ISRI Institute of Scrap Recycling Industries, Inc.
Voice of the Recycling Industry
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Mr Ebrahim Patel
The Honorable Minister
Department of Economic Development
Private Bag x149
Pretoria 001 South Africa

Attn: Mr. Paul Ledwaba

Ref: Draft Policy Directive on the Exportation of Ferrous and Nonferrous Waste and Scrap Metal, General Notice 33-2013

Dear Minister Patel,

I am writing to you on behalf of the more than 1,700 member companies of the Institute of Scrap Recycling Industries, Inc. (ISRI) who operate more than 7,000 scrap recycling facilities. While ISRI's members are spread throughout the world, including South Africa, the largest concentration of our members is in North America. ISRI members process, broker and industrially consume scrap metals, paper, glass, plastic, rubber, electronics and textiles. These commodities are traded globally, in a dynamic marketplace that is extraordinarily sensitive to artificial intervention. Indeed, as I will discuss later, such artificial intervention has resulted in counterintuitive effects resulting in the industry sought to be protected facing higher prices than before the intervention. Thus, ISRI has always advocated the free *and* fair trade of scrap materials worldwide.

We are writing today to offer our comments on the Economic Development Department's (EDD) "Draft Policy Directive on the Exportation of Ferrous and Nonferrous Waste and Scrap Metal." We are gravely concerned that the Republic of South Africa is contemplating imposing restrictions on the export of scrap metals with the stated intent to increase the supply of scrap metals available to domestic industry while also making the price of those scrap metals more affordable for the domestic industry. Although it may be hard to appreciate, domestic scrap prices in most countries are driven by the global marketplace for the scrap materials and not by the local economy. Scrap materials, and scrap metals in particular, are one of the purest examples of supply and demand economics that we have seen in the global economy and thus are extraordinarily sensitive to even the slightest outside intervention.

Unfortunately, numerous examples of artificial intervention in the scrap markets are abundant. Virtually all of them have resulted in disastrous consequences. Perhaps the greatest example we can learn from with regard to the history of artificial intervention in scrap markets, is a huge mistake the United States made in the 1970s. Controls were imposed on ferrous scrap exports during the period of 1973-1974. United States steel producers argued that scrap exports were creating a domestic scrap shortage and that foreign scrap buyers were thereby raising the cost of U.S. steel to domestic industries.[1] The objective of the restrictions was to retard the outflow of scrap to foreign users to protect the supply available for domestic users and reduce the level of scrap price increases.[2] Restrictions were placed on the amount of scrap exported from the U.S. in early 1973 and extended to 1974. Despite the imposition of export controls, the price of scrap continued to rise at an accelerating rate through 1973 and into 1974.[3] During this period, export purchasers were agreeing to prices substantially above the domestic market level because the rising global demand for steel and the restricted supply of scrap from the U.S. caused foreign buyers to vigorously compete for the available supply.[4]

The 1977 study of the after-effects of the export controls imposed on scrap provided an explanation for the increase in domestic scrap prices during the period the controls were in place.

> *In the absence of export controls, foreign and domestic scrap are part of the same market and their prices move essentially in harmony. Only when the export controls were imposed did a significant divergence from their traditional relationship emerge. Therefore, any effect on domestic scrap price that is attributed to foreign scrap price must ultimately be attributed to the export restriction itself.*
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> *. . . It appears that both buyers and sellers of scrap in the U.S. failed to anticipate or recognize the fact that the traditional relationship between domestic prices and export prices could not be maintained once export controls were applied. Seeing export prices skyrocket and expecting the domestic prices to remain in its normal relationship to export prices, buyers and sellers may well have been led astray by plausible but naïve expectations of market behavior based on previous conditions.*[5]

The report concluded that the evidence suggests that the U.S. scrap export restrictions actually caused domestic scrap prices to rise more than would have been the case otherwise and caused the U.S. steel industry to spend approximately $2 billion more for ferrous scrap in 1973 and 1974 than it would have had export restrictions on ferrous scrap not been imposed.[6]

Similarly, if the EDD were to limit the supply of scrap available for export from South Africa that action can, as it did in the U.S., cause a wild scramble for the available scrap and thus drive the purchase prices up. Thereafter, the closely related domestic and export prices will likely stray from their normal equilibrium seriously risking a *Control Reversal* such as that described above. The stated objective of the suggested controls is to reduce the domestic price in South Africa, not to cause an increase. However, imposing controls on scrap metal exports could very well have the perverse effect of causing the exact opposite of what the South African government intends.

Aside from the purely economic effects that export restrictions can have, the imposition of export controls or restrictions on the export of scrap metals may be viewed as a violation of the Republic of South Africa's obligations under the international trade agreements of the World Trade Organization ("WTO"). The General

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[1] R. Shriner, Control Reversal In Economics: U.S. Scrap Export Restrictions, The Business Economist, p. 3 (1977).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.* at 5
[6] *Id.*

Agreement on Tariffs and Trade ("GATT") is the basis of the WTO agreements and generally prohibits restrictions on the exportation or sale for export of any product destined to a WTO member country. Specifically, GATT Article XI (1) states:

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on . . . the exportation or sale for export of any product destined for the territory of any other contracting party.

Clearly, unless some exception to the general prohibition contained in Article XI applies, the imposition of export controls on scrap metal would likely be deemed to be prohibited by Article XI.

In summary, we urge the EDD and the Republic of South Africa, to seriously reconsider any notion it may have to restrict the export of scrap metals. While we can appreciate the serious concerns raised in the Notice we would also point out the potential adverse impacts that such an action can have. Furthermore, the imposition of export restrictions on scrap metals can have a devastating impact on the scrap recycling industry within the Republic of South Africa. That industry provides good jobs and contributes significantly to the economy. Additionally, the scrap recycling industry plays a significant role in preserving the environment through resource conservation and energy savings. We thank you for the opportunity to submit these comments and stand ready to respond to any questions you may have regarding this matter. Should you require further information please feel free to contact the undersigned at +1 202 662 8513 or at ScottHorne@ISRI.org.

Respectfully yours,

Scott J. Horne
Vice President & General Counsel