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To: The Office of the United States Trade Representative (USTR)

Docket No: USTR-2026-0067

From: Scott Lincicome (Vice President of General Economics and Trade, Cato Institute); Chad Smitson (Research Associate, Cato Institute)

Subject: Section 301 Investigations of Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors

I. Introduction

We hereby submit comments on the above-captioned investigations initiated by the Office of the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974 (19 U.S.C. §§ 2411-2420).[1] These comments explain the evidence and analysis that are required to impose remedial measures in response to "structural excess capacity" (SEC) in the foreign economies under consideration. We primarily focus on capacity utilization and other related evidence of structural excess capacity, leaving the examination of alleged macroeconomic indicators, such as a nation's trade balance, to other submissions.[2] **As our comments make clear, USTR faces significant evidentiary and methodological challenges to demonstrate that remedial measures are necessary and lawful in this case**.

Section II outlines the evidentiary framework USTR must employ to impose remedial tariffs or other government restrictions on U.S. trade and/or investment. Section III discusses the limitations of various capacity utilization data, and Section IV addresses USTR's proposed 80 percent utilization benchmark, as well as the incomparability of capacity utilization data across different economies. Section V concludes and is followed by annexes containing additional data and evidence for the record in these investigations.

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[1] *Initiation of Section 301 Investigations: Acts, Policies and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,* Office of the United States Trade Representative, *available at*: https://ustr.gov/sites/default/files/files/Press/Releases/2026/USTR%20301%20FRN%20Industrial%20Excess%20Capacity%20Final.pdf. Excerpts are provided in **Annex 1** (hereafter, the "Initiation Notice").

[2] *See*, *e.g.*, Comments of Emily Blanchard, Kyle Handley, and Stan Veuger. USTR-2026-0067-00126067, *available at:* https://comments.ustr.gov/s/commentdetails?rid=HJGQYDQD2B.

II. The Imposition of Remedial Measures Offsetting "Structural Excess Capacity" in a Foreign Market Requires a Long-Term, Industry-Specific Analysis Establishing a Causal Link Between Government Policies, Appropriate Economic Indicators, and Harm to the U.S. Economy

The Initiation Notice does not provide a single, authoritative definition of SEC but asserts without citation that the phenomenon "has been characterized generally as underutilized industrial production capacity that is sustained through governmental interventions or policies incentivizing companies to maintain or grow their unused capacity inefficiently."[3] Similar descriptions of SEC are offered throughout the Initiation Notice and are excerpted in **Annex 1** to this submission. Based on these descriptions and the text of Section 301 itself, an affirmative determination of SEC in a certain market and the subsequent imposition of tariffs or other remedial measures require USTR to affirmatively establish four distinct elements in each foreign market under investigation: (1) long-term, industry-specific evidence of excess production capacity and other possible indicators of SEC; (2) evidence of non-market government policies specifically tied to SEC; (3) evidence of direct harm to the U.S. manufacturing industries at issue; *and* (4) causal links between these three elements.

We address each requirement below.

First, long-term, industry-specific evidence is crucial for establishing the existence of SEC for several reasons. Many macro- and microeconomic phenomena can depress capacity utilization in an industry or economy or generate other SEC-like indicators[4] over a relatively short period.[5] In theory, any excess capacity may be considered inefficient because capital is going unused. In reality, however, excess capacity is typical, ubiquitous, and almost inevitable in any large, modern, market economy. Businesses might, for example, rationally operate at less-than-maximum capacity so that they may stay flexible in the face of large supply or demand shocks. Routine seasonal, maintenance, labor, or other factors might also cause a company to idle production for a certain period.[6] As pointed out by our colleagues Emily Blanchard, Kyle Handley, and Stan Veuger in their

[3] Initiation Notice, page 3.

[4] According to USTR, in addition to low long-term capacity utilization, evidence of SEC might include trade in goods surpluses and firm profitability (page 6 of the notice). As discussed in other submissions on the record, the availability, dependability, and relevance of some of these data points are questionable.

[5] Bauer, Paul W. & Mary E. Deily, *Measuring the Unseen: A Primer on Capacity Utilization*. Federal Reserve Bank of Cleveland, 1988, *available at:* https://fraser.stlouisfed.org/title/economic-commentary-federal-reserve-bank-cleveland-4515/measuring-unseen-495398.

[6] Dixit, Avinash. *Entry and Exit Decisions Under Uncertainty*. Journal of Political Economy, 97 no. 3, 1989, *available at:* https://www.jstor.org/stable/1830458?seq=1.

separate submission to USTR, "low capacity utilization has many causes that have little to do with government policy: demand shifts and sometimes falls, while capital investment is lumpy, i.e., capacity is built in large discrete increments, often ahead of anticipated demand."[7] This "cyclical excess capacity" stands in contrast to artificial, or "structural," excess capacity.

Record evidence in this investigation – and any published affirmative final determination[8] – must therefore demonstrate a sustained, long-term break from the production capacity trends caused by normal market factors. USTR itself acknowledges this in the Initiation Notice, for example by noting "persistent" evidence of SEC *eighteen* separate times.[9]

The supporting data on record also must be industry specific. As discussed in Section IV below, standards for what is realistically considered "full" or "excess" capacity vary widely by industry. A utilization rate of 80 percent or even 90 percent, for example, might be considered depressed in one industry but abnormally high in another. Using a single national benchmark for both would be nonsensical, misleading, and thus unlawful.[10]

At a theoretical level, moreover, it is impossible for a government to sustain "excess capacity" in every industry: "Resources cannot be diverted into, say, the steel industry without being diverted away from other industries – say, the aluminum and electronics industries – thus causing capacity in those other industries to be inadequate."[11] Finally, economy-wide evidence of overcapacity might be owed to a few large industries' systemic underperformance, hiding the fact that several smaller industries in that same economy are operating at normal, healthy capacity levels (elaborated in Section IV). This is particularly an issue for less-diversified economies that depend heavily on a single industry, such as oil and gas or semiconductors.[12]

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[7] Comments of Emily Blanchard, Kyle Handley, and Stan Veuger. USTR-2026-0067-00126067, *available at:* https://comments.ustr.gov/s/commentdetails?rid=HJGQYDQD2B.

[8] *See* 19 U.S.C. § 2414(c) ("The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1), together with a description of the facts on which such determination is based.").

[9] Initiation Notice, pages 1, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15.

[10] Reputable economists agree with this conclusion in the current investigation. *See* Comments of Emily Blanchard, Kyle Handley, and Stan Veuger. USTR-2026-0067-00126067, *available at:* https://comments.ustr.gov/s/commentdetails?rid=HJGQYDQD2B.

[11] Boudreaux, Don, *More on How Excess Capacity = Inadequate Capacity*, Café Hayek, 2026, *available at:* https://cafehayek.com/2026/03/more-on-how-excess-capacity-inadequate-capacity.html.

[12] Examples in 2025 include Norway, for which oil & gas makes up 62.2 percent of exports; and Taiwan and Singapore, for which semiconductors & electronics make up 80.4 and 58.8 percent respectively. Workman, Daniel, *World's Top Exports*, 2025, *available at:* https://www.worldstopexports.com/.

For these reasons, national data allegedly indicating SEC would be insufficient – something USTR has again acknowledged in the Initiation Notice when repeatedly identifying more than 20 different industries that may be experiencing SEC in the foreign markets under investigation.[13]

Second, USTR must provide proof of specific government policies directly linked to SEC. Under the statute, the U.S. government may take remedial action only in response to an "unjustifiable" or "unreasonable or discriminatory" foreign government act, policy, or practice.[14] As already noted, cyclical overcapacity is common in healthy, market economies with limited government intervention. The economics literature[15] also establishes that there are many natural, market-based reasons why a country could have, in USTR's words, "productive capacity that outstrip[s] their domestic demand"[16] and might therefore export more than it imports (resulting in a trade surplus). These market factors include business cycles, recessions, new domestic competition, poor business decisions, scheduled and unscheduled downtime, natural disasters, and other common phenomena that have essentially nothing to do with government policy.

There are *also* many government economic policies – fiscal, monetary, regulatory, trade, etc. – that might depress demand and/or boost investment in a certain domestic industry and thus indirectly or unintentionally result in a sustained bout of overcapacity in an industry or industries. A government, for example, might enact onerous public health regulations to discourage cigarette smoking, and the resulting collapse in domestic demand could cause the local tobacco industry to suffer from overcapacity and low profitability (and generate a sustained trade surplus by selling excess production abroad at a loss). Yet such policy cannot possibly be argued to be – as required by the statute – an "unreasonable," "discriminatory," or "unjustifiable" one that is intended to create SEC!

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[13] Initiation Notice, page 6: ("aluminum, automobiles, batteries, cement, chemicals, electronics, energy goods, glass, machine tools, machinery, non-ferrous metals, paper, plastics, processed food and beverages, robotics, satellites, semiconductors, ships, solar modules, steel, and transportation equipment.").

[14] 19 U.S.C. § 2411(b) (authorizing discretionary action by the U.S. Trade Representative).

[15] Dixit, Avinash. *Entry and Exit Decisions Under Uncertainty.* Journal of Political Economy, 97 no. 3, 1989, *available at:* https://www.jstor.org/stable/1830458?seq=1; also, *see* Federal Reserve's Industrial Production and Capacity Utilization dataset's (hereafter referred to as "G.17") Bibliography for literature influencing its methodology / capacity utilization framework, which recognizes that rates vary with demand cycles, maintenance, scheduling, and other market factors, *available at:* https://www.federalreserve.gov/releases/g17/Bib/BibCap.htm.

[16] Initiation Notice, page 8: ("The United States is the global consumer market of last resort, and economies with productive capacity that outstrip their domestic demand tend to send overproduction to the United States, directly or indirectly through third countries.").

