorable rankings achieved in recent Doing Business reports could not be "considered sufficient to overcome concerns about overall macroeconomic vulnerabilities or other core issues" and noted that "continued efforts" were necessary to ensure enforcement of regulations and to create "a level playing field for all enterprises in the economy."[335]

Capital Controls. Capital controls are, broadly speaking, restrictions placed on trade in real and financial assets and are generally associated with limitations on FDI and portfolio investment.[336]

325 FDI at the GSIP, in particular, increased over 500 percent between 2017 and 2019, according to Belstat data. Neither Belstat nor the HTP itself publishes FDI data for FDI inflows into the HTP in 2018 and 2019.
326 Nastassia Astrasheuskaya, (Financial Times), "Funding and stability are key to IT growth in Belarus," December 19, 2019.
327 National Agency of Investment and Privatization, "Invest in Belarus Guidebook," 2019 at 58.
328 Belarus HTP, "HTP Announced the Results of 2017," November 30, 2018; Belstat, "The main indicators of the activity of the residents of China-Belarus Industrial Park Great Stone in 2018," 2019.
329 World Bank, "Ease of Doing Business," 2008 at 6.
330 World Bank, "Ease of Doing Business," 2020 at 5.
331 *Id.* at 4.
332 World Bank, "Ease of Doing Business," 2019; World Bank, "Ease of Doing Business," 2020; Despite Belarus' relatively high ranking and placement among its peers in the World Bank report, Commerce notes that the Doing Business Rankings do not measure ease of entry for foreign firms into the Belarusian market, but are rather a measure of domestic conditions that apply to all investors, regardless of origin.
333 Belta, "Economy Ministry comments on Belarus' position on Doing Business 2020," October 24, 2019; "Belta" is the Belarusian Telegraph Agency, the official news agency of Belarus (*See* Belta, "About Belta," 2020).
334 World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 47.
335 *Ibid.*
336 The latest version of the IMF's Balance of Payments Manual has re-designated the definition of the capital account to now include the capital and financial accounts in balance of payments accounting. As such, historical references to controls on the capital account, or capital controls, now include a broadened definition of the financial account. While financial assets now include FDI and portfolio investment, they also include financial derivatives

Although many countries have some degree of capital account controls, Belarus has a high degree of capital account controls relative to other countries. The Chinn-Ito index measures capital account convertibility,[337] ranging from 2.39 (highest level of convertibility) to -1.89 (lowest level of convertibility). Belarus' score in 2018 was -1.22, which is far below the mean of 1.33 for industrialized countries.[338] Such capital controls represent a mostly closed capital and financial account,[339] though Belarus' score was established before the implementation of the recent and related currency reforms described in Factor 1.

Minority Investor Protections. Discrimination against the private sector is indirectly reflected in Belarus' relatively low score of 58.0 out of 100 (when compared with the "Europe and Central Asia" regional average of 61) for the category of "protecting minority investors" in the World Bank's 2020 Doing Business report.[340] This score fell from 61.67 the previous year (causing Belarus' country ranking to decrease from 51 out of 190 countries to 79 out of 190 countries between 2019 and 2020) and was the result of a new policy that extended the deadline for companies to publicly disclose related-party transactions. Although this policy makes it easier for firms to comply with regulations, it also potentially harms the private sector by increasing information asymmetry,"[341] according to the World Bank report.[342]

Treatment of Private and State-Owned Enterprises. The World Bank describes an "implementation gap between *de jure* and *de facto* experiences" faced by private investors in Belarus compared to the state sector.[343] According to the IMF, foreign and domestic private investors are generally treated equally and have equal rights and opportunities before the law, but are both discriminated against in an economy that "unfairly tilts the playing field in favor of SOEs."[344] The 2019 Investment Climate Statements for Belarus from the U.S. Department of State noted an investment environment that "reflects an old-fashioned, Soviet-style distrust of private enterprise – whether local or foreign."[345]

(other than reserves), employee stock options, other investment, and reserve assets. *See* IMF, "Balance of Payment Manual" (Sixth Edition, BPM6), 2009; IMF, "Balance of Payments Compilation Guide," 2014 at 4; and Christopher J. Neely, (Federal Reserve Bank of St. Louis Review), "An Introduction to Capital Controls," November/December 1999 at 13-30.

[337] Menzie D. Chinn and Hiro Ito, "What Matters for Financial Development? Capital Controls, Institutions, and Interactions," (Journal of Development Economics: Volume 81, Issue 1, October 2006 at 163-192). The data in the index were updated for 2018 on July 13, 2020 and are available at http://web.pdx.edu/~ito/Chinn-Ito_website.htm.

[338] Menzie D. Chinn and Hiro Ito, "Notes on The Chinn-Ito Financial Openness Index 2018 Update," July 12, 2020 at 8-9.

[339] Capital controls are related to foreign exchange controls, as changes in asset ownership that cannot be converted into other currencies represent restrictions on transactions. The 2018 update to the index scores 182 countries on their capital account restrictions, with country scores ranging from 2.33 or "most financially open" to -1.92 or "least financially open." The index is not published by the IMF, but IMF sources have cited to it in official publications (*See* Davide Furceri and Prakash Loungani, (IMFBlog), "Openness and Inequality-Distributional Impacts of Capital Account Liberalization," November 24, 2015).

[340] World Bank, "Ease of Doing Business, Economy Profile: Belarus," 2020 at 35.

[341] World Bank, "Ease of Doing Business," 2020 at 13.

[342] There is no indication that "minority investors," as defined by the World Bank, represent solely private investors. Nonetheless, because the "Ease of Doing Business" rankings relate primarily to the experiences of private investors in a given country, and due to the *de facto* preference to the SIE sector prevalent in Belarus, it is reasonable to assume that "private investors" constitute a proxy for "minority investors" in the World Bank's rankings.

[343] World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 53.

[344] IMF, "Belarus Article IV Report," 2019 at 14.

[345] U.S. Department of State, "2019 Investment Climate Statements: Belarus" at 3.

Many benefits available to SOEs, such as state subsidies and directed lending,[346] are generally unavailable to private companies.[347] For example, as recently as 2016, interest rates on state-directed loans (*e.g.*, to the state sector) were nine percent, compared to the 34 percent rate paid by borrowers at the non-subsidized rate.[348] In addition, Reuters found that although the GOB actively recruited investment from abroad, the investment climate in Belarus made investment there less attractive than in other European destinations.[349] For example, red tape and "a cumbersome bureaucracy" led to higher costs and lower competitiveness for one Swiss manufacturer than its affiliates in Central Europe.[350] Another private investor, a Belarusian clothing manufacturer, noted the harsh punishments for any violations of administrative procedure, including the confiscation of goods.[351]

As a result of the GOB's preferential treatment of the state sector, the number of sectors essentially closed to private investment constitutes a "comparatively large number of sectors" which make it difficult for private companies (including foreign investors) to invest in Belarus, according to the U.S. Department of State report.[352] In addition, laws are not perceived as "stable," the judicial system is not independent (which impedes its ability to resolve disputes between investors and the GOB[353]), and a "weak and partial" administration often allows regulators to take "arbitrary" actions against private investors.[354]

Nationalization and Expropriation. Although property rights of investors are protected under the law, according to the World Bank, there is a lack of "credible commitment to private property rights"[355] in Belarus. Although the *Law on Investments* protects investment property from expropriation, investors still face a high risk of expropriation without adequate compensation.[356] Several enterprises have been nationalized in recent years,[357] including foreign-owned enterprises and joint ventures with partial foreign ownership. For example, the Orsha Aircraft Repair Plant (a joint venture between a Belarusian and Ukrainian enterprise) was nationalized by the GOB in 2018 to become almost wholly government-owned (going from no GOB ownership to 99 percent GOB ownership).[358] Although the Ukrainian enterprise was compensated for forfeiture of its ownership shares,[359] the nationalization reportedly took place at the urging of the President,[360] who had previously expressed concern at how the enterprise was faring since it

[346] World Bank, "Belarus: Strengthening Public Investment and Public Private Partnerships," September 2018 at 11.
[347] U.S. Department of State, "2019 Investment Climate Statements: Belarus."
[348] Organisation for Economic Co-operation and Development, "Scaling Up Green Investment and Finance in Belarus," 2018 at 6.
[349] Matthias Williams and Andrei Makhovsky, (Reuters), "Once derided as leeches, private firms see new hope in Belarus," October 23, 2017.
[350] *Ibid*.
[351] *Ibid.*
[352] U.S. Department of State, "2019 Investment Climate Statements: Belarus" at 4.
[353] *Id.* at 9.
IMF, "Belarus Article IV Report," 2019; U.S. Department of State, "Investment Climate Statements - Belarus," 2019 at 3.
[355] World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 51.
[356] *Id.* at 52.
[357] CIA, "World Factbook-Belarus," 2020.
[358] Belarusian Yearbook 2019 (*See* Footnote 91) at 227.
[359] U.S. Department of State, "2019 Investment Climate Statements: Belarus" at 12.
[360] Belta, "Orsha Aircraft Repair Plant back into government's hands," July 11, 2018.

came under private ownership in 2012.[361] As of 2020, two ISDS cases are pending before ICSID and one is pending before UNCITRAL.[362] The case pending before UNCITRAL is *Manolium Processing v. Belarus* (2018), in which the GOB, citing a contract violation and an outstanding tax debt, is alleged to have expropriated a Russian company's investment property.[363]

C. Assessment of Factor

Belarus has, overall, improved markedly in the World Bank's Doing Business rankings (although with a substantial decline in 2020), and *de jure* investment regulations requiring equal treatment of foreign and domestic investment reflect this high ranking. Belarus' legal regime, which includes multiple FEZs and SEZs, offers investment incentives to foreign firms. However, data from the GOB and World Bank show that, when measured either nominally or in terms of percentage of GDP, foreign investment has declined since the current legal regime was put into place in 2013.[364] The lack of significant increase in FDI inflows in recent years suggests that the conditions for foreign investment have not allowed for significant increases of foreign investment to Belarus.

Although, by law, domestic and foreign investors are guaranteed equal treatment, the many deficiencies in the investment regime (including, among other factors, limited property rights and high expropriation risk, as well as the subordination of the judiciary to the executive branch) results in *de facto* discrimination against the private sector. These deficiencies therefore discourage private investment by either domestic and foreign entities and reduce the country's attractiveness to foreign investors. Current policies result in an investment environment subject to frequent government interference, leading Commerce to conclude that private investors do not have sufficient control over their investments and that the investment framework in Belarus is therefore not market-based.

<u>Factor 4:</u> THE EXTENT OF GOVERNMENT OWNERSHIP OR CONTROL OF THE MEANS OF PRODUCTION

Excessive government ownership or control of the means of production undermines the functioning of a market economy. If economic actors cannot make market-based decisions based on supply and demand factors, then prices and costs become distorted, and non-market conditions prevail. Part A of this section examines the *de jure* role of SIEs in the economy and assesses the privatization efforts undertaken by the GOB. Part B assesses the size of the state sector and examines the effect of GOB reforms on private sector development and economic growth. Part C examines three areas of the Belarusian economy: (i) the agriculture, mining and logging sectors; (ii) banking and finance; and (iii) manufacturing and steel, and assesses the extent of state influence over each of these sectors. Part D discusses Commerce's assessment of

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361 Belta, "Lukashenko - Belarus ready to accommodate Ukrainians willing to work and live here," October 16, 2014; GOB (Regional Government), "Ukrainian Motor Sich to get controlling interest in Orsha Aircraft Overhaul Plant," January 9, 2012.
362 UNCTAD, "ISDS cases - Belarus - search results," 2020.
363 UNCTAD, "Investment Policy Hub - Manolium Processing v. Belarus," 2018.
364 GOB, "Conditions for Investment in the Republic of Belarus," 2020, citing *Resolution of the Council of Ministers No. 51/2 on the Adoption of the Strategy for Foreign Direct Investment Attraction to the Republic of Belarus till 2015*, (January 18, 2012, ed. December 11, 2013).

the extent of government ownership or control over Belarus' means of production.

A. Legal and Institutional Framework

Legality of State and Private Enterprises. The Belarusian *Constitution* does not clearly define the role of the state or SIEs in the economy and specifies only that the state "shall ensure the direction and co-ordination of state and private economic activity for social purposes."[365] The GOB also does not use the term "SOE" anywhere in its legal framework. Instead of "SOE," the *Civil Code* of Belarus uses the term "State Unitary Enterprise" (SUE) to refer to enterprises that are wholly government-owned and in which ownership of assets is indivisible (*i.e.*, only a single owner is permitted).[366] The *Civil Code* also establishes "Open Joint Stock Companies" (OJSCs), which are non-state enterprises whose assets are owned by an unlimited number of shareholders (which may, and often does, include the GOB).[367]

Reforms from Central Planning. A review of legislation adopted since Belarus' independence from the Soviet Union revealed no regulations specifically limiting the size of the state sector or requiring a reduction in GOB shares in enterprises by a certain date. Instead, existing regulations focus on privatization according to the definitions in the *Civil Code* (*i.e.*, converting SUEs into OJSCs, thereby providing no guarantee of state divestment of assets). Furthermore, they all include provisions allowing the GOB considerable authority to intervene in the privatization process. For example, the *1993 Law on Privatization of State Property and Transformation of State Unitary Enterprises in Open Joint-Stock Companies* calls for transformation of SUEs into OJSCs, but gives the President full discretion to prohibit the sale or lower the sale price of such enterprises.[368] Another law, the 1998 *Decree of the President on Privatization of State Property in the Republic of Belarus*, provides a framework for "privatization" via the sale of the state-owned shares of OJSCs to individuals and private entities.[369] However, it does not specify a deadline for when such sales must take place,[370] and also grants the President and Council of Ministers the power to intervene in the sale process, including by restricting sales of OJSCs in certain sectors.[371] The 1993 *Law on Personal Privatization Vouchers* creates a voucher system for privatization of state assets[372] (where ownership shares of an SIE are transferred free of charge to Belarusian citizens in a system similar to voucher privatization programs in other former Soviet states in place at the time).[373] However, the law provides no minimum percentage of state assets required to undergo the privatization and provides no date for when such privatization must be completed.[374] Furthermore, the system was discontinued in 1995 soon

[365] GOB, *Constitution*, (March 15, 1994), Article 13.
[366] GOB, *Civil Code of the Republic of Belarus*, (December 7, 1998), Article 113.
[367] *Id.*, Articles 96-97.
[368] GOB, *Law No. 2103-XII on Privatization of State-Owned Assets and Reorganization of State-Owned Unitary Enterprises into Open Joint Stock Companies*, (January 19, 1993), Article 6.
[369] GOB, *Decree of the President No. 3 on Privatization of State Property in the Republic of Belarus*, (March 20, 1998), Article 1.11.
[370] *Id.*, Article 1.9 states that "up to 50 percent of state-owned shares of open joint-stock companies created prior to January 1, 2011" would be allowed to privatize under the regulation, but does not give a minimum percentage of shares that would be required to do so.
[371] *Id.*, Article 1.12.
[372] GOB, *Law No. 2468-XII on Personal Privatization Vouchers*, (July 6, 1993), Article 3.
[373] *See, e.g.*, John Nellis, (IMF), "Time to Rethink Privatization in Transition Economies?" June 1999.
[374] GOB, *Law No. 2468-XII on Personal Privatization Vouchers*, (July 6, 1993).

after the election of incumbent President Lukashenko the year before.[375]

B. Developments in the Economy

State and Market Forces in Production. Information put on the record by the GOB (which is uncited) in this CCR shows that total output by the state sector as a percentage of GDP declined from 46.5 percent in 2015 to 43.5 percent in 2019.[376] However, using the most recent data from Belstat obtained during bilateral exchanges with the GOB,[377] the IMF concluded in 2017 that SOEs[378] play a "dominant role" in the Belarusian economy,[379] which it further stated "relies heavily on SOEs as a driving force of its economic growth and development."[380] The 2019 IMF Article IV Report on Belarus likewise found that Belarus remains "one of the most state-controlled economies in Europe" and estimates that, as of 2019, "enterprises either fully or partially owned but controlled by the State account for about half of value-added in the economy," which constitutes a "significantly higher" share than in its regional peers.[381] In addition, a January 2020 report by the U.S. Department of State found that "Belarusian authorities are reluctant to undertake systemic economic reforms necessary to create a market-based economy, with 70 percent of the economy still under government control."[382]

State and Market Forces in Employment. The change in the share of employment in the state sector over from 2015 to 2019 cited by the GOB in its case brief (46.2 percent to 39.3 percent)[383] does not correspond to Belstat data, which instead show that the share of employment in the state sector actually increased from 39.3 percent to 39.4 percent over the same period.[384] Irrespective of this data disparity, the GOB's use of the term "SUE" as a proxy for SIEs (as explained in Section A), which legally excludes OJSCs, even in cases where they are wholly owned by the state, results in estimates of state ownership of assets that differ significantly from other sources. For example, the 2019 IMF Article IV Report found that employment in SOEs accounted for roughly 50 percent of employment in the economy,[385] while another IMF report published the same year found that the ratio of SOEs to the population was higher in Belarus than any other countries in Central, Eastern and Southeastern Europe (with 380 SOEs per one million inhabitants).[386] The latter report also concludes that Belarus "is still very much a state-

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375 Grigory Ioffe and Viachaslau Yarashevich, (Eurasian Geography and Economics), "Debating Belarus - An Economy in Comparative Perspective," 2011 at 755.
376 GOB's Brief at 33.
377 IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 8.
378 The IMF defines SOEs for statistical purposes as entities with at least 251 employees that have any degree of state ownership at either the national or local level. *See* IMF, (Country Report No. 17/384), "Belarus: Selected Issues," December 2017 at 33, Footnote 2.
379 IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 81, Annex - Table 1.1.
380 IMF, (Country Report No. 17/384), "Belarus: Selected Issues," December 2017 at 33.
381 IMF, "Belarus Article IV Report," January 2019 at 4.
382 U.S. Department of State, "U.S. Relations with Belarus," 2020.
383 GOB's Brief at 33.
384 Belstat, "Employment by ownership type," 2020; The value for 2019 represents an estimation.
385 IMF, "Belarus Article IV Report," January 2019 at 4.
386 IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 6.

dominated economy."[387]

Effectiveness of Market-Based Reforms. Despite the legislation from the 1990s mandating gradual privatization and GOB divestment, reports by independent organizations describe a lack of meaningful reduction of state sector activity in the Belarusian economy in recent years (in part due to the absence of concrete requirements for state divestment of assets). For example, the IMF noted that despite recent efforts undertaken by the GOB, current legislation aimed at privatization was ineffective, "given the scale of the problems" and that more "ambitious" reforms to the SOE sector were necessary.[388] It also noted that "inefficient SOEs lay at the heart of many of the economy's weaknesses," and mentioned specific deficiencies, such as, *inter alia*, a weak social safety net for SOEs, limited transparency and accountability in the corporate governance in the public sector, and an absence of a system for risk-based assessment of SOEs' viability, as areas that required reforms to improve state sector efficiency and to accelerate economic growth.[389] Similarly, in its recent report on Belarus' SOE sector, the World Bank noted progress in certain areas (*e.g.*, measures reducing red tape and relaxing regulations on product and service markets)[390] which "gradually widened the role of the private sector," but also concluded that the "bureaucratic apparatus of controls that remains largely unmodified" had slowed the pace of reform and delayed the appearance of any concrete results.[391]

Uneven Implementation of Market-Based Reforms. The IMF and World Bank reports mentioned in the preceding paragraph noted numerous areas where reforms to reduce the role of the state sector have been implemented and even proven moderately effective (*e.g.*, bankruptcy regulation[392]), while describing other areas where reforms have not been actively contemplated (including no concrete commitment from authorities to accelerate the pace of reforms[393]). In the near-term, The Economist echoed the findings of the World Bank and IMF reports, and predicted that throughout 2020 "the authorities' reluctance to reduce the state's role in the economy in many sectors and to increase competition will remain major constraints on investment and growth."[394] According to its most recent projections, "the Belarusian economy will remain state-directed during the forecast period (2020-21)."[395]

C. Sector-Specific Analysis

Agricultural Industry. The *Constitution* mandates that all land for agricultural use is the "exclusive property of the State."[396] The *Land Code* guarantees private land ownership rights to Belarusian citizens and prohibits land ownership by foreign legal entities[397] (foreign entities

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[387] *Id.* at 10.
[388] IMF, "Belarus Article IV Report," January 2019 at 18.
[389] *Id.* at 14.
[390] World Bank, "Country Diagnosis of Belarus," February 20, 2018 at 42.
[391] *Id.* at 45.
[392] IMF, "Belarus Article IV Report," January 2019 at 15.
[393] *Id.* at 16.
[394] EIU, "Economy Continues to Struggle," August 30, 2019.
[395] EIU, "Belarus Briefing Sheet," January 1, 2020.
[396] GOB, *Constitution*, (March 15, 1994), Article 13.
[397] GOB, *Land Code No. 425-Z* (*Land Code*), (June 23, 2008), Article 12.

may, however, lease the land for a period of up to 99 years[398]). Despite private land ownership rights, as of 2019, 92 percent of land in Belarus is owned by the national or local government, and there is no official plan in place governing the transfer of land plots to private ownership.[399] Legislation implemented in the late 1990s allowed for private land ownership in household plots of up to one hectare.[400] Although the measure was introduced twenty years ago, private farms still comprise a negligible share of total farms, occupying only two percent of agricultural land.[401] Private farming accounts for only 2.3 percent of employment in the sector and generates only 1.9 percent of total agricultural output, as of 2019.[402] Growth of private enterprises in the agricultural sector has been hindered by an absence of government support for private farms, whereas large state-controlled farms "enjoy the benefits of scale and receive a range of government subsidies," according to The Economist.[403] Furthermore, legislative developments in the agricultural sector, which is still "almost entirely state-controlled," have provided no indication that the authorities are planning any comprehensive reforms in the sector, and note that the GOB's dominant role in agriculture is set to remain in place.[404]

Mineral Industry. According to the *Constitution*, all mineral wealth and forestland in Belarus belongs to the state.[405] Furthermore, the *Land Code* prohibits privatization of land on the areas of explored mineral deposits or forested land.[406] As with agricultural land, land plots can be leased to private entities for the purpose of mineral extraction and logging,[407] as was done, notably, in 2012 when the GOB held a competition for commercial development of the Petrikov salt deposits.[408] The land plot was ultimately leased to OJSC Belaruskali,[409] a fully state-owned and controlled SIE[410] that is also one of Belarus' largest companies and the largest company in the mining industry.[411] It is the world's largest potash (potassium based fertilizer) miner[412] and produces a fifth of the world's potash fertilizers.[413] OJSC Belaruskali exports to over 140 countries[414] and is the primary exporter in the mineral sector, which is Belarus' largest export

398 Mondaq, "Land Rights of Foreign Subjects in Belarus," June 12, 2020, citing GOB, *Law No. 63-Z on Concessions*, (July 12, 2013), Article 32.
399 Ulrich Graute, "Country Profiles on Housing and Land Management: Belarus," (New York: UNECE, October 2019) at 70.
400 Food and Agriculture Organization of the United Nations, "Seed Policy and Programmes for the Central and Eastern European Countries, Commonwealth of Independent States and Other Countries in Transition," 2001, Appendix, Country Profiles: Belarus.
401 EIU, "Country Report: Belarus," March 19, 2019 at 26.
402 *Ibid.*
403 *Ibid.*
404 *Ibid.*
405 GOB, *Constitution*, (March 15, 1994), Article 13.
406 GOB, *Land Code*, (June 23, 2008), Article 13.
407 Mondaq, "Land Rights of Foreign Subjects in Belarus," June 12, 2020, citing GOB, *Law No. 63-Z on Concessions*, (July 12, 2013), Article 36.
408 *Ibid*.
409 *Ibid.*; GOB, "Belaruskali Starts Building New Mining and Processing Factory," August 27, 2014.
410 Belarusian Potash Company, "Shareholders-JSC Belaruskali," 2020.
411 GOB, "Belarusian Brands," 2020.
412 Alistair MacDonald, (The Wall Street Journal), "Strike in Belarus by Potash Miners Pressures President, Clouds Commodity Market," August 17, 2020.
413 *Ibid*.
414 GOB, "Belarusian Brands," 2020.

industry.[415] The GOB also owns 99.96 percent of OJSC Grodno Azot,[416] the second largest exporter in the mineral industry in Belarus.[417]

Logging Industry. Belarus' logging and woodworking industry is more privatized (with state ownership shares of the 60 member enterprises in Bellesbumprom, the primary conglomerate for timber harvesting and production, ranging from 16 to 60 percent), but the entire industry accounts for only two percent of GDP, according to GOB estimates.[418]

Manufacturing (including Steel). The manufacturing sector is the largest sector of the Belarusian economy and accounts for roughly 28 percent of Belarus' GDP[419] and slightly below a quarter of the Belarusian workforce.[420] Although only nine percent of manufacturing companies in Belarus have some level of GOB ownership (and 2.6 percent are fully government owned), these SIEs produce over two thirds of manufacturing output, with fully private and foreign-owned firms making up the remaining 25 percent and five percent, respectively.[421]

Although they are officially classified as OJSCs and therefore no longer considered SIEs, Belarus' largest manufacturing companies are OJSC BelAZ and OJSC BMZ, which are both still listed as fully "state owned" in official GOB publications,[422] on their websites,[423] and in their annual reports.[424] BelAZ, the "world's leading" producer of mining and quarrying vehicles,[425] according to its website, had a revenue roughly equal to at least nine percent of the entire Belarusian manufacturing sector, according to its latest available financial statements.[426]

The most recent financial statements for BMZ, the sole official steel producer in Belarus, show a revenue of equal to roughly 14 percent of the entire manufacturing sector,[427] indicating that in 2018 these two SOEs alone - BelAZ and BMZ - produced at least one fifth of Belarus' entire manufacturing output.[428] The supervisory boards of these two enterprises include multiple high-

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[415] GOB, "Key Facts about Belarus," 2020.
[416] Export.BY, "Grodno Azot reports Br176.895m net profit in 2018, up 6.5 times," April 25, 2019.
[417] GOB, "Main Social and Economic Indicators," 2020.
[418] GOB, "Woodworking industry," 2020.
[419] GOB, "Manufacturing in Belarus," 2020.
[420] GOB, "Main Social and Economic Indicators," 2020.
[421] Bruno S. Sergi, "Modeling Economic Growth in Contemporary Belarus," (Emerald Publishing Ltd., November 8, 2019), Chapter 4 at 4.
[422] GOB, "Manufacturing case studies in Belarus," 2020.
[423] BMZSteel, "Structure of BMZ," 2020.
[424] BMZSteel, "Consolidated Financial Statements," 2019 at 51, notes that "the sole owner of the Company is the Republic of Belarus;" BELAZ, "IFRS Audit," 2018 at 6; BELAZ, "IFRS Audit," 2018 at 13, lists the GOB as the sole controlling party of BelAZ and its holding company "BelAZ Holding."
[425] GOB, "Manufacturing case studies in Belarus," 2020.
[426] Belstat, "Gross domestic product by kinds of economic activity," 2018: Manufacturing Sector = 26,002.6 million BYN; BELAZ, "IFRS Audit," 2018 at 6: Revenue (EUR): 979,906,000 at 17: 2018 EUR/BYN exchange rate: 2.473, 979,906,000 x 2.473 = 2,423.3 million BYN; 2,423.3 / 26,002.6 = 9.3%.
[427] Belstat, "Gross domestic product by kinds of economic activity," 2018: "Manufacturing Sector = 26,002.6 million BYN; BMZSteel, "Consolidated Financial Statements," 2019 at 8: Revenue = 3,717.6 million BYN; 3,717.6 / 26,002.6 = 14.3%.
[428] 9.3% + 14.3% = 23.6%.

ranking GOB officials and are chaired by the Minister of Economy (for BelAZ[429]), and the Deputy Minister of Industry (for BMZ[430]).

Financial Sector. Belarus' financial sector is bank-dominated,[431] with banks accounting for 85 percent of financial sector assets as of 2018.[432] Estimates of state ownership in the banking sector vary from 50 to 75 percent.[433] The latest available GOB data place the percentage of assets owned by state-owned commercial banks (SOCBs) at 63 percent (with "SOCBs" defined as all banks whose authorized capital is majority owned by the GOB).[434] The banking system is highly concentrated,[435] with the combined assets of Belarus' two largest banks, JSSB Belarusbank (99.82 percent owned by the GOB[436]) and Belagroprombank (99.41 percent owned by the GOB[437]), accounting for over 55 percent of all banking sector assets (41.00 percent and 14.34 percent, respectively[438]). Foreign banks (such as BPS Sberbank and Belgazprombank, Belarus' third and fourth largest banks, respectively,[439] which are both majority-owned by the Russian Government[440]) own almost all the remaining assets in the banking sector, leaving domestic private banks with about three percent of all banking sector assets.[441]

Control over Belarus' SOCBs is exercised by a Supervisory Board at each bank made up primarily of high-ranking GOB officials and in many cases chaired by members of the GOB Council of Ministers (such as the First Deputy Prime Minister, in the case of Belarusbank[442] and the Minister of Finance, in the case of Belagroprombank[443]). Although the GOB does not have majority ownership in foreign banks, it still maintains a presence in the management and

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[429] BELAZ, "Supervisory Board of OJSC Belaz," 2020.
[430] BMZ, "The Minister of Industry introduced a new General Director to BSW team," August 12, 2019; The Press Release also notes that the new appointment of the Deputy Prime Minister as General Director of BMZ was subject to the approval of the President of Belarus.
[431] Luca Gattini and Sofia Borysko, (EIB), "Financial Sector Review and Private Sector Financing," June 2018 at 3.
[432] *Ibid.*
[433] The 2019 IMF report on SOEs in Central, Eastern and Southeastern Europe estimated that the GOB owns at least 50 percent of banking sector assets in Belarus. An EIB report from 2018 estimated an even higher share of 65 percent of banking sector assets belonging to SOCBs. The latest CIA Factsheet for Belarus (current as of summer 2020) puts this figure even higher and estimates that state banks make up 75 percent of the banking sector (*See* CIA, "World Factbook-Belarus," 2020).
[434] GOB, "Report of the National Bank of the Republic of Belarus," May 13, 2020 at 10; The GOB's definition of SOE and SOCB differs from Commerce's definition, (*See* Footnote 2), which instead defines "SIEs" as an entity (including a commercial bank) in which the government has any ownership stake. The 63 percent of assets owned by SOCBs is higher if Commerce's definition is used. *See, e.g.,* Footnote 445 about GOB minority shares in Belgazprombank.
[435] Luca Gattini and Sofia Borysko, (EIB), "Financial Sector Review and Private Sector Financing," June 2018 at 9.
[436] Belarusbank, "Shareholder Information," 2020.
[437] JSC Belagroprombank, "Consolidated Financial Statements," December 20, 2019 at 13.
[438] NBRB, "Balance Sheet and Profit and Loss Statement - all banks," July 01, 2020: Total Assets in Banking Sector = 82,372,949 thousand BYN; NBRB, "Balance Sheet and Profit and Loss Statement - JSC JSSB Belarusbank," April 01, 2020: Total assets = 33,770,753 thousand BYN; NBRB, "Balance Sheet and Profit and Loss Statement -JSC Belagroprombank," July 1, 2020: Total assets = 11,816,185 thousand BYN; 33,770,753 / 82,372,949 = 41.00%; 11,816,185 / 82,372,949 = 14.34%.
[439] NBRB, "Balance sheet and profit and loss statements of banks and non-banking credit and financial institutions," 2020.
[440] Sberbank, "Shareholder Structure," 2020; Gazprom, "Shares," 2020.
[441] GOB, "Report of the National Bank of the Republic of Belarus," May 13, 2020 at 10.
[442] Belarusbank, "Supervisory Board," 2020.
[443] Belagroprombank, "Supervisory Board," 2020.

ownership structures of the two largest foreign banks (*e.g.*, at BPS Sberbank, where the chair of the Supervisory Board is a member of a working group under the administration of the President of Belarus,[444] and at Belgazprombank, where the GOB retains a 0.97 percent ownership share).[445]

__Lending.__ Despite high levels of state ownership in the financial sector, credit to the private sector as a percentage of total credit has increased in recent years. The latest estimates from the 2019 IMF Article IV Report show credit to the private sector accounting for approximately 57 percent of overall lending in 2019.[446] The IMF report also states that directed lending to the SOE sector[447] has declined in recent years (down from over 50 percent in 2014 to 33 percent of total credit in 2018),[448] but still distorts the lending market along with other controls such as interest rate caps on household deposits,[449] which were "set well below competitive levels."[450] These interest rate ceilings appear to still be in place in 2020. In a 2018 report, the European Investment Bank noted that "considerable state dominance" in the lending market limits banks' abilities to provide financing to private sector enterprises, especially small and medium sized enterprises.[451] Furthermore, SOEs still benefit from a number of preferential lending programs (*e.g.*, budget loans and GOB guarantees on debt),[452] even though such preferential lending has enabled the continued inefficiency and underperformance of the SOE sector and resulted in high levels of non-performing loans (NPLs),[453] which reached 13.7 percent of the total value of loans in fall 2017.[454]

D. Assessment of Factor

An analysis of relevant regulations reveals that measures requiring GOB divestment from economic entities have achieved privatization in name only and the high percentage of output from SIEs relative to GDP suggests that such measures have done little to reduce the extent of GOB ownership over the means of production. Structural and institutional reforms aimed at privatization have been inadequate and have not led to significant divestment of GOB shares in

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[444] Sberbank, "Bank Management," 2020; GOB ownership in Sberbank could not be confirmed and the extent of GOB ownership is unclear.
[445] Belgazprombank, "Shareholders," 2020; Because the GOB has an ownership stake in Belgazprombank, Commerce considers it an SIE.
[446] IMF, "Belarus Article IV Report," January 2019; The value cited is a projection for 2019 based on 2018 data: Table 1 "Selected Economic Indicators:" 2019 Net credit to the economy (percent of GDP) = 41.0 %; 2019 Net credit to the private sector = 23.5%; 23.5% / 41.0% = 57.3%.
[447] IMF definition; *see* Footnote 378.
[448] IMF, "Belarus Article IV Report," January 2019 at 10.
[449] *Id.* at 11.
[450] IMF, (Country Report No. 19/10), "Republic of Belarus: Selected Issues," January 2019 at 8.
[451] Luca Gattini and Sofia Borysko, (EIB), "Financial Sector Review and Private Sector Financing," June 2018 at 5.
[452] IMF, "Reassessing the Role of State-Owned Enterprises in Central, Eastern, and Southeastern Europe," June 18, 2019 at 65.
[453] According to the IMF: "A loan is nonperforming when payments of interest and/or principal are past due by 90 days or more, or interest payments equal to 90 days or more have been capitalized, refinanced, or delayed by agreement, or payments are less than 90 days overdue, but there are other good reasons—such as a debtor filing for bankruptcy—to doubt that payments will be made in full" (*See* IMF, "The Treatment of Nonperforming Loans," 2005).
[454] Luca Gattini and Sofia Borysko, (EIB), "Financial Sector Review and Private Sector Financing," June 2018 at 13.

SIEs. The result is that Belarus remains one of the most state-controlled economies in Europe, with SIEs accounting for about half of Belarus' economic activity. The almost complete GOB ownership and control of Belarus' largest banks results in a market where the private sector's access to loans is still limited and where credit is instead disproportionally directed to SIEs, contributing to their legacy of inefficiency. This is evidenced by the high levels of NPLs.

The considerable influence and control exercised by the state is also evident in key sectors of the economy. The absence of private land ownership (with few exceptions) results in the GOB exercising significant control over its use and hinders the development of private enterprises in the agricultural, mineral, and logging sector. Lastly, the disproportional production output from SIEs relative to *de jure* private entities, and the GOB monopoly over steel production, makes clear that SIEs continue to dominate the Belarusian manufacturing sector. The above facts clearly show a high level of government ownership and control of the means of production in the Belarusian economy and indicate an economic environment that is inconsistent with market-based supply and demand principles.

<u>Factor 5:</u> THE EXTENT OF GOVERNMENT CONTROL OVER THE ALLOCATION OF RESOURCES AND OVER THE PRICE AND OUTPUT DECISIONS OF ENTERPRISES

Excessive government control over the allocation of resources and over the price and output decisions of enterprises undermines the functioning of a market economy. If resources are severely misallocated or the government unduly influences or constrains the price and output decisions of individual market actors, then prices and costs become distorted and non-market conditions prevail. Part A of this section describes the legal framework for price formation in Belarus and lists existing and recent regulations on prices and the categories of products and services to which such regulations apply. Part B analyzes inflation and how the *de jure* price controls affect the GOB's stated goals of maintaining price stability and controlling CPI growth. It also describes the energy industry in Belarus and highlights how Belarus' dependence on low-priced Russian energy imports adds to macroeconomic domestic vulnerabilities. Finally, Part C discusses Commerce's assessment of the extent of government control over Belarus' allocation of resources and enterprises' price and output decisions.

A. Legal and Regulatory Framework

<u>Price Regulation.</u> In Belarus, the 1999 *Law on Price Formation* grants the GOB the legal authority to regulate prices of certain goods and services. It states that the GOB "shall" regulate the prices of two groups of "commodities" which include:

(1) All commodities (goods and services) from entities occupying a "dominant position" in the market; and
(2) Commodities that are deemed "socially important."[455]

[455] GOB, *Law No. 255-Z on Price Formation* (*Law on Price Formation*), (May 10, 1999), Article 7.

Outside these groups, the *Law on Price Formation* guarantees that all commodity prices in Belarus are set by market forces.[456] However, it does not define the terms "dominant position" or "socially important," and instead gives the President (or the Council of Ministers, with the President's approval) the authority to approve and modify as necessary the official list of commodities to be included in these two groups.[457] With presidential approval, both lists are maintained and published by the Ministry of Antimonopoly Regulation and Trade (MART), which is responsible for regulation and analysis of prices in the Belarusian economy.[458] As of the latest available update (March 2019),[459] the official list of entities occupying a "dominant position" in the market (and whose goods and services have regulated prices) includes 727 enterprises from a variety of sectors (including, among many others, funeral services, laundry soap, heaters, tobacco, and TV sets) operating nationally and at the regional level.[460] The types of commodities considered "socially important" (whose prices are generally regulated for a period of up to 90 days per year in accordance with legislation enacted in 2014[461]) have varied since 1999,[462] but the latest official list of such products, published by MART in April 2020 (whose prices are regulated until mid-July 2020, with exceptions[463]) includes 26 household items (mostly food and hygiene products - *e.g.*, meat, rice, toilet paper, and matches).[464]

In addition to the two categories of commodities outlined above, there are a number of other products whose prices are regulated by the government as specified in the 2011 *Presidential Decree on Some Issues of Prices/Tariffs Regulation in the Republic of Belarus* (*Decree on Price Regulation*). These commodity prices are regulated by various GOB agencies or by regional government bodies.[465] Like the other two product lists, the list of products in the edict includes goods and services from many industries, as identified in Table 3 below.[466]

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456 *Id.*, Article 6.
457 *Id.*, Article 9.
458 GOB, "MART Activities," 2020; MART's organizational structure includes a "Pricing Methodology Division" specifically responsible for analysis of price formation policies (*See* GOB, "MART Management Structure," 2020).
459 Commerce was unable to ascertain with certainty how often changes to the list have been made since 2011 but notes that the list has been modified at least twice in the two-year period preceding publication of this memorandum. The latest list from the MART website available in English is current as of March 21, 2019, but a more recent Russian language list (dated June 15th, 2020) containing 854 entities (instead of 727) is also available from the MART website (*See* GOB, "reestr hoz subektov," June 15, 2020).
460 GOB, "State Register of Economic Entities Dominating in Product Markets of the Republic of Belarus," March 21, 2019.
461 GOB, *Resolution No. 35 of the Council of Ministers on Approval of Lists of Socially Important Goods (Services) Whose Prices (Tariffs) are Regulated by State Bodies*, (*Resolution No. 35*), (January 17, 2014).
462 For example, *Resolution No. 35* established four official lists of "socially important commodities." In general, the number of "socially important commodities" with regulated prices has decreased since 1999 (*See* GOB's Brief at 36-38).
463 One such exception is white crystalline sugar, whose prices were regulated in separate legislation. A measure issued by MART (acting under authority of the President) in December 2019 set the minimum retail (VAT inclusive) sales price of white crystalline sugar sold within Belarus at 1.5 BYN per kilogram (with a maximum 15 percent markup) for a period of 60 days (*See* GOB, *MART Resolution No. 99 on Setting Minimum Prices on White Crystalline Sugar*, (December 30, 2019)). This was later extended until the end of 2020 with the approval of the EAEU Commission (*See* EAEU, "Belarus extends term of state price regulation for sugar," March 18, 2020).
464 GOB, *MART Resolution No. 30 on Regulating Prices for Socially Important Goods*, (April 15, 2020).
465 GOB, *Decree of the President No. 72 on Some Issues of Prices/Tariffs Regulation in the Republic of Belarus*, (February 25, 2011), Annex 1.
466 *Ibid.*

Table 3. Price Regulation of Certain Commodities in Belarus, by Regulatory Body

Commodity	Official Regulating Body
Energy Products (Most) - See Section 5(B)(i)	Ministry of Antimonopoly and Trade
Alcoholic Beverages (Certain)	Ministry of Antimonopoly and Trade
Passenger Air and Rail Transportation	Ministry of Antimonopoly and Trade
Scrap Metal and Waste (Ferrous and Non-Ferrous)	Ministry of Industry
Medical Services (Certain) and Medications That are Domestically Produced	Ministry of Health
Higher and Specialized Secondary Education at Public Education Establishments	Ministry of Education
Construction Materials and Products for Public Roads and Bridges	Ministry of Transport and Communications
Heat & Water Supply Services (Including Waste Management & Wastewater Disposal)	Regional Executive Committees
Elevator Maintenance and Major Repairs of Residential Houses	Regional Executive Committees

Source: GOB, Decree of the President No. 72 on Some Issues of Prices/Tariffs Regulation in the Republic of Belarus, (February 25, 2011).

In addition to the prices of the products listed above, the *Law on Price Formation* gives the President, the Council of Ministers and relevant State Bodies the authority to "execute the regulation of prices on certain commodities" not specifically included in any of the above lists,[467] which effectively grants the GOB the power to impose price controls on any commodity at any time. The *EAEU Treaty*, of which Belarus is one of three founding signatories,[468] states that Members may introduce price regulations in commodity markets that are not in a situation of natural monopoly as a last resort (*i.e.*, "in exceptional cases, including emergencies, natural disasters, national security matters").[469] However, in a practice that the IMF equates to "abuse," the GOB has used this authority to "freeze" unregulated prices on an *ad hoc* basis by administrative decision (*e.g.*, to combat inflation),[470] and not only "in exceptional circumstances," as required by the *EAEU Treaty*. For example, one recent measure imposed for the purpose of price stability is the March 2020 *Resolution on Temporary Measures to Stabilize the Situation in the Consumer Market*, which requires producers of consumer goods from a number of industries to keep growth of the prices of goods and services under 0.5 percent per month for a period of 90 days.[471] The measure regulates prices (as monitored and enforced by MART) of many commodities from industries not generally subject to regulation (*e.g.*, forestry and construction goods), and, like the other price regulations,[472] applies not only to goods produced by SOEs but to "legal entities of all forms…who produce (import), and/or sell goods for the domestic market."[473]

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[467] GOB, *Law on Price Formation*, (May 10, 1999), Articles 9, 11.
[468] The other two founding signatories are Russia and Kazakhstan, who signed the *EAEU Treaty* that came into force on January 1, 2015.
[469] *EAEU Treaty*, Annex 19, Section 7, Paragraph 81.
[470] IMF, "Belarus Article IV Report," January 2019 at 16.
[471] GOB, *Resolution of the Council of Ministers No. 184 on Temporary Measures to Stabilize the Situation in the Consumer Market*, (March 30, 2020); Belta, "Belarusian government curbs price growth to 0.5% per month," April 1, 2020.
[472] Price regulations for "socially important goods" are imposed on specific groups of commodities, regardless of the legal status of the producing entity (*See* GOB, *MART Resolution No. 30 on Regulating Prices for Socially Important Goods*, (April 15, 2020), Article 1, Paragraph 1). Similarly, the current list of entities occupying a "dominant position" in the market is comprised of legal entities of all kinds but mostly OJSCs, which by law are private entities (*See* Factor 4, Section A).
[473] GOB, "Belarusian government curbs price growth to 0.5% per month," April 1, 2020.

Monetary Policy. "Slowing down inflationary processes" is mentioned in the latest policy guidelines released by the President of Belarus as the primary objective of monetary policy for 2020,[474] which suggests that the GOB's purpose for granting various agencies and ministries the power to regulate prices is generally to maintain price stability and to protect the consumer market.[475] As part of this policy, the NBRB has implemented measures aimed specifically at controlling inflation, and in 2018 introduced an anti-inflation program with the goal of keeping annual inflation under four percent in the medium term (starting in Q4 of 2018),[476] which was later raised to five percent for the period December 2019 - December 2020.[477] The NBRB also states that "ensuring price stability" is its primary long-term objective in carrying out Belarusian monetary policy,[478] and policy documents confirm that such price stability is increasingly being achieved via inflation targeting.[479]

Price Regulation in the Five-Year Plans. Since 1996, when the first PSED for 1996-2000 was announced a few years after independence from the Soviet Union, Belarus has continued its predecessor's practice of centralized economic planning[480] over a five-year period through successive "five year plans."[481] The PSEDs include, among other measures, the mandate for price controls on commodities and services described in the preceding paragraphs. For example, the current PSED for 2016-2020 states that the GOB will continue to directly regulate pricing policies in the five-year period and notes that pricing regulations will also be applied to the energy sector (specifically mentioning fuel, electricity and heat energy as sectors whose prices will be directly regulated).[482] It also outlines industrial policies in a number of industries (*e.g.*, energy, agriculture, and manufacturing) and lays the foundation for 20 national programs to develop priority sectors (*e.g.*, the high tech industry) that will help to achieve the program's goals. The PSED for 2021-2025 is still being drafted and has not yet been finalized as of fall 2020,[483] so the extent to which direct pricing policies or industrial policies will continue in the next planning period is unclear.

B. Developments in the Economy

Depth of Price Regulation. The GOB has expressed a readiness to "narrow the sphere" of direct price regulation in official policy documents,[484] and the IMF has observed a "gradual

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474 GOB, *Edict of the President No. 402 on the Approval of the Republic of Belarus Monetary Policy Guidelines for 2020* (*Edict No. 402*), (October 31, 2019), Chapter 1, Paragraph 2.
475 *See, e.g.*, GOB, *Resolution of the Council of Ministers No. 184 on Temporary Measures to Stabilize the Situation in the Consumer Market*, (March 30, 2020), Preamble.
476 GOB, "New program to counter inflation adopted in Belarus," September 13, 2018.
477 GOB, *Edict No 402*, (October 31, 2019), Chapter 2, Paragraph 6.
478 NBRB, "General Characteristics of Approaches to the Monetary Policy Implementation," 2020
479 *See*, *e.g.*, GOB, *Edict No. 402*, (October 31, 2019), Chapter 2, Paragraph 6.
480 The Soviet Union's use of Five-Year Plans as a framework for economic planning and a central tenet of industrial development dates back to the early Stalinist period and continued until its dissolution in 1991 (*See* BBC, "Stalin's Five-year Plans," 2020; *see also* CIA, "The Soviet Economy in 1988: Gorbachev Changes Course," 1989).
481 GOB, "1991-2006 Planning Committees reorganization during years of independence," 2020.
482 GOB, *2016-2020 PSED*, (December 15, 2016), Article 5.2.
483 GOB, "Working group to draft Belarus' social, economic development program for 2021-2025," March 31, 2020.
484 GOB, "State antimonopoly policy in the Republic of Belarus," 2020.

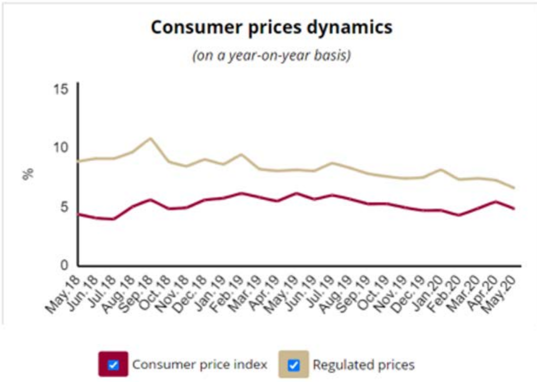
liberalization of prices" over the past decade[485] (down from 50 percent of the CPI in 2011[486]). Nevertheless, in 2019, legally regulated prices in Belarus, which still include many of the goods and services in the industries listed in the *Decree on Price Regulation*, as well as prices for the groups of commodities listed in the *Law on Price Formation* and the other product groups regulated by occasional legislation, account for nearly 20 percent of Belarus' CPI, according to the IMF's latest estimate.[487]

Price Regulation by Multiple Agencies. The GOB's use of inflation targeting as an instrument of monetary policy is not contrary to market principles and was in fact welcomed by the IMF in its 2019 Article IV Report on the Belarusian economy.[488] In that report, the IMF also credited the GOB's adoption of "prudent" monetary policy reforms for reducing inflation to "historically low" levels[489] (down from over 100 percent annually in 2011 to 4.7 percent annually in January 2020).[490] However, the fact that measures aimed at price stability and controlling inflation are carried out by multiple agencies throughout the government instead of a single authority reduces the effectiveness of the measures and weakens monetary transmission channels.[491]

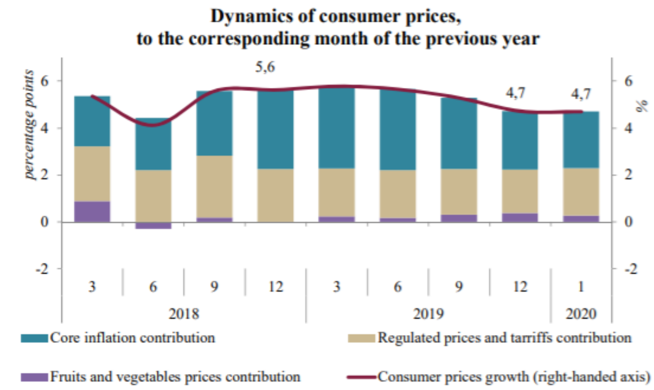
Effects of Price Controls. The IMF Article IV Report notes that the continued existence of regulated prices in Belarus "distorts market signals." The distortion also affects the output decisions of enterprises by "putting pressure on firms' bottom line."[492] In the case of SOEs, distortions to output result in substantial GOB support, which as recently as 2015 totaled 9.5 percent of GDP.[493] The effect that regulated prices and the GOB's decentralized (*i.e.*, via multiple government agencies) efforts to control inflation and achieve price stability have on CPI growth is illustrated on the next page in two figures published by the NBRB.[494] The NBRB data in Figure 2 show that regulated prices grew faster than the CPI by roughly two to five percentage points (which appears inconsistent with the GOB's stated objective in the PSED of slowing down the inflationary process)[495] while Figure 3 shows that regulated prices still account for nearly half of overall growth in Belarus' CPI despite the introduction of a program to combat inflation in 2018.[496]

[485] IMF, "Belarus Article IV Report," January 2019 at 16.
[486] IMF, (Country Report No. 15/137), "Republic of Belarus: Selected Issues," May 2015 at 9.
[487] IMF, "Belarus Article IV Report," January 2019 at 16.
[488] *Id.* at 5.
[489] *Ibid.*
[490] NBRB, "Inflation Review," 2020; For comparison, the global average annual inflation rate was 2.3 percent in 2019, according to the World Bank (*See* World Bank, "Inflation, consumer prices (annual %)," 2019).
[491] IMF, (Country Report No. 19/10), "Republic of Belarus: Selected Issues," January 2019 at 7-8; *see also* IMF, "Belarus Article IV Report," January 2019 at 10.
[492] IMF, "Belarus Article IV Report," January 2019 at 16.
[493] Alex Kremer (World Bank), "Why economic reforms in Belarus are now more urgent than ever," June 26, 2019.
[494] NBRB, "Inflation Review," June 2020.
[495] GOB, *Edict No. 402*, (October 31, 2019), Chapter 1, Paragraph 2.
[496] NBRB, "Inflation Review," 2020.

Figure 2: **Figure 3:**



Source: National Bank of the Republic of Belarus



Source: the National Bank's calculations based on the National Statistical Committee's data

Energy Prices. Energy prices in Belarus are mostly sold at below-market rates, and thereby cause distortions to economic activity. As mentioned in Section A, economy-wide regulation of energy prices is prescribed in the current PSED (2016-2020), with the GOB's original authority to regulate prices in the energy sector stipulated in the *Decree on Price Regulation* (including, with exceptions, most petroleum prices).[497] According to that decree, while MART is the regulatory authority for most of the energy sector (including the prices of transportation of all energy products through pipelines), prices of petroleum products (imported and domestic) are regulated by the fully state-controlled Belarusian State Concern for Oil and Chemistry (Belneftekhim), Belarus' largest petrochemical conglomerate.[498] Furthermore, even though the legal acts above already mandate price regulation in the entire energy sector, a number of energy companies also appear in the latest list of entities occupying a dominant position in the market (and whose products therefore have regulated prices), including the following enterprises:

- Belarus' only two oil refineries: OJSC Naftan (fully state-owned[499]) and OJSC Mozyr Oil Refinery (in which the GOB and two Russian-government owned entities are the primary shareholders[500]);
- OJSC Gasprom Transgas Belarus, the Russian-owned operator of the Russia-Belarus natural gas pipelines and principal provider of natural gas in Belarus[501] (through its regional subsidiaries, which are also on the list); and
- Several (nominally private) electrical and heat energy providers in each of Belarus' six administrative regions (plus Minsk City).[502]

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[497] GOB, *Decree of the President No. 72 on Some Issues of Prices/Tariffs Regulation in the Republic of Belarus,* (February 25, 2011), Annex 1.
[498] U.S. Department of the Treasury, "Treasury Targets Lukashenko-controlled Petrochemical Conglomerate," November 13, 2007.
[499] GOB, "Chemicals and Petrochemicals case studies in Belarus," 2020.
[500] Slavneft, "OAO Mozyr Overview," 2020.
[501] Export.BY, "Gazprom Transgaz Belarus seeking provider of marketing research services," March 14, 2019.
[502] GOB, "State Register of Economic Entities Dominating in Product Markets of the Republic of Belarus," March 21, 2019.

Natural gas and oil are the main sources of energy in Belarus, accounting for approximately 62 percent and 29 percent of domestic supply, respectively.[503] Yet Belarus produces only roughly one percent of the natural gas and 20 percent of the oil it consumes,[504] while importing the rest (mostly from Russia, its largest trading partner accounting for over half of total imports to Belarus in 2019[505]). Since its independence, Belarus has been highly dependent on discounted oil and gas imports from Russia[506] in what amounts to an "implicit subsidy" that the IMF noted in 2019 has halved since 2008 but remains "very substantial."[507] In 2018, the total value of the benefit from Russian energy imports (which includes duty free quotas as well as price discounts on crude oil and natural gas[508]) totaled roughly 13 percent of Belarus' GDP.[509] Disputes with Russia in 2004, 2010 and 2019 resulted in temporary halts in supply, and negotiations for long-term continuation of the discounted energy imports are ongoing, but the current framework for discounted imports from Russia is still in place in the short term through 2020.[510] The provision of energy at non-market prices has contributed to macroeconomic vulnerabilities in the Belarusian economy and has left the country vulnerable to shocks.[511]

C. Assessment of Factor

Belarus' legal regime for price regulation, although liberalized in recent years, still includes products in many sectors not commonly subject to regulation in market-based systems (*e.g.*, household items, the cost of home repairs, and funeral services, among many others). Energy prices in Belarus are almost entirely regulated. Because energy is an important input to production of many commodities, distortions in its price ripple throughout the economy. Furthermore, the President's authority to intervene at his discretion and temporarily set prices in any sector on an *ad hoc* basis has allowed for frequent temporary price controls that are implemented arbitrarily and not solely in exceptional cases, (*e.g.*, in response to natural disasters) as required by EAEU law.

Price distortions are evident throughout the economy, although it is unclear, despite the PSED and other GOB policy documents mentioning inflation control as the primary objective of administered pricing, whether these regulations keep prices artificially above or below what they would be if they were determined by the market. It is clear, however, that prices in the state-dominated energy sector are kept well below market levels. Furthermore, the analysis in the IMF report makes clear that the GOB's decentralized inflation control measures exacerbate the price distortions and reduce the effectiveness of its efforts. In addition to controlled prices, the blueprint for economic growth (including price controls in specific sectors) and industrial policies outlined in the five-year plans suggest that the GOB is still actively involved in

[503] Belstat, "Infographic - Energy balance of the Republic of Belarus 2018," 2018.
[504] *Ibid*.
[505] Belstat, "Distribution of commodity imports by major trading partner countries in 2019," 2019.
[506] Reuters, "Factbox - Russia's oil and gas disputes with Belarus," December 31, 2019.
[507] IMF, "Belarus Article IV Report," January 2019 at 38.
[508] *Id.* at 6 (Box 1).
[509] *Id.* at 38.
[510] Congressional Research Service, "Belarus: An Overview," May 19, 2020; Stuart Elliott, (S&P), "Gazprom ready to talk 2021 gas supply with Belarus subject to 2020 deal 'compliance,'" June 8, 2020.
[511] IMF, "Belarus Article IV Report," January 2019 at 4.

economic planning and output regulation. Therefore, Commerce finds that GOB control over resource allocation and pricing decisions in Belarus is significant and far-reaching.

<u>Factor 6:</u> SUCH OTHER FACTORS AS THE ADMINISTERING AUTHORITY CONSIDERS APPROPRIATE

Under this factor, Commerce is mandated to address any additional issues relevant to its consideration of NME status. In Part A, Commerce considers the extent to which weak rule of law and corruption exist in Belarus. In Part B, Commerce analyzes the status of Belarus' bid to join the WTO and assesses the causes that have slowed down the accession process. Finally, Part C discusses Commerce's assessment of other factors that have affected market and non-market activity in Belarus.

A. Adherence to the Rule of Law

<u>Rule of Law.</u> The U.S. Department of State characterizes the state of Belarus' adherence to the rule of law as "deficient," and describes further how the opaque legal and regulatory systems create a "challenging business environment."[512] *The Economist* notes that the presidential elections, which are "neither free nor fair,"[513] are an example of how weak rule of law in Belarus is systemic and institutionalized. The Organization for Security and Co-operation in Europe (OSCE), the world's largest regional security organization,[514] which counts Belarus among its members,[515] has sent a mission to observe every Belarusian presidential election since 2001.[516] Findings after each election have been generally consistent, and, most recently, in its report after the presidential election in 2015, the mission concluded that the legal framework still does not guarantee the conduct of elections in line with international standards and that "legal shortcomings limit the free expression of the will of voters," citing specifically to "significant problems, particularly during the counting of votes and tabulation of election results," that "undermined the integrity" of the election.[517]

On August 9, 2020, incumbent president Alexander Lukashenko was elected to a sixth term in office.[518] In a statement released the following day, the U.S. Department of State expressed "deep" concern about the conduct of the presidential election, noting restrictions in ballot access for candidates, intimidation tactics against opponents, and prohibition of independent observers at polling stations, among other issues, as contributing factors that "marred" the election process.[519]

<u>Corruption.</u> Transparency International ranked Belarus the 66th least corrupt country out of 198 countries in its Corruption Perceptions Index in 2019, noting that it performed strongly when

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[512] U.S. Department of State, "U.S. Relations with Belarus," 2020.
[513] EIU, "Belarus Country Report," June 2020 at 10 (Election Watch).
[514] OSCE, "Who we are," 2020.
[515] OSCE, "Participating States," 2020.
[516] OSCE, "Elections in Belarus," 2020.
[517] OSCE, "Belarus Presidential Election - OSCE Election Observation Mission Final Report, Executive Summary," October 11, 2015.
[518] BBC, "Belarus elections-Shocked by violence, people lose their fear," August 13, 2020.
[519] U.S. Department of State, "Presidential Elections in Belarus: Press Statement," August 10, 2020.

compared to many of its regional peers (Eastern Europe and Central Asia).[520] The ranking was based on Belarus' score of 45, on a scale where 0 is "highly corrupt," and 100 is "very clean,"[521] suggesting that Belarus' ranking should not be construed as evidence that it has low levels of corruption but rather that it is relatively less corrupt than many other former Soviet Union countries.[522] In 2019, the Council of Europe's anti-corruption monitoring body, GRECO,[523] made an "unprecedented move" when it publicly announced that Belarus was non-compliant with its anti-corruption standards.[524] The report that prompted the decision found that corruption in Belarus was "systemic," especially in government, and "particularly alarming higher up in the hierarchy and {in} state-run enterprises."[525] Only four of the 24 recommendations GRECO provided to Belarus in 2001 (when it joined GRECO) for strengthening its anti-corruption regime were satisfactorily implemented as of 2019. These did not include the recommendations calling for an independent judiciary or for the decentralization of power and influence within the executive branch.[526]

B. Belarus' Accession to the WTO

Belarus is currently an observer at the WTO and a Working Party for Belarus' accession to the organization (the first step in the accession process) was formed in October 1993.[527] Accession negotiations are ongoing, and in the most recent WTO update, while some Members lauded the recent presence of GOB decision-makers and high ranking officials at the negotiation table, which indicated an increased "engagement" on behalf of the GOB, other negotiators expressed concern at the status of negotiations and pointed to the "limited appetite for trade liberalizing reforms," including the implementation of market-oriented policies, as considerable obstacles in the negotiation process.[528] Transparency issues and continued market access restrictions were also cited as factors inhibiting progress in Belarus' accession bid.[529] The consensus from WTO Members in early 2019 was that "significant progress" would be necessary in order for Belarus to achieve its "ambitious" goal of acceding by summer 2020[530] — a goal that as of the drafting of this memorandum Belarus has failed to reach.[531] If Belarus is able to join the WTO, its accession process will have lasted (at least) seven years longer than the accession process of any

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[520] Transparency International, "Our work in Belarus," 2019.
[521] Transparency International, "Eastern Europe & Central Asia- Weak Checks and Balances Threaten Anti-Corruption Efforts," 2019.
[522] *Ibid.*
[523] Though a sub-entity of the Council of Europe (CoE), GRECO membership is open to non-CoE member countries. Belarus is a member of GRECO, but it is also one of three European countries (with Kazakhstan and the Vatican City) who are not members of the CoE.
[524] CoE, "GRECO publicly declares Belarus non-compliant with the CoE anti-corruption standards," March 19, 2019.
[525] CoE, "Joint First and Second Evaluation Rounds - Public declaration of non-compliance in respect of Belarus," March 19, 2019 at 3.
[526] *Id.* at 3; CoE, "Republic of Belarus - Joint First and Second Evaluation Rounds," February 3, 2014, Paragraph 274, x, xi, and xv.
[527] WTO, "Belarus," 2020.
[528] WTO, "Belarus reaffirms intent to complete WTO accession by next Ministerial Conference," July 11, 2019.
[529] *Ibid*.
[530] WTO, "Belarus sets out ambitious target of WTO accession by next Ministerial Conference," February 15, 2019.
[531] Commerce acknowledges that throughout 2020 Belarus' accession negotiations at the WTO have likely been delayed in part due to the COVID-19 pandemic.

other current member (the average length of the process is slightly over 10 years).[532] As of July 2020, a Draft Working Party Report has not been adopted and Belarus is still carrying out technical negotiations on both a multilateral and bilateral basis.[533]

C. Assessment of Factor

Third-party reports express concern about the rule of law in Belarus. In addition, the causes for delay in Belarus' WTO accession process are concerning and may be due to factors under the GOB's control. The GOB's continued reluctance to implement the needed liberalizing reforms, as noted by other WTO members in 2019 during Belarus' most recent Working Party meeting, indicates that the delay is likely due to a continuing resistance to establish the framework necessary for market-based economic conditions. Members have also raised concerns in this context about the GOB's transparency in this regard. Considered in the broader context of this report, the issues identified in this section are consistent with the findings for the other five factors and characterize an economy dominated by state intervention and control.

VI. FINAL ASSESSMENT

Although section 771(18)(B) of the Act enumerates six factors that Commerce must consider in determining whether a country operates on market principles, the statute provides no direction or guidance with respect to the relative weight that should be placed on each factor in assessing the overall state of the economy. Therefore, Commerce considers whether the facts, as applied to the statutory factors, demonstrate that the economy is generally operating under market principles.

Belarus' official exchange rate regime was historically managed by the GOB but today is largely free floating, and a general absence of current account controls generally allow BYN convertibility for export-based and other current account transactions. Nevertheless, numerous restrictions in the capital account remain, preventing the BYN from being fully convertible for all foreign exchange transactions. Furthermore, limitations on participation in the foreign exchange market and regulations guiding the use of the official exchange rate in foreign exchange transactions restrict variability (*i.e.*, fluctuations with the market) of the rate in practice and lead to uniformity of exchange rates among licensed currency dealers.

The labor market is subject to a tariff system that regulates remuneration for roughly a fifth of Belarus' work force, yet in practice most employers in the private sector use the tariff system as a basis for setting wages, resulting in administratively set wages in most sectors of the economy. Furthermore, the GOB's suppression of dissent and freedom of expression have allowed the GOB to restrict workers' ability to participate in labor unions and organize strikes. These restrictions are in line with more general GOB efforts to limit opposition to GOB leadership (*e.g.*, during presidential elections). The tariff system leads to little wage differentiation in regions and sectors across the country, despite vastly different levels of employee productivity.

Restrictions on foreign investors' access to the Belarusian market have been considerably

[532] WTO, "Module 1 - An Overview of the WTO Accession Process," 2020.
[533] WTO, "Belarus," 2020.

reduced in the last decade, yet current data show stagnant FDI inflows into Belarus (including in free economic zones offering generally favorable conditions to investors). The lack of increased inflows indicates that the reforms have done little to increase foreign participation in an economy that greatly favors the state sector and in which corruption and a weak rule of law prevail.

The GOB still owns most economic assets in Belarus, and SIEs, the largest of which are headed by GOB cabinet members, are dominant in many key sectors, including manufacturing, agriculture, and energy. Prices are set administratively in each of these sectors (among many others), and other mechanisms and occasional temporary legislation regulate prices of goods not generally subject to price setting in market economies, leading to disproportionate price growth in sectors with regulated prices. Likewise, the state-controlled financial sector allocates credit disproportionally to SIEs and often does so on preferential terms, distorting the lending market, and resulting in a high percentage of NPLs. Reforms have led to limited liberalization, as evidenced by recent negotiations on Belarus' accession to the WTO, yet the GOB has shown a reluctance to curb the state's influence in economic outcomes and has yet to divest from its holdings to an extent that would allow enterprises and entities to make independent decisions relating to pricing, output, and resource allocation.

In considering the *de jure* and *de facto* conditions characterizing the Belarusian economy in the context of the six criteria analyzed in this memorandum, Commerce has determined that Belarus remains an NME country under the U.S. antidumping and countervailing duty laws.

VII. RECOMMENDATION

Based on our analysis, we recommend adopting the above positions in these final results. If this recommendation is accepted, we will publish the final results of the reviews in the Federal Register.

☒	☐
Agree	Disagree

10/16/2020

X

Signed by: JEFFREY KESSLER