GRINBERG CORDOVIL

International Trade

Leonor Augusta Giovine Cordovil | *Bernardo Rodrigues Veloso Leite*

The steel sector and trade defense in an overcapacity context

ABSTRACT

The international overcapacity crisis in the steel sector has assumed a highlighted position in political and economic agendas over the past years, especially with the rise in the use of trade defense measures by the United States and the European Union. This study aims to understand the position adopted by the Brazilian government with its trade defense measures before the positioning of other partnering countries and their measures against Brazilian steel products. The litigations initiated at the WTC/OMC and the bilateral measures adopted against Brazilian steel products were tracked, as well as the measures approved by the Brazilian government to better understand the international context. The data shows that the next years will be crucial to the national politics, given the evolution of the context of the international sector, including the volume of measures to which Brazilian exportations are subjected to, besides the termination of a large part of commercial defense measures in force in Brazil.

KEY-WORDS

Steel Sector; Steel; Commercial Defense; World Trade Organization; OMC/WTO; Section 232; Antidumping; Countervailing Measures; Safeguards.

INTRODUTION

In recent years, the steel sector has progressively occupied more space in the news and in studies related to international trade. The original and growing concern of producers, regarding capacity building in the world market, has acquired political aspects increasingly interspersed in the debates, leading to the adoption of multiple trade defense actions.

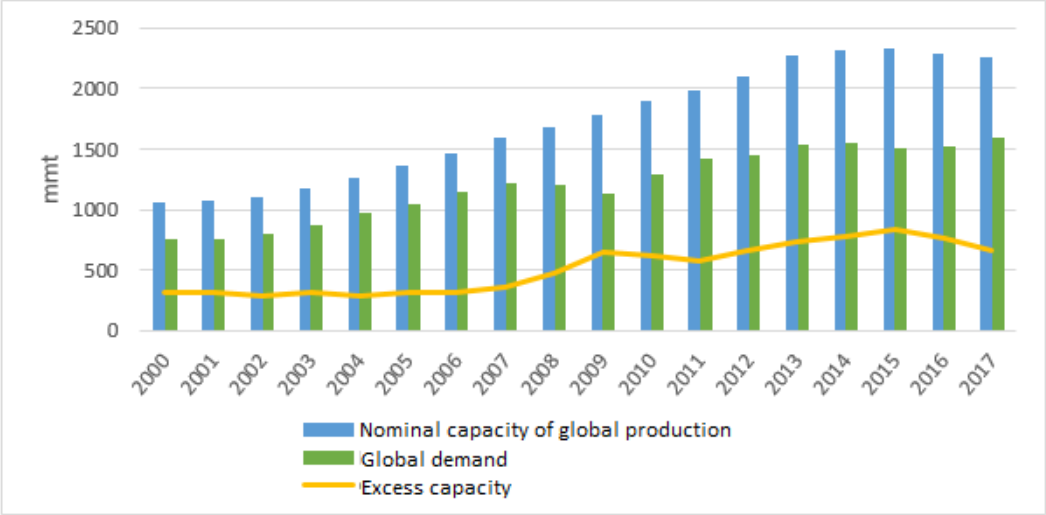
The current denominated crisis started to show its outlines in the beginning of this decade. According to the study *Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects* published by the Organization for Economic Co-operation and Development

(OECD) in 2015[1], the global production overcapacity of steel was shaped by changes in both supply and demand in this market.

From the supply side, there was a rapid increase in the global production capacity starting at the beginning of the 2000s, after decades of reduced growth. According to static data obtained by the OECD, global production capacity remained below 1,000 million metric tons (mmt) between 1980 and the end of the 1990s[2]. After reaching the volume of 1,056 mmt in 2000, the global capacity has grown at an average annual rate of almost 6%, quickly reaching the historical level of 2,334 mmt in 2015[3] - a growth of almost 121%. The most recent available data points to a global capacity of 2,251 mmt in 2017.

From the demand side, the growing tendency was also interrupted by the economic and financial global crisis in 2008. According to data from World Steel Association, the global demand for steel has grown at an average rate of 7.3%, with successive falls in 2008 and 2009. Despite the rapid resumption of growth in 2010, the average growth rate between 2010 and 2017 fell to 4.4%.

The data analysis of nominal capacity and global demand shows that the strange mismatch has worsened over recent years, although demand was not reaching available capacity, more capacity was added. Therefore, this is not the expected dynamics in a model. Concerning such dissonance, the OECD (2015) identified certain structural and behavioral aspects of the global steel industry that may explain the excess of available capacity.



Source: OECD for Nominal Capacity of Global Production and WSA for Global Demand.

[1] OECD (2015), "Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects", OECD Science, Technology and Industry Policy Papers, No. 18, OECD Publishing, Paris. Available at: http://dx.doi.org/10.1787/5js65x46nxhj-en

[2] OECD (2010), "Developments in world steelmaking capacity", DSTI/SU/SC(2010)14 69th Steel Committee Meeting, Paris. Available at: http://www.oecd.org/industry/ind/46580898.pdf

[3] According to data available at: https://stats.oecd.org/Index.aspx?DataSetCode=STI_STEEL_MAKINGCAPACITY#. Accessed on February 20th in 2019.

Steel industries are used to market variations and periods of low capacity utilization. In times of prolonged reduction of usage, they try to reduce their fixed costs, typically by reducing their production capacity. However, this adjustment period has proved to be long and arduous for the steel industry over the years.

Regarding structural aspects, the OECD (2015) pointed out that the high exiting costs of the steel sector may discourage rapid adjustments on the supply side. The costs associated with the dismantling of a plant, relating to both the direct expense of this operation and the labor and environmental costs, may lead the players to prolong their wait for a resumption of demand, making the industry resilient.

Considering the current global context of the steel sector, OECD Steel Committee[4] discussions point to a behavioral problem that may be affecting market dynamics: governmental interventions. As already known throughout the industry, government practices range from subsidies for capacity production and expansion to tariff measures against steel imports to upstream constraints, in order to reduce domestic costs of raw materials.

THE HISTORICAL CONTEXT OF TRADE DEFENSE WITHIN THE STEEL SECTOR

Governmental intervention in the steel sector dates back at least as far as the middle of the twentieth century, especially through trade barriers, as CANTO (1983)[5] recalls. In 1968, shortly after the completion of the Kennedy Round and before the reconstruction of the Japanese steel industry had gained more space in the United States of America (USA), a voluntary three-year import restriction was negotiated with Japanese and European producers.

Exports to the US were limited to a volume 22% lower than that of the previous year in 1969, with the limit steadily increasing over the following years. In 1971, the agreement was extended for another three years.

The most striking feature of these governmental interventions in the steel sector in recent years has been the US government's decision to apply tariffs and quotas on imports of various steel products under the purported protection of national security, based on Section 232 of the Trade Expansion Act of 1962:

[4] OECD (2015), "Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects", OECD Science, Technology and Industry Policy Papers, No. 18, OECD Publishing, Paris. Available at: http://dx.doi.org/10.1787/5js65x46nxhj-en

[5] CANTO, Victor A. "U.S. Trade Policy: History and Evidence". CATO Journal, Vol 3, Nº 3 (Winter 1983/1984). Available at: https://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2011/10/cj3n3-4.pdf

> Safeguarding national security
>
> No action shall be taken pursuant to section 201 (a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

Nevertheless, this move by the US government was frowned upon by the international community, leading to diplomatic conflicts, commercial discussions and retaliations, and to the beginning of a trade war. Subsequently, and on the grounds that the US measure threatens to cause significant trade deflections on the global chain, other countries have initiated investigations of steel imports, increasing the existing restrictive measures and creating insecurity. Brazil was the only country that took a reverse move.

The Brazilian government set its diplomatic channels and negotiated, so that Brazilian imports of steel products were only bound to the absolute quota, without the application of a surcharge.

Within the international context of fierce disputes and direct involvement of governments, yet also considering the prominent Brazilian steel industry and its relevant presence in the international market, this report seeks to understand the orientation adopted by the Brazilian government in recent years, regarding international steel trade in comparison to those followed by the governments of other countries.

THE STEEL SECTOR AND THE MULTILATERAL SYSTEM

According to World Trade Organization (WTO) archives, since the founding of the Organization until the drafting of this report, 578 cases have been registered in the dispute settlement system - dating from January 10, 1995 (consultation request in the case of DS1 Malaysia - Prohibition of Imports of Polyethylene and Polypropylene) to February 21, 2019 (consultation request in the case of DS578 Morocco - Definitive Anti-Dumping Measures on School Exercise Books from Tunisia).

Among these 578 cases, 57 of them were classified as disputes related to the steel sector, including claims related to antidumping measures, compensatory measures, safeguards, and others.

Therefore, in the last 24 years, the steel sector has been at the heart of almost 10% of the cases, among the diverse subjects and sectors subject to disputes in the WTO and extending from satellite equipment to dairy products, as well as intellectual property and services. This demonstrates an impressive representation that indicates the sector's relevance in the main world economies.

When this universe of 57 cases related to the steel sector is the object of analysis, some observations and very interesting correlations emerge.

The analysis of the complainants of the cases reveals that the European Union (EU) was responsible for presenting 17.5% of the cases related to the steel sector in the WTO Dispute Settlement System (DSS), with there being 10 complaints total. Japan appears as the complainant in 6 of the cases, followed by Brazil and South Korea with 4 cases each.

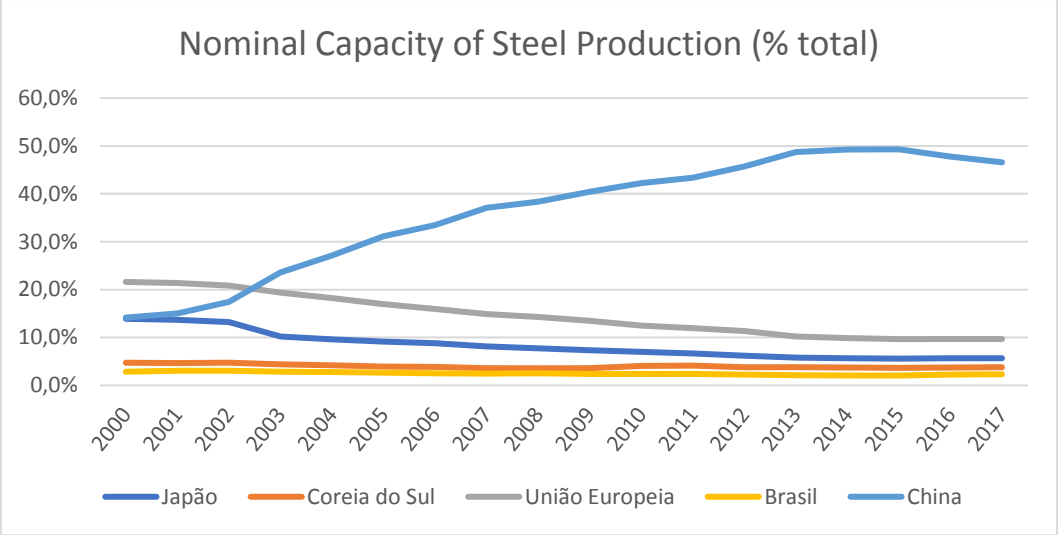
Unsurprisingly, some of the main and most traditional steel producers were responsible for the presentation of 42% of all steel-related disputes.

Complainant	**Number of Disputes**	**%**
European Union	10	17.5%
Japan	6	10.5%
Brazil	4	7.0%
South Korea	4	7.0%
China	3	5.3%
Chinese Taipei	3	5.3%
India	3	5.3%
Mexico	3	5.3%
Turkey	3	5.3%
Ukraine	3	5.3%
Others	15	26.3%
Total	**57**	**100%**

Source: WTO. Elaborated by the authors.

When considering the date of the beginning of the disputes, the distribution of cases per claimant reveals an even clearer relation to the position of each country in the world scenario.

Traditional steel producers, like the European Union, Japan, and the USA, all had their positions and world market share (when nominal capacity is taken into account) reduced, due to the intensive expansion of the Chinese producers, which in the year of 2000 was 14.2% of total world capacity and ended the year of 2017 with 46.5% of capacity.



Source: World Steel Association. Elaborated by the authors.

This transition in the representativeness of the countries on global capacity is also reflected in their representativeness on the cases presented.

Through the year of 2002, when Brazil, Japan, South Korea, and the EU possessed more than 40% of the world's steel production capacity, these countries were responsible for presenting 16 cases to the DSS (61% of the total). From 2003 onwards (through 2018), when China and other countries became more prominent in the world market, the four traditional producers had their market share reduced to just over 20%, presenting only 8 cases to the DSS out of a total of 31cases (approximately 26%).

Although the relationship between the representativity of a country's productive capacity over the world total and the number of disputes initiated by that country is not sought here, the close relationship between these two variables is remarkable. The explanation is possibly related to the fact that the increase of the production capacity in a saturated market, such as that of the steel market, leads to an increase of exportations by the country, thereby, generating greater concerns of trading partners and increasing the possibility of applying trade defense measures.

Interestingly, the USA is one of the most active members in the WTO DSS and a traditional steel producer, yet only presented 2 cases related to the sector. The first (DS260), from 2002, was against the European Union (in reaction to the loss of a case presented by the EU against the safeguards imposed by the Bush government in 2002), and the second (DS414), from 2010, was against China, due to the anti-dumping duty and compensatory measures imposed on the importation of grain oriented flat-rolled products.

However, the view from the other side of the statistics reveals that the USA was the claiming party in 38 cases (66.7% of the total), followed by China and the EU, with only 3 cases each.

Defendant (Country)	Number of Disputes	%
USA	38	66.7%
China	3	5.3%
European Union	3	5.3%
Indonesia	2	3.5%
Armenia	1	1.8%
Canada	1	1.8%
Egypt	1	1.8%
Hungary	1	1.8%
India	1	1.8%
Kazakhstan	1	1.8%
South Korea	1	1.8%
Kyrgyzstan	1	1.8%
Morocco	1	1.8%
Thailand	1	1.8%
Turkey	1	1.8%
Total	**57**	**100%**

Source: WTO. Elaborated by the authors.

The remarkable presence of the USA as a defendant in more than 66% of the cases seems to indicate much more than the relevance of the American consumer market for world steel producers. The USA was indicted for measures related to the steel sector at least twelve times more than any other member of the WTO, which is possibly indicative of the effects of the American politics and their favoritism of national consumers, as well as possible protective aspects.

The disputes presented against the USA came from diverse countries, and not only the traditional members of the DSS.

Disputes filed against the USA (steel sector)

Complainant	Number of Disputes
European Union	9
South Korea	4
Brazil	3
China	3
Japan	3
Mexico	3
India	2
Norway	2
Switzerland	2
Canada	1
Chinese Taipei	1
New Zealand	1

Disputes filed against the USA (steel sector)	
Complainant	**Number of Disputes**
Russia	1
Turkey	1

Source: WTO. Elaborated by the authors.

Despite Brazil's prominent position as a developing country with substantial investments in the infrastructure, oil, and gas sectors in recent years, the country hasn`t yet had its politics disputed within the WTO so far.

TRADE DEFENCE MEASURES AGAINST THE BRAZILIAN STEEL SECTOR.

As mentioned above, the steel sector represents roughly 10% of the disputes initiated in the of the WTO DSS, regarding a wide range of complaints. Brazil, on the other hand, as a medium-sized manufacturer, receives special attention in very few cases: three times as a plaintiff and not a single case as the defendant, despite some requests to act as an intervening third party.

Therefore, it is opportune to analyze the amount of safeguard measures applied to import products made from Brazilian steel from then forwards.

According to the information made available by the Federal Government and evidence provided by the WTO for the summoning of member-countries regarding investigations or imposed definitive measures, there are currently 19 restrictive measures applied to the importation of steel originated from Brazil – 13 antidumping rights, 3 compensatory measures, 2 safeguard measures, beyond the quotas imposed by the USA according to section 232 as abovementioned. There are also 2 investigations for dumping conducts and 3 safeguard measure investigations.

In regards to the current measures enacted, ten of them (53%) were applied by the USA. This high volume of measures applied seems to reinforce the discussion presented above, regarding the fact that the USA is the member-country that is the highest accounted plaintiff in the DSS for safeguard measures in the steel sector.

Following the USA, there is Canada, Thailand, and the European Union, which each applied two measures against Brazil. Canada has two antidumping measures and Thailand and the European Union have one antidumping and safeguard measure each.

The oldest measures applied are also American: the antidumping rights applied to the importation of welding accessory tubes with steel tips have been effective since 03/24/1986 and will remain effective until July 2021. The antidumping rights applied to connection tubes or alloys for circular welding have been effective since 10/21/1991 and have the validity date of October 2022. These rights are effective for 33 and 28 years respectively.

In total, applied commercial defense measures were identified to be in effect by seven countries, including relevant markets, such as the European Union and three members of NAFTA.

In reference to the investigations still in progress, a quite varied profile emerges among the countries. India and Peru are leading the original dumping investigations, while Canada, Turkey, and the Eurasia Union are conducting their own safeguard investigations against steel products, in response to the recent actions made by the USA within the scope of Section 232 and the European Union's safeguard measures.

By analyzing this data, one can notice that there is a heavy profile of commercial defense measures against steel products originating from Brazil. If we consider the traditional consumer markets, the USA has 6 antidumping measures, 3 compensatory measures, and restrictive quotas from Section 232 that are effective. Canada has 2 antidumping rights, and the European Union has 1 antidumping right and 1 safeguard measure.

There are still 3 safeguard measures under the analysis of the national authorities from other countries that can be enacted at any moment, in order to protect themselves from possible changes in the market caused by the American Measures (Section 232) and European (safeguards).

COMMERCIAL DEFENSE MEASURES ADOPTED BY BRAZIL

Brazil currently has 170 effective commercial defense tariff measures, of which 168 are antidumping rights and 2 are compensatory measures. A further detailed analysis demonstrates that 29 of these measures (28 antidumping rights and 1 compensatory measure) are related to steel products, roughly 17% of the total.

Country of origin	Commercial Safeguard Measures Enacted	Suspended measures
China	12	2
South Korea	3	0
Chinese Taipei	3	0
Ukraine	2	0
Vietnam	2	0
South Africa	1	0
Germany	1	0
Finland	1	0
Malaysia	1	0
Romania	1	0
Russia	1	1
Thailand	1	0

Country of origin	Commercial Safeguard Measures Enacted	Suspended measures
Total	**29**	**3**

Source: DECOM. Elaborated by the authors.

Firstly, it should be pointed out that the measures applied by Brazil are exclusively anti-dumping duties and compensatory measures, barriers considered less arbitrary and offensive within the multilateral trading system, especially because they are bilateral.

The reason for this is that, according to the WTO rules for the application of each one of these trade remedies, they must have only the necessary measure to compensate for the unfair practice of the trading partner or at least enough to stop the damage of their domestic industry. Even if excesses can be seen, they should be taken as exceptions to the rule, especially when comparing the diversity of applied measures with the specific measures that are brought to a dispute in the WTO.

In regards to the investigated origins, it is noteworthy to mention that the countries that registered the greatest advances and expansion in their productive capacity of steel are exactly the main targets of the measures in force, such as China, Chinese Taipei, and South Korea. China, who ceased to be a medium-sized producer in the year of 2000 to make up almost half of the world's total nominal production capacity in 2017, is a defendant in 11 anti-dumping duties and 1 compensatory measure.

Meanwhile, the current moment is extremely relevant for the validation and definition of Brazilian political and commercial orientation, in relation to the steel sector. During the years of 2018 and 2019, 18 of the measures in force will lose their validity and may be revised at the request of the domestic industry. Once the technical requirements have been exceeded, the decision to extend the application of the measures will fall under a political-diplomatic decision of the Federal Government.

Moreover, beyond the 18 measures that will have to be revised during the present year, there are also 3 measures that have had their applications suspended in 2018 for reasons of public interest. There is a recent tool being used in the national scenario that allows for the suspension of the anti-dumping duty application, if it is understood that the measure generates more damages than benefits to the national economy.

However, in accordance with the applicable national law, an anti-dumping duty can have its application suspended for up to one year, then renewable for as much as one more year. At the end of this period, if the right is not restored immediately, the right will be definitively terminated. Thus, over the next year, 3 other measures in force will have their validity discussed in a terminal manner within the Federal Government.

There are still two original dumping investigations currently pending before the Department of Trade and Public Interest of the Ministry of Economy, related to steel products (one for cast iron pipes from China, the United Arab Emirates, and India and another for flat-rolled silicon steel product from Germany).

In this sense, the next few years will be extremely sensitive