Economics, common sense, and the law therefore require USTR to establish the existence of government policies directly linked to SEC. The agency also recognizes this requirement when listing the types of "policy interventions" that lead to SEC, naming examples such as subsidies, currency intervention, sterilization of foreign exchange flows, and cash incentives for exporting.[17] An affirmative determination must identify these kinds of policies, not simply point to random government interventions that have little, if anything, to do with the economic data on the record.

Third, USTR must find evidence of direct harm to U.S. firms in the industry or industries under examination. The statute permits retaliatory action only against the act of a foreign government that "burdens or restricts" U.S. commerce.[18] Yet the mere existence of excess capacity in an overseas industry does not automatically establish such burden or restriction, *i.e.*, that U.S. firms in the corresponding industry have suffered clear, material harm to their business. Evidence of such harm might include reduced sales, exports, production, employment, productivity, or profitability in a specific industry or firm over the duration of the period examined. It cannot be simple assertions of industry harm based on aggregate national manufacturing data.

USTR has generally acknowledged this evidentiary requirement in the Initiation Notice. For example, the agency states that the current investigation is based on allegations that "structural excess capacity and production in manufacturing sectors presents a serious challenge to U.S. efforts to re-shore supply chains and provide good-paying jobs for American workers."[19] The agency repeatedly stated elsewhere that the case is intended to stop SEC that has supposedly harmed U.S. manufacturing. Real evidence of harm is therefore an obvious prerequisite to imposing such a remedy; the harm cannot be assumed.[20]

Finally, **USTR must establish conclusive causal links between all three elements above.** The statute permits remedial actions only in response to a (1) foreign country act, policy, or practice that (2) burdens or restricts U.S. commerce.[21] There must be, in other

[17] Initiation Notice, page 17.

[18] 19 U.S.C. § 2411(b).

[19] Initiation Notice, page 3.

[20] USTR implies that a decline in the U.S. manufacturing sector's share of GDP (value added) is evidence of injury, but this is a misleading and erroneous metric. Real manufacturing value added is at an all-time high, and the sector's share has declined only because the services sector has grown at an even faster rate. This is not evidence of U.S. manufacturing decline. *GDP by Industry,* Bureau of Economic Analysis, *available at:* https://www.bea.gov/data/gdp/gdp-industry.

[21] 19 U.S.C. § 2411(a) (Mandatory Action).

words, a clear, causal connection between the identified policy and the identified harm to U.S. commerce. This is consistent with previous Section 301 investigations, including ones completed under President Trump.[22]

In this case, USTR must establish that foreign government policies caused SEC (as indicated by long-term, industry-specific data), and that this SEC – via years of exports beyond that demanded by domestic and global consumers – caused harm to U.S. manufacturers, workers, industry, and/or trade. This causation is essential, otherwise USTR would merely be cherry-picking disparate, unrelated statistics to reverse-engineer new U.S. trade restrictions. Once again, the agency acknowledges this causal requirement throughout the Initiation Notice.[23]

While there is no settled definition of SEC, economists generally agree with the above analytical framework.[24] Market-driven excess capacity is common and unremarkable, and an economy will always have some slack resources when domestic or global demand declines. This is normal but also temporary: when production exceeds demand, supply is gradually drawn down, and equilibrium eventually returns. "Structural" excess capacity is fundamentally different because slack results from non-market government policies and thus does not adjust in response to significant, long-term changes in global demand. Structural overcapacity is "persistent" precisely because market signals — falling prices, declining profitability, etc. — fail to trigger capacity cuts that would normally occur in a competitive market. SEC happens when government policy causes domestic companies to maintain or expand unused capacity without regard to the financial consequences that would ordinarily discipline firms in a less interventionist market economy.

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[22] *See, e.g.*, *Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974,* Office of the United States Trade Representative, 2018, *available at:* https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF at pages 45, 60, 150, 173, 181 (finding causal links between (1) Chinese government trade, industrial, and technology policies under investigation; (2) various record data on trade, production, investment, and related factors; and (3) documented harm to U.S. innovation, technology companies, and related industries and markets).

[23] Initiation Notice, page 18: ("USTR invites comments regarding: …The acts, policies, and practices of each investigated economy creating or maintaining structural excess capacity or production in specific sectors, …Whether the acts, policies, and practices burden or restrict U.S. commerce, and if so, the nature and level of the burden or restriction.").

[24] *See, e.g.*, Sun, Tiancheng. *Excess Capacity and Demand-Driven Business Cycles*. The Review of Economic Studies, Volume 92, Issue 4, 2025, *available at:* https://doi.org/10.1093/restud/rdae072; & Emmons, Garry. *Too Much of a Good Thing?* Harvard Business School, 1999, *available at:* https://www.alumni.hbs.edu/stories/Pages/story-bulletin.aspx?num=5416.

This is what USTR must uncover in the current investigation so that it may impose tariffs or other remedial measures in response.

III. Publicly Available Data Do Not Support the Imposition of Remedial Measures Targeting SEC

Publicly available data are limited but do not support the finding of SEC in many of the targeted economies.[25] For example, of the eight OECD economies under investigation and reporting comparable data (Switzerland, Norway, the European Union, China, Mexico, Indonesia, Thailand, Malaysia),[26] four – the EU, Norway, Switzerland, and Malaysia – have higher nationwide manufacturing capacity utilization rates than the United States' rate over both the short and long terms. Two others, China and Mexico, have long-term utilization rates that – pandemic recession aside – hovered within 2 percentage points of the U.S. utilization rate and occasionally exceeded it. Only two economies reporting comparable data (Thailand and Indonesia) had capacity utilization rates that could be considered low by U.S. standards (see **Figures 1, 2, 3** in **Annex II** for national level utilization rates).[27]

As noted above, however, capacity utilization – especially at the national level – in isolation is of limited value when assessing the existence of governmnet-driven SEC. We can see this when examining the relationship between an economy's overall manufacturing capacity utilization rate and either its level of government economic intervention or its trade balance.

- **Economic intervention.** When comparing an economy's capacity utilization rate with its score in the Fraser Institute's Economic Freedom Index (EFI)[28] – a widely-accepted measure for government economic interventions – there is essentially no relationship between the two factors (see **Figures 6 - 16** in **Annex II** for country-specific scatterplots of EFI and manufacturying capacity utilization rates). In most of the economies examined, manufacturing capacity utilization changes substantially over the period examined[29], but EFI scores remain steady. This non-relationship

[25] The full dataset is provided in **Annex III.**

[26] While not members of the OECD, Thailand (OECD candidate in the process of joining) and Malaysia report comparable national utilization rates.

[27] These economies, of course, are radically different than the U.S. economy in numerous respects. Simplistically comparing them to the U.S. thus raises other methodological concerns that USTR must consider.

[28] Fraser Institute Economic Freedom Index, *available at:* https://efotw.org/?geozone=world&page=map&year=2023.

[29] Most countries are analyzed over 2000 – 2023, with gaps in data emphasizing lack of availability / consistency of utilization rate data.

warns against using nationwide capacity utilization and governmnet intervention metrics to determine the existence of SEC.

- **Trade balance.** In their comments on the record, economists Blanchard, Handley, and Veuger conduct a rigorous analysis of both the capacity utilization rate and trade balance of several economies currently under investigation. They find that the two variables have "no statistically significant relationship," and that "if anything, the estimates run in the direction opposite" to the one posited in the Initiation Notice: "economies with larger trade surpluses tend to exhibit higher, not lower, capacity utilization rates."[30] This non-relationship again cautions against a determination that SEC exists in an economy simply because it has a relatively low manufacturing capacity utilization rate and a trade surplus. More evidence is needed.

The data also urge caution when considering, as the Initiation Notice indicates, firm profitability as evidence of structural excess capacity. [31] A commonly used proxy of overall profitability is dividing gross operating surplus by value added from manufacturing. [32] Examining this ratio for the economies under investigation demonstrates not only that firms in several countries appear to be more profitable than those in the U.S., but also that the ratios are remarkably steady over a multi-decade period and thus likely insulated from changes in government policy (see **Figure 4** in **Annex II**). Leaving aside that firm profitability is affected by a variety of specific, market-based factors at the micro- and macroeconomic levels, these data show why USTR cannot use a snapshot of nationwide aggregate manufacturing profitability data to find the existence of SEC in a certain market.

IV. USTR's 80 Percent Capacity Utilization Benchmark is Arbitrary and Not Generalizable

In the Initiation Notice, USTR asserts that "global manufacturing capacity utilization remains between 75.0 and 75.9 percent, below healthy utilization rates for many sectors of approximately 80 percent." [33] However, the source of USTR's 80 percent utilization rate benchmark is highly questionable, and the rate itself is not useful across industries and economies.

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[30] Comments of Emily Blanchard, Kyle Handley, and Stan Veuger. USTR-2026-0067-00126067, *available at:* https://comments.ustr.gov/s/commentdetails?rid=HJGQYDQD2B.

[31] Initiation Notice, pages 5, 7.

[32] Bureau of Economic Analysis, *Guide to the Interactive GDP-by-Industry Accounts Tables, available at*: https://www.bea.gov/resources/guide-interactive-gdp-industry-accounts-tables.

[33] Initiation Notice, page 3.

As discussed in Section I, most firms normally operate well below a 100 percent capacity utilization rate, and deviations from industry norms are common.[34] There is, however, no single rate that is considered "healthy," and USTR's own source for this benchmark is unsound. In particular, the agency bases its benchmark in this case on a February 2025 presidential proclamation[35] concerning the Section 232 investigation of steel products. That proclamation, in turn, cites statements by the Department of Commerce (in reports from January 2018[36] and July 2020[37]) that the *U.S. steel industry* is "typically" profitable when operating at or above 80 percent utilization.[38] This cannot be said to apply to non-steel industries.

Even for the steel industry, however, the benchmark is questionable. The Commerce reports base the 80 percent figure on just three news articles that cannot be considered authoritative – even for the U.S. steel industry, no less every manufacturing industry in the world. One cited article, from personal finance website Market Realist in 2014, simply asserts that unnamed "analysts" believe that "the profitability of steel companies is negatively impacted if plants operate at less than 80% utilization rates," while offering no

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[34] The Federal Reserve treats 100 percent utilization as abnormal, *see* Federal Reserve G.17 notes, *available at:* https://www.federalreserve.gov/releases/g17/CapNotes.htm.

[35] *Adjusting Imports of Steel into the United States*, Executive Office of the President, accessed via Federal Register, *available at:* https://www.federalregister.gov/documents/2025/02/18/2025-02833/adjusting-imports-of-steel-into-the-united-states.

[36] *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, International Trade Administration, accessed via Federal Register, *available at:* https://www.federalregister.gov/documents/2018/01/11/2018-00356/initiation-of-antidumping-and-countervailing-duty-administrative-reviews.

[37] *Publication of a Report on the Effect of Imports of Steel on the National Security*, Industry and Security Bureau, accessed via Federal Register, *available at:* https://www.federalregister.gov/documents/2020/07/06/2020-14359/publication-of-a-report-on-the-effect-of-imports-of-steel-on-the-national-security-an-investigation.

[38] *See, e.g.*, *Publication of a Report on the Effect of Imports of Steel on the National Security,* Industry and Security Bureau, accessed via Federal Register, *available at:* https://www.federalregister.gov/d/2020-14359/p-266:

> Industry analysts note that utilization of 80 percent or more is typically necessary for sustained profitability, among other factors. For most capital and energy-intensive U.S. steel producers, capacity levels of 80 percent or higher are required to maintain facilities, carry out periodic modernization, service company debt, and fund research and development. When steel factory utilization falls, costs per unit of steel product rises, reducing profit margins and product pricing flexibility. Higher capacity utilization usually results in lower per-unit product costs and higher overall profit. Over 80 percent is a healthy capacity utilization rate and a rate at which most companies would be profitable. The U.S. steel industry uses 80 percent as a benchmark for minimum operational efficiency. Moreover, the steel industry is capable of reaching and sustaining 80 percent capacity utilization or higher. During the 2002-2008 period, U.S. steel companies operated at an average 87.4 percent level.

supporting citations or research.[39] The second article, also from Market Realist in 2015[40] (although no longer accessible on their website), is quoted by Commerce in the report as stating that steel industry earnings tend to "jump" above 80 percent capacity utilization and climb more slowly above 90.[41] The final article, from local Houston news site *Chron*[42], does not mention the 80 percent benchmark at all.

This is an alarming methodological oversight for U.S. government investigations that could affect hundreds of billions of dollars in annual trade and result in billions more in unilateral taxes on covered imports. More and better support for a universal 80 percent capacity utilization benchmark is therefore required.

It is unlikely, however, that USTR will be able to marshal such support in this investigation. Capacity utilization rates *and* their calculation methodologies vary wildly across industries, countries, and time periods. The U.S. Federal Reserve, for example, calculates various U.S. sector capacity utilization rates using an output index divided by a capacity index and compares that figure to a long-run average, which is currently at about 78 percent for the manufacturing sector as a whole.[43] The Federal Reserve does not endorse any specific target utilization rate, instead only comparing the current rates against their long-term trends – a significantly less rigid benchmark than a flat 80 percent for every industry.

Conversely, the EU and OECD countries use OECD Business Tendency Surveys to calculate capacity utilization rates.[44] These surveys of business managers are significantly more qualitative and less granular than the Federal Reserve's methodology, further compromising comparability.

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[39] Oberoi, Mohit. *Why Steel Investors are Mindful of Capacity Utilization Rates*. Market Realist, 2014, *available at:* https://marketrealist.com/2014/10/investors-mindful-capacity-utilization-rate/.

[40] O'Hara, Mark. *Upstream Exposure Impact Steel Companies*, Market Realist, 2015, *available at:* https://marketrealist.com/2015/09/upstream-exposure-impact-steel-companies.html/.

[41] *Publication of a Report on the Effect of Imports of Steel on the National Security*, Industry and Security Bureau, accessed via Federal Register, *available at:* https://www.federalregister.gov/documents/2020/07/06/2020-14359/publication-of-a-report-on-the-effect-of-imports-of-steel-on-the-national-security-an-investigation found at footnote 67: ("It's important to note how changes in capacity utilization rates impact a company's earnings. For example, we see a big jump in earnings when utilization rates improve from 80 percent to 85 percent. However, incremental benefits are lower when utilization rates increase from 90 percent to 95 percent.").

[42] "Chron Contributor." Capacity Utilization and Effects on Product and Profit, Chron, *available at:* https://smallbusiness.chron.com/capacity-utilization-effects-product-profit-67046.html.

[43] Federal Reserve G.17 Industrial Production and Capacity Utilization dataset, *available at:* https://www.federalreserve.gov/releases/g17/download.htm.

[44] OECD Business Tendency Surveys, *available at:* https://www.oecd.org/en/publications/business-tendency-surveys_9789264177444-en.html.

Furthermore, it is widely accepted among economists that optimal or "healthy" utilization rates vary widely by industry – event in the same country.[45] For example, continuous flow industries like petroleum refining, chemicals, paper products, and semiconductors try to target 85 or even 90 percent utilization and can run even higher during times of high demand. By contrast, "healthy" utilization rates can be much lower (65 – 75%) for seasonal, high-agility, and/or custom industries, such as defense, apparel, or food & beverage production.[46]

Federal Reserve data show this variation in the U.S. manufacturing sector, with a range of 17 percentage points between the U.S. industries with the highest and lowest 10-year average utilization rates (see **Figure 5** in **Annex II**), those being petroleum products (85.6) and primary metals (68.6). More recently, there is a 23 percentage point difference between the industries with the highest and lowest rates in the first two months of 2026 (lowest is automotive, highest is petroleum products)[47], further emphasizing the possible range of utilization rates within economies.

These facts demonstrate that, no matter the exact number, a single benchmark utilization rate, like those used by USTR in the country-specific sections of the Initiation Notice[48], simply cannot be used across industries and borders to make definitive conclusions regarding whether a certain industry in a certain economy is operating at "healthy," market-based levels. If USTR were to determine the existence of SEC by using an economy-wide 80 percent utilization rate target, it would be using a number without legitimate academic support and completely untethered from economic reality.

V. USTR Contradicts Itself on Low Capacity Utilization Rates

Finally, the Initiation Notice contains a glaring contradiction when discussing manufacturing capacity utilization rates around the world: relatively low rates (e.g., below 80 percent) in *other countries* are treated as *prima facie* evidence of SEC[49], while a similar rate in the *United States* is treated as *prima facie* evidence of that American manufacturers

[45] *See, e.g.*, Comments of Emily Blanchard, Kyle Handley, and Stan Veuger. USTR-2026-0067-00126067, *available at:* https://comments.ustr.gov/s/commentdetails?rid=HJGQYDQD2B.

[46] *Capacity Utilization Notes,* Federal Reserve G.17, *available at:* https://www.federalreserve.gov/releases/g17/CapNotes.htm.

[47] Federal Reserve G.17 Industrial Production and Capacity Utilization Current Release, *available at:* https://www.federalreserve.gov/releases/g17/Current/default.htm.

[48] Initiation Notice, Section II, pages 8 – 16.

[49] Initiation Notice, pages 1, 3, 5.

are being victimized by overseas SEC.[50] This raises several concerns that must be addressed and corrected in the investigation and any determination recommending new import restrictions under Section 301.

The U.S. manufacturing sector currently operates at a 75.6 percent capacity utilization rate overall – below USTR's (arbitrary) 80 percent threshold, below the sector's long-run average (78.2)[51], *and* below the rates of many of the economies now under investigation (see **Figures 1, 2, 3** in **Annex II**). Thus arises the aforementioned contradiction regarding depressed utilization in the U.S. versus abroad.

In the Initiation Notice, USTR implicitly resolves this contradiction by claiming that only foreign firms are propped up by government policy, artificially sustaining inefficient capacity through subsidies or other interventions and, via exports, depressing U.S. output (and thus utilization rates) that has not been distorted by policies out of Washington.[52] For USTR, in other words, other countries' excess capacity is due to the proliferation of anti-competitive, non-market policies by their governments, while U.S. excess capacity is solely the *result* of those same foreign policies, as opposed to other factors or non-market interventions in the United States.

Such a difference is theoretically possible, but it must be thoroughly substantiated. It is highly unlikely that USTR can meet this burden of proof.

As already discussed, many normal, market factors can cause a U.S. company's (or industry's) manufacturing capacity utilization to sit below 80 percent for many years. Yet it is also vital to note that **the United States – at the federal, state, and local levels – has long featured a wide array of non-market government interventions intended to boost manufacturing production capacity and today totaling *trillions of dollars***. For example:

- The United States has long protected the shipbuilding, steel, sugar, dairy, automotive, and other industries from foreign import competition via an array of tariff and non-tariff measures (e.g., the Jones Act and Buy American rules). The United States is one of the world's biggest users of protectionist trade remedy (anti-dumping and countervailing duty) laws, with more than 828 duty orders in place today and another 77 investigations ongoing.[53] The federal government also has a

[50] Initiation Notice, pages 3, 4.

[51] Federal Reserve G.17 Current Industrial Production and Capacity Utilization, *available at:* https://www.federalreserve.gov/releases/g17/Current/default.htm.

[52] Initiation Notice, page 6.

[53] International Trade Administration ADCVD Proceedings, *available at:* https://www.trade.gov/data-visualization/adcvd-proceedings.

long history of offering targeted subsidies to U.S. manufacturers, such as the investment tax credit (ITC), the domestic production activities deduction, accelerated and bonus depreciation, and more.[54] Even before 2017, U.S. trade and industrial policy has been considered among the most interventionist in the world.[55]

- In the last decade, already-significant government support for U.S. manufacturing has been dramatically expanded. Federal laws such as the American Infrastructure Investment and Jobs Act, the CHIPS and Science Act, and the Inflation Reduction Act have funneled more than $1 trillion into the U.S.'s manufacturing sector via grants, loans, tax credits, and other subsidies.[56] New U.S. trade restrictions, such as the Build American, Buy America Act and various executive branch tariffs (recently increased Section 232 tariffs, previously levied Section 301 tariffs, recently enacted Section 122 tariffs, etc.) have also proliferated over the same period.[57]
- Finally, there are *hundreds* of protectionist and anti-competitive policies at the state and local levels across the United States. This includes grants, subsidies, subsidized land, tax exemptions, customized infrastructure, preferential utility pricing, and localization requirements.[58]

Several of these government interventions have likely contributed to the maintenance and expansion of unused or underutilized production capacity in the United States. For example, semiconductor companies such as Intel have used funding from the CHIPS Act to

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[54] Hart, David M. *Federal Tax Policy: Targeted Incentives for Manufacturing in the Post-World War II Era*. Bipartisan Policy Center, 2024, *available at:* Federal-tax-policy-Targeted-incentives-for-manufacturing-in-the-post-World-War-II-era.pdf; & Lincicome, Scott. *Countervailing Calamity: How to Stop the Global Subsidies Race*. Cato Policy Analysis No. 710, 2012, *available at:* https://www.cato.org/policy-analysis/countervailing-calamity-how-stop-global-subsidies-race.

[55] Lincicome, Scott. *"Unfettered" Free Trade? If Only.* Cato Institute (with data from Global Trade Alert), 2016, *available at:* https://www.cato.org/blog/unfettered-free-trade-only.

[56] Blevins, Emily G., Yong W. Kwon & Karen M. Sutter. *Frequently Asked Questions: CHIPS Act of 2022 Provisions and Implementation*. Congressional Research Service, 2023. *available at:* https://www.congress.gov/crs-product/R47523#_Toc216884095; Eggers, William D., John O'Leary & Kevin Pollari. *Executing on the $2 Trillion Investment to Boost American Competitiveness.* Deloitte, 2023, *available at:* https://www.deloitte.com/us/en/insights/industry/government-public-sector-services/infrastructure-bill-projects-agency-execution.html; & Michel, Adam N. & Scott Lincicome, *Charting Some of Industrial Policy's Opportunity Costs*, Cato Institute, 2023, *available at:* https://www.cato.org/blog/charting-some-industrial-policys-opportunity-costs.

[57] *What is Build America, Buy America?* Office of Management and Budget, 2022, *available at:* https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/07/Build-America-Buy-America-Factsheet-and-FAQs-for-Award-Recipients.pdf.

[58] Good Jobs First Subsidy Tracker & Tax Break Tracker, *available at:* https://goodjobsfirst.org/databases/; & Lincicome, Scott, Marc Joffe & Krit Chanwong. *Reforming State and Local Economic Development Subsidies.* Cato Policy Analysis No. 980, 2024, *available at:* https://www.cato.org/policy-analysis/reforming-state-local-economic-development-subsidies.

implement a "shell-first strategy," in which *empty, unused* factories and facilities are built "to regain transistor leadership and to ensure [they] have at-scale manufacturing capacity by building ahead on shells."[59]

In sum, U.S. manufacturing capacity utilization is below USTR's own threshold for a healthy sector, and the U.S. has long enacted many of the same types of interventionist policies that have supposedly caused similar levels of capacity utilization in many of the foreign markets under investigation. This reality reinforces why USTR's final determination must be based on extensive evidence and demonstrate a causal relationship between foreign government policies, SEC in those markets, *and* harm to the U.S. manufacturing sector.

VI. Conclusion

As these comments demonstrate, USTR has assigned itself a herculean task in attempting to quickly substantiate SEC-related grievances with the foreign economies now under investigation, and broadly applying a handful of disparate, economy-wide capacity utilization and trade datapoints would be a woefully insufficient shortcut. It would likely take many months and thousands of man-hours for USTR to conduct a thorough and proper examination of SEC that might allow the agency to recommend remedial measures in these investigations. Given the economic consequence of such measures, however, anything short of this analysis would be an egregious analytical failure that violates U.S. law and the United States' international obligations under numerous trade agreements.

[59] Intel Corporate Earnings Call Oct. 2022, *available at:* https://download.intel.com/newsroom/2022/corporate/3q22-earnings-call-script.pdf.

Annex I

Initiation Notice, page 3:

> Key trading partners have developed production capacity untethered from the incentives of domestic and global demand. This excess capacity leads to, among others, overproduction and large or persistent trade surpluses, as well as underutilized and unused capacity, in manufacturing sectors. Structural excess capacity has been characterized generally as under-utilized industrial production capacity that is sustained through governmental interventions or policies incentivizing companies to maintain or grow their unused capacity inefficiently.

Initiation Notice, pages 3 – 4:

> In 2024, global manufacturing generated $16.6 trillion dollars in economic output, up from $16.4 trillion in 2023, according to World Bank data. Nonetheless, according to U.S. government estimates, global manufacturing capacity utilization remains between 75.0 and 75.9 percent, below healthy utilization rates for many sectors of approximately 80 percent. This is an indication that, for manufactured goods, although global production is expanding, underlying global supply exceeds underlying global demand. Further, unused foreign capacity can chill production and new investments in the United States. Indeed, many countries with excess capacity problems also have large trade surpluses with the world, or at least with the United States—the world's consumer market of last resort.

Initiation Notice, page 4:

> When global manufacturing investment outstrips global demand for manufactured goods, and production surpluses are concentrated within certain countries, production surpluses in those markets undermine industrial ecosystems in other countries.

Initiation Notice, page 5:

> Low capacity utilization rates in the manufacturing sectors of some economies can be evidence of structural excess capacity in those sectors. For example, the Global Forum on Steel Excess Capacity (GFSEC) estimates that global steel excess capacity is expected to increase to 721 million metric tons by 2027. The worsening global steel excess capacity trend is being driven by a wide range of non-market practices that fuel new capacity growth that exceeds underlying market demand in some economies, in turn putting jobs, investments, and supply chains in other economies at risk.

Initiation Notice, page 5:

> Structural excess capacity and production may also be evidenced by a large number of firms that are unprofitable, or cannot meet interest expenses through their operations.

Initiation Notice, page 6:

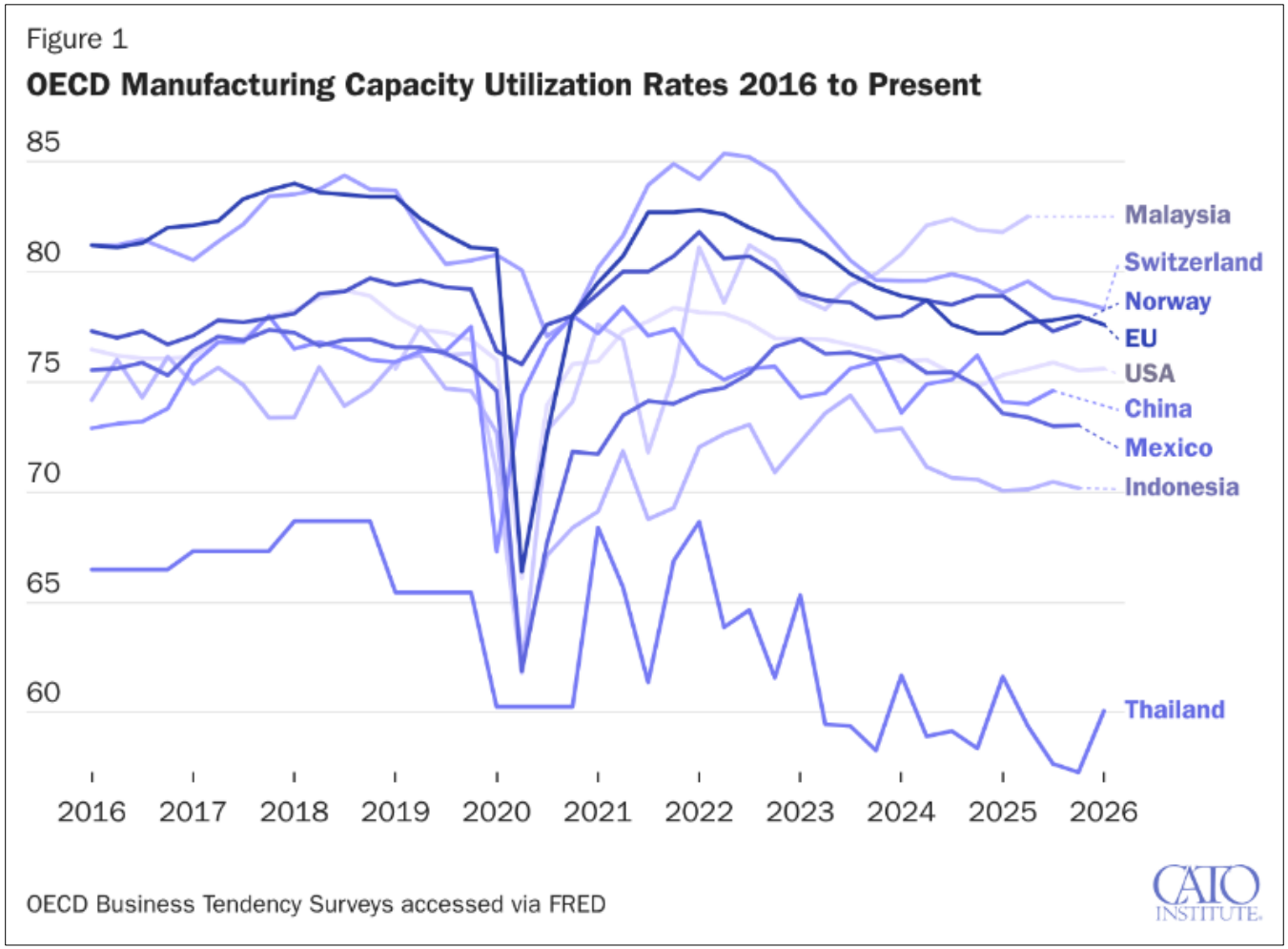
> The creation or maintenance of structural excess capacity and production may result from policy interventions by trading partners that increase their domestic capacity and production while suppressing their domestic demand. Such interventions maintain capacity and production well above what would be expected under more market-oriented conditions. This may include: (1) promoting production and export untethered from market drivers of supply, demand, and investment, including through subsidies; (2) suppressing domestic wages; (3) non-commercial activities of state-owned or - controlled enterprises; (4) sustained market access barriers; (5) lax or inadequate environmental or labor protection or social safety net; (6) subsidized lending; (7) financial repression and currency practices; and others.

Initiation Notice, page 17:

> Actionable matters under section 301 include acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy, or practice is unreasonable if, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, it is otherwise unfair and inequitable.

Annex II[60]

Figure 1:



[60] Data supporting these figures provided electronically (*see* **Annex III**).

Figure 2:

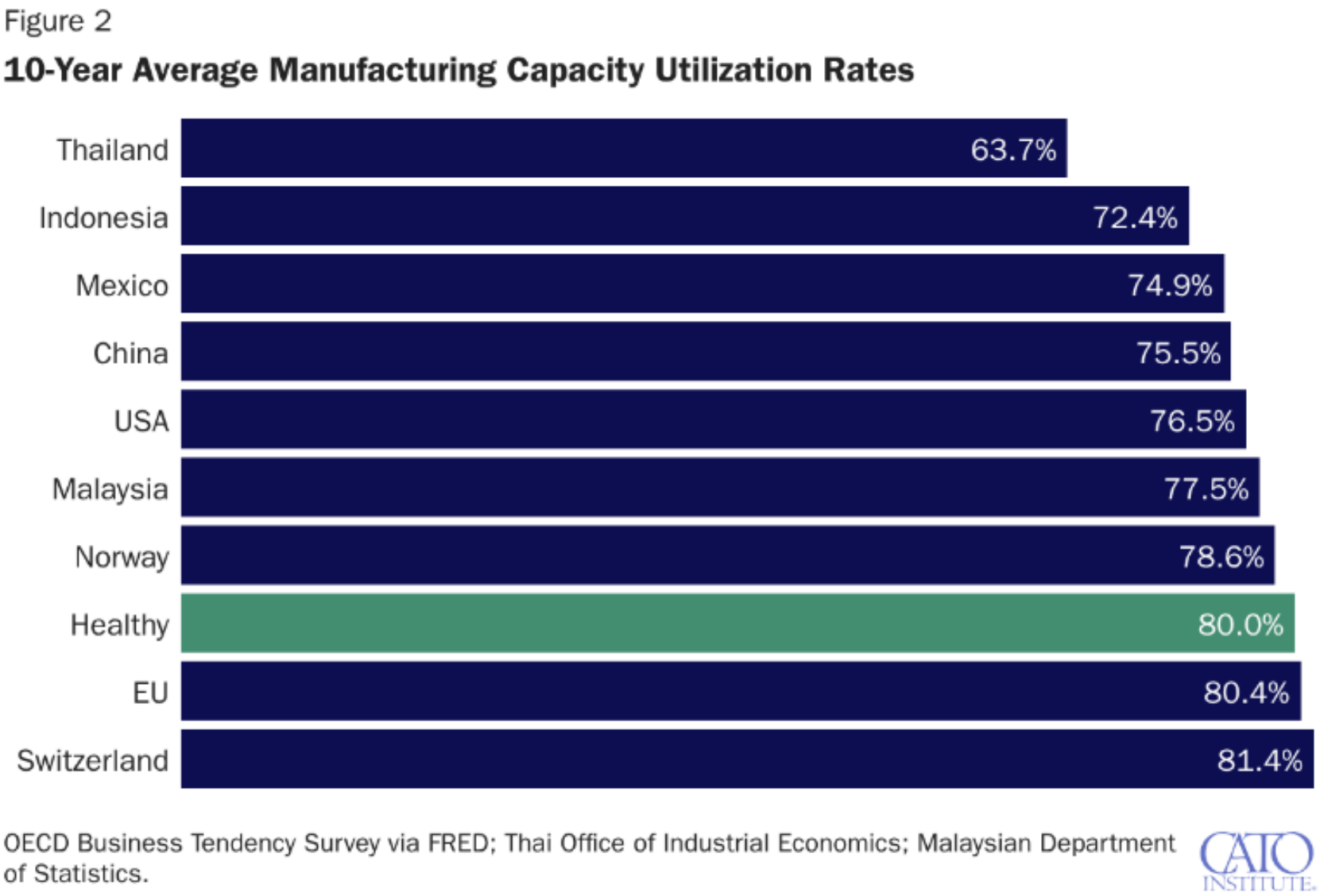


Figure 2
10-Year Average Manufacturing Capacity Utilization Rates
Thailand
63.7%
Indonesia
72.4%
Mexico
74.9%
China
75.5%
USA
76.5%
Malaysia
77.5%
Norway
78.6%
Healthy
80.0%
EU
80.4%
Switzerland
81.4%
OECD Business Tendency Survey via FRED; Thai Office of Industrial Economics; Malaysian Department of Statistics.
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Figure 3:

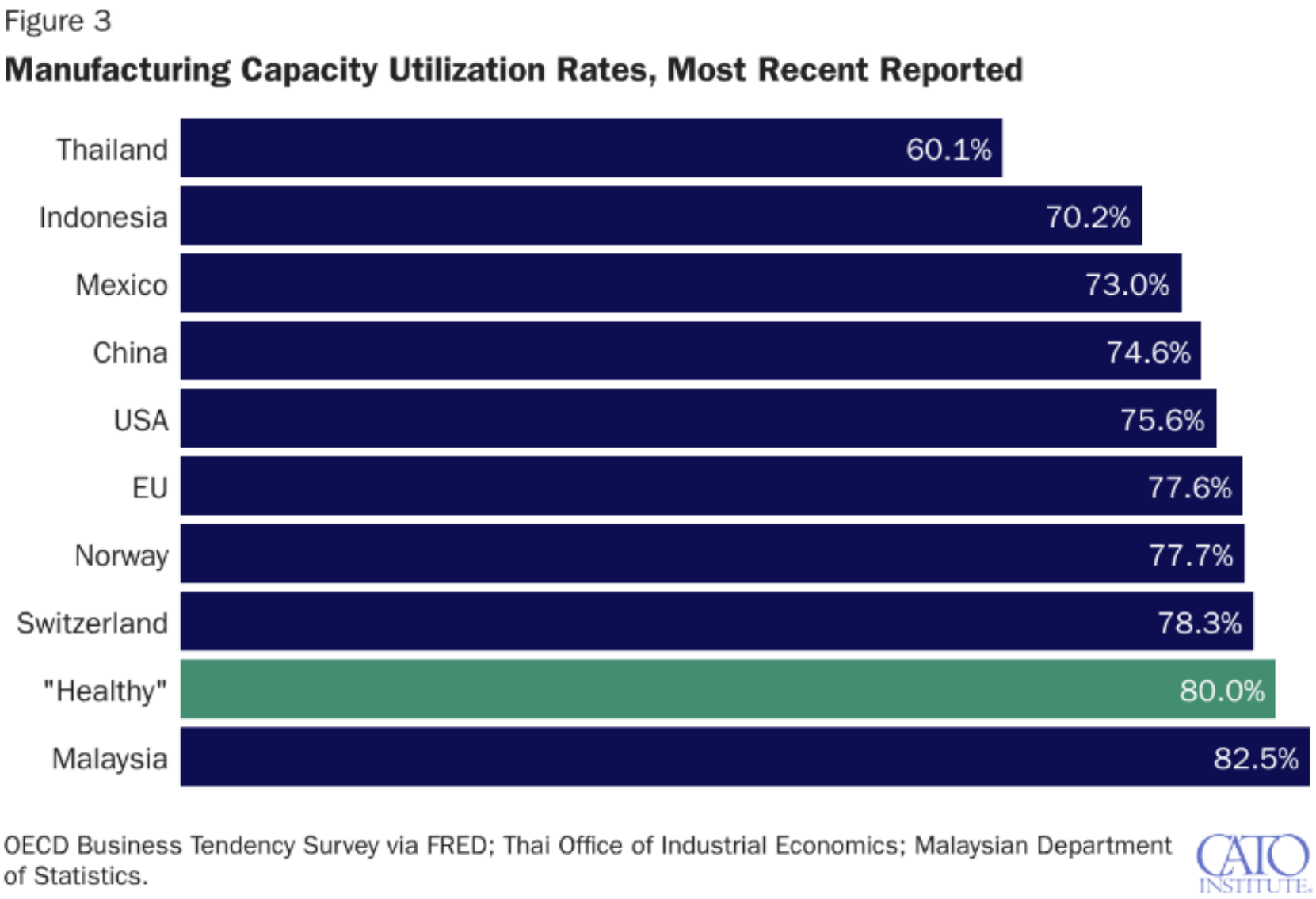
Figure 3
Manufacturing Capacity Utilization Rates, Most Recent Reported
Thailand
60.1%
Indonesia
70.2%
Mexico
73.0%
China
74.6%
USA
75.6%
EU
77.6%
Norway
77.7%
Switzerland
78.3%
"Healthy"
80.0%
Malaysia
82.5%
OECD Business Tendency Survey via FRED; Thai Office of Industrial Economics; Malaysian Department of Statistics.
CATO INSTITUTE

Figure 4:

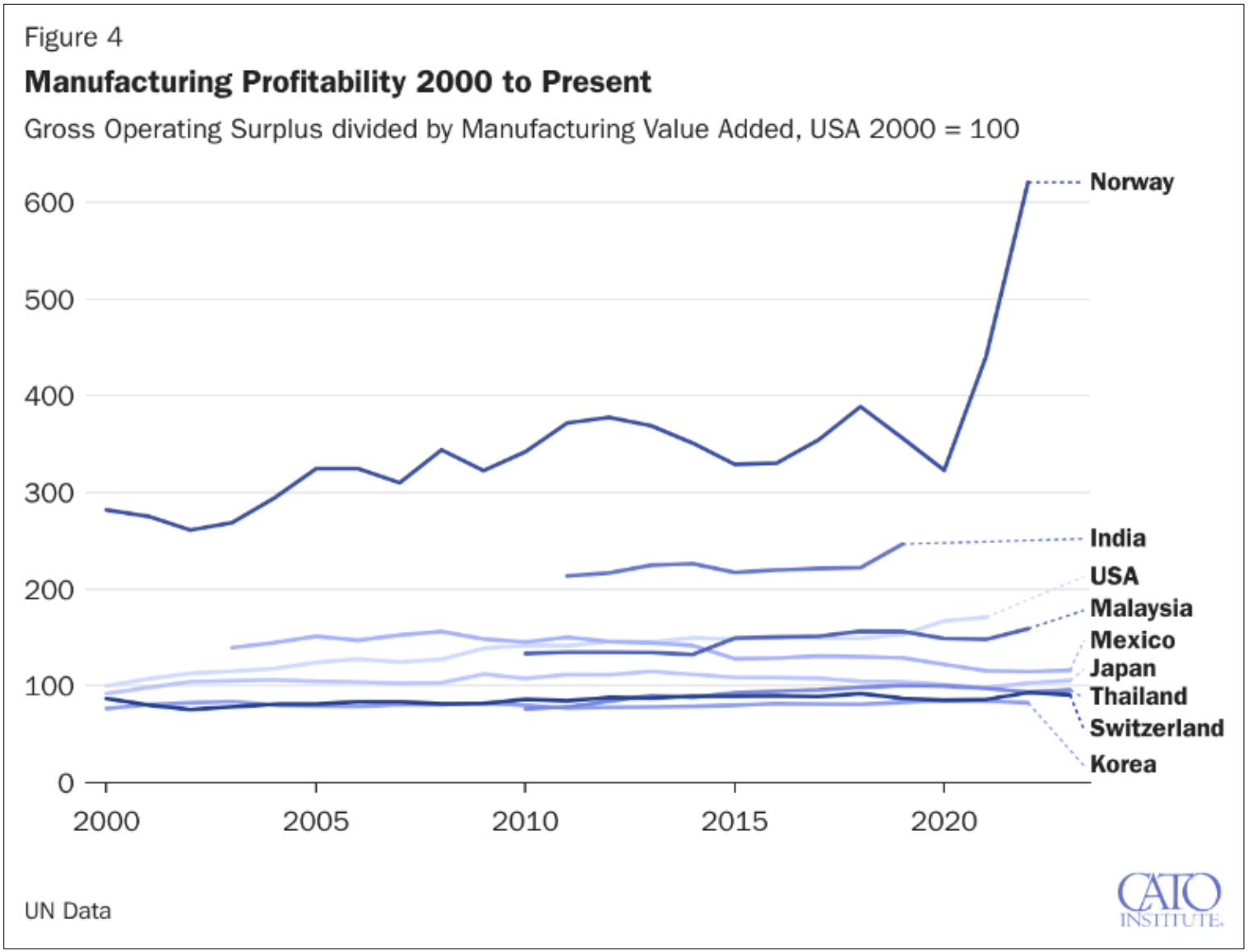
Figure 4
Manufacturing Profitability 2000 to Present
Gross Operating Surplus divided by Manufacturing Value Added, USA 2000 = 100
600
500
400
300
200
100
0
2000
2005
2010
2015
2020
Norway
India
USA
Malaysia
Mexico
Japan
Thailand
Switzerland
Korea
UN Data
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Figure 5:

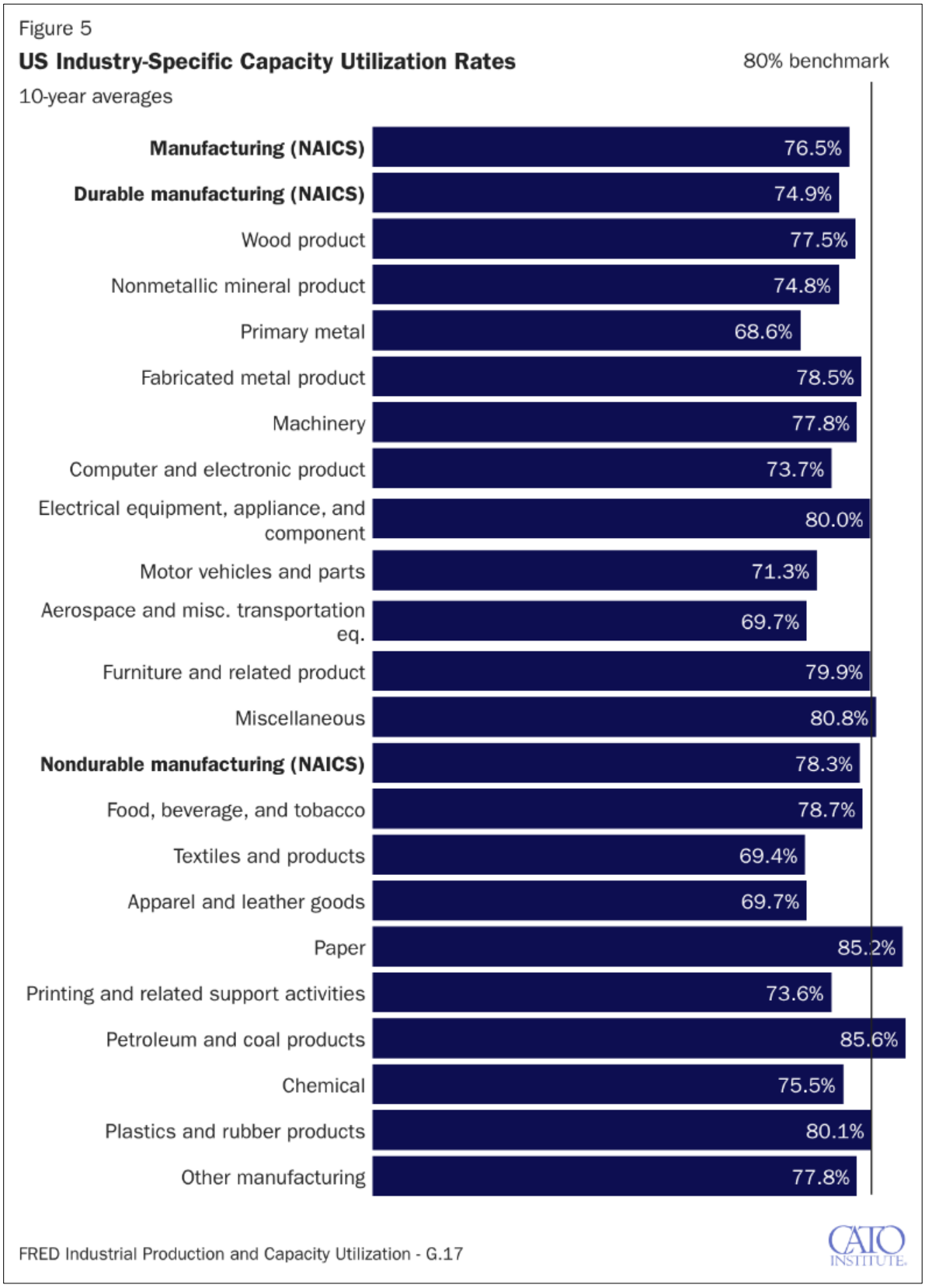


Figure 5
US Industry-Specific Capacity Utilization Rates
10-year averages
80% benchmark
Manufacturing (NAICS) 76.5%
Durable manufacturing (NAICS) 74.9%
Wood product 77.5%
Nonmetallic mineral product 74.8%
Primary metal 68.6%
Fabricated metal product 78.5%
Machinery 77.8%
Computer and electronic product 73.7%
Electrical equipment, appliance, and component 80.0%
Motor vehicles and parts 71.3%
Aerospace and misc. transportation eq. 69.7%
Furniture and related product 79.9%
Miscellaneous 80.8%
Nondurable manufacturing (NAICS) 78.3%
Food, beverage, and tobacco 78.7%
Textiles and products 69.4%
Apparel and leather goods 69.7%
Paper 85.2%
Printing and related support activities 73.6%
Petroleum and coal products 85.6%
Chemical 75.5%
Plastics and rubber products 80.1%
Other manufacturing 77.8%
FRED Industrial Production and Capacity Utilization - G.17
CATO INSTITUTE

Figures 6 – 16: Scatter plots showing yearly observations of a country's annual EFI and manufacturing capacity utilization rate (or a percentage balance in the case of Japan, South Korea, and India)

Figure 6:

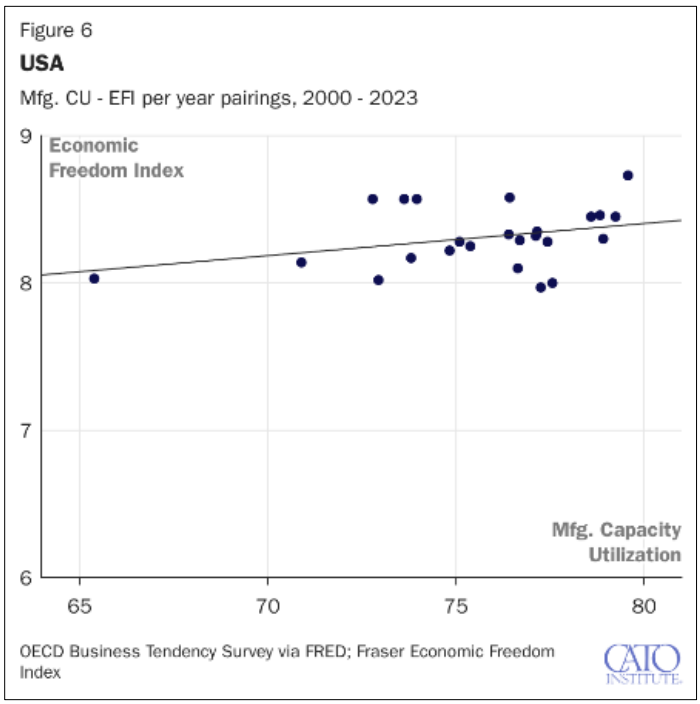


Figure 7:

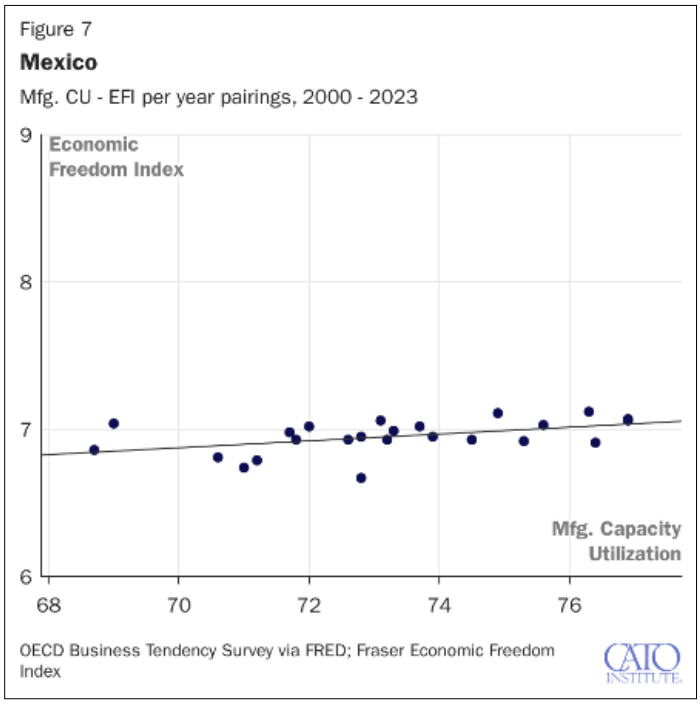


Figure 8:

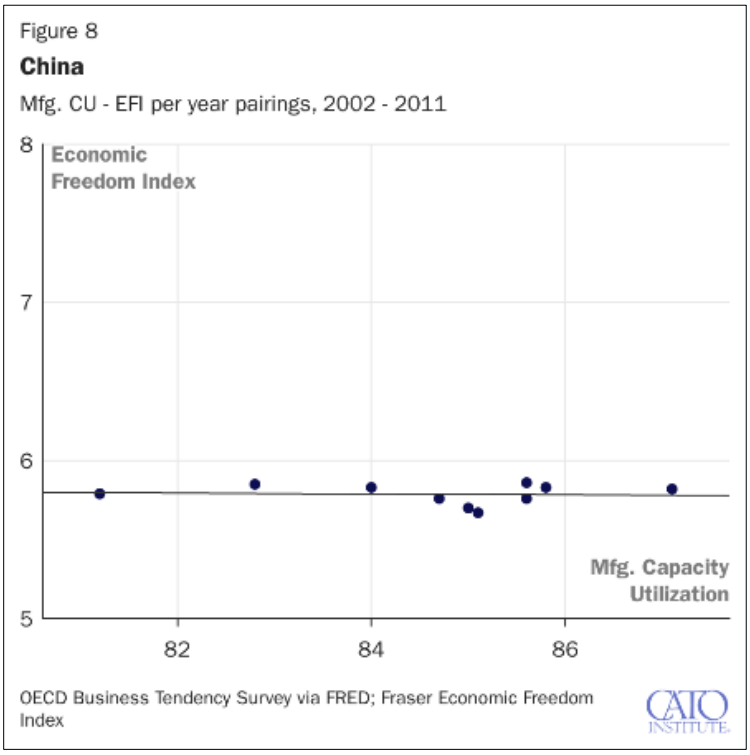


Figure 9:

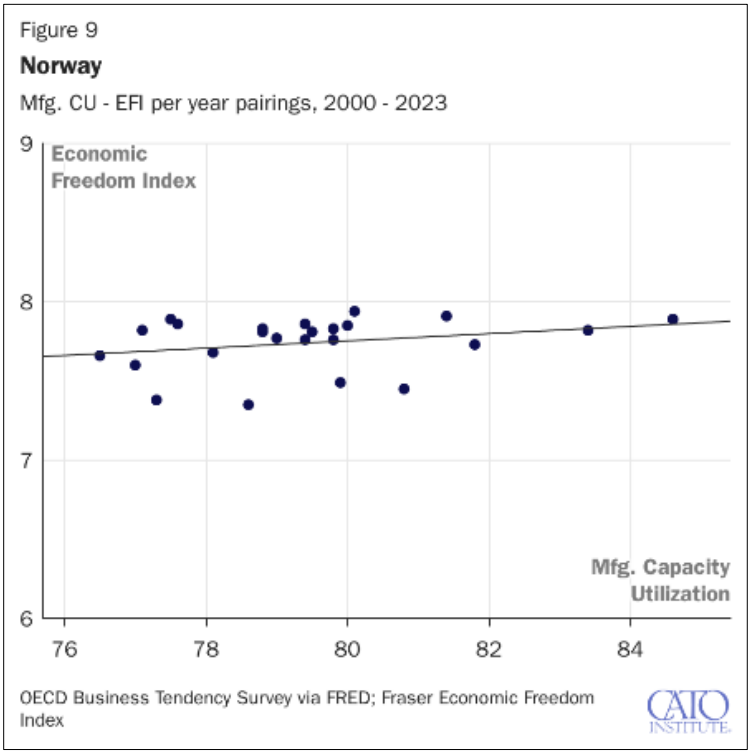
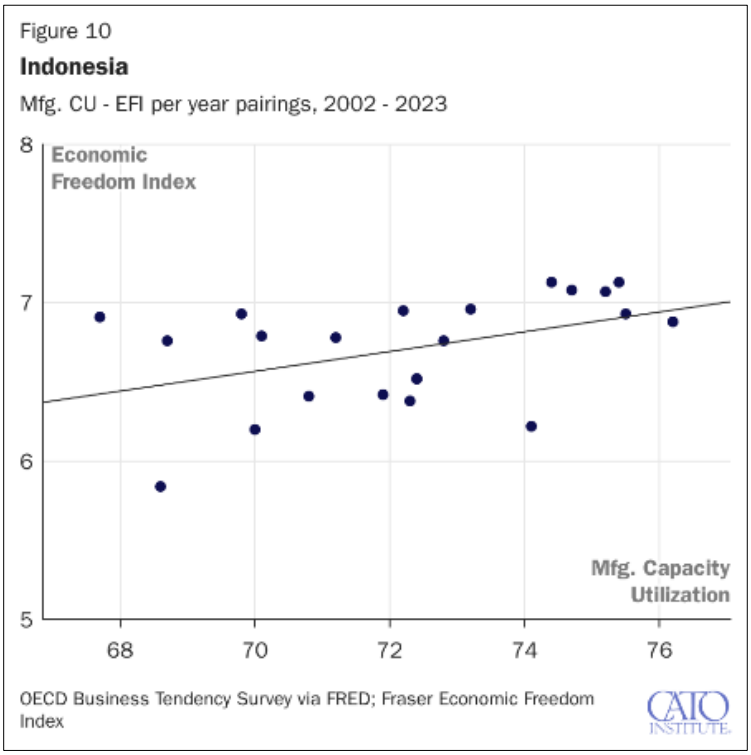


Figure 10:



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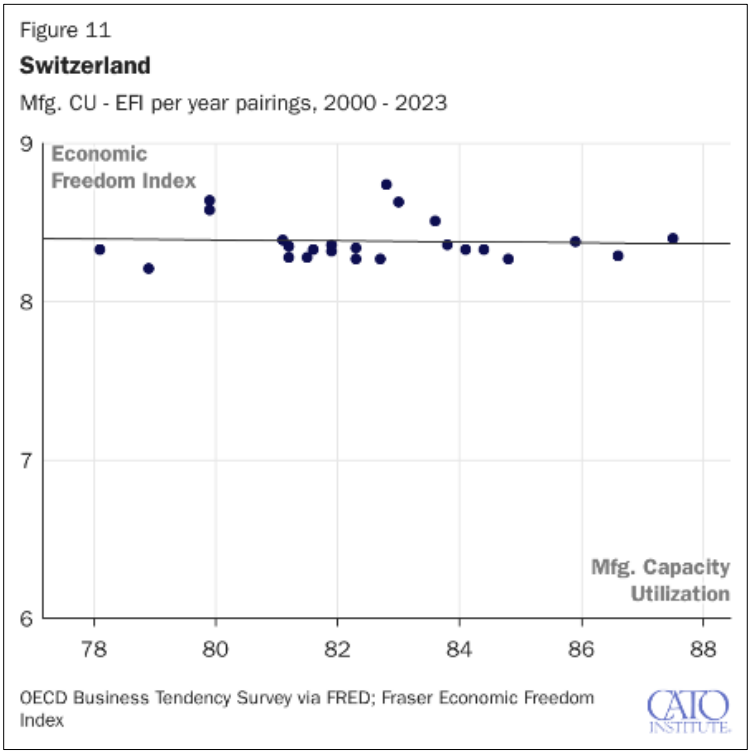

Figure 12:

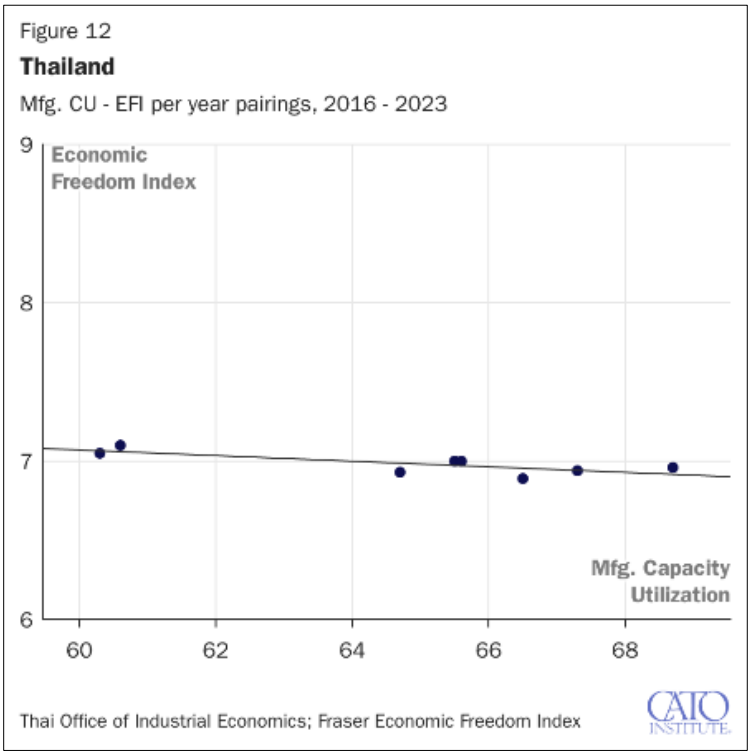

Figure 13:

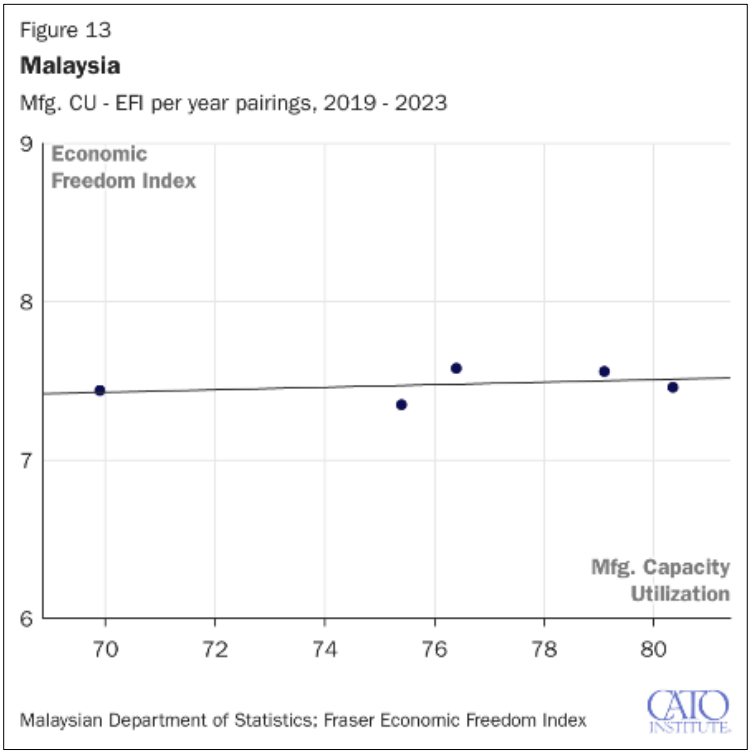

Figure 14:

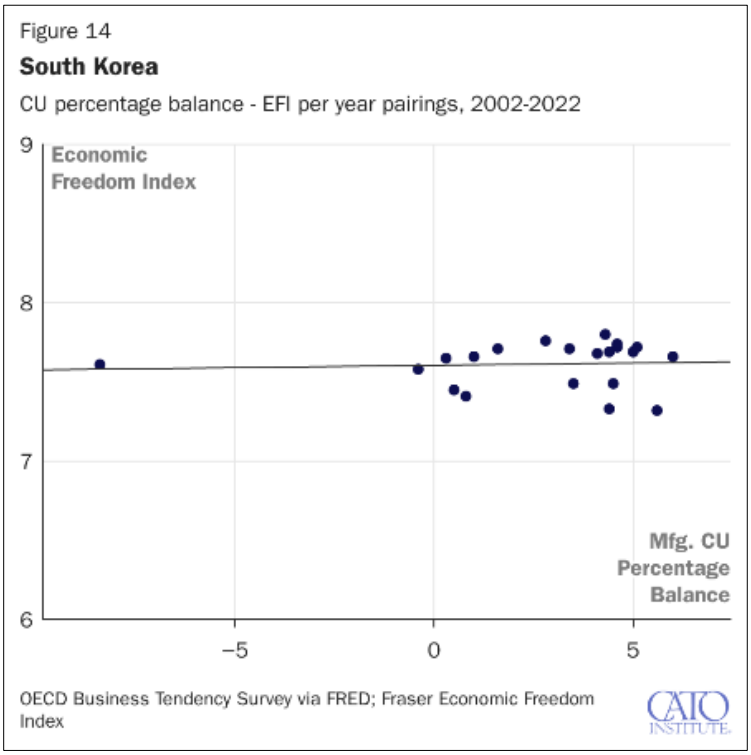

Figure 15:

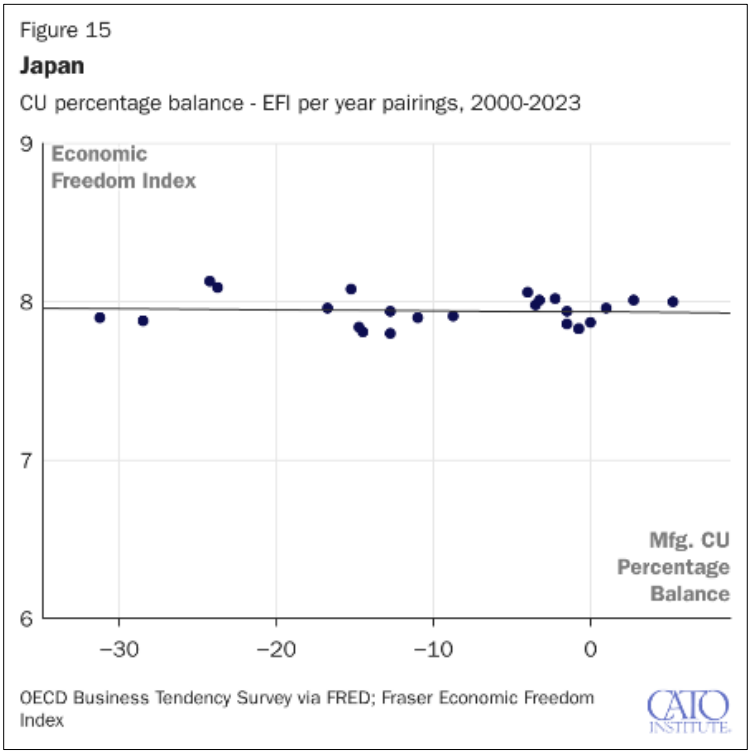

Figure 16:

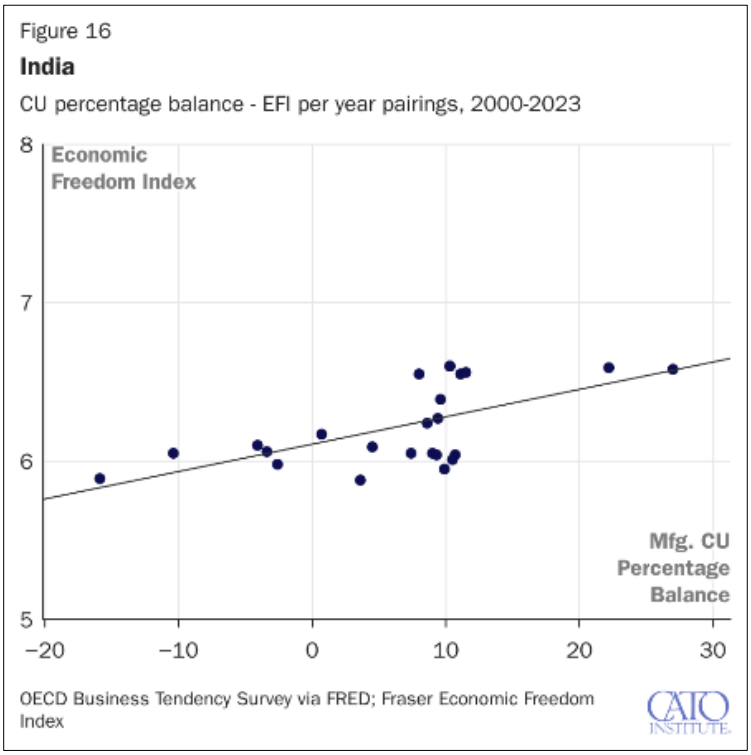
Figure 16
India
CU percentage balance - EFI per year pairings, 2000-2023
Economic Freedom Index
8
7
6
5
−20
−10
0
10
20
30
Mfg. CU Percentage Balance
OECD Business Tendency Survey via FRED; Fraser Economic Freedom Index
CATO INSTITUTE

Annex III

[Data provided electronically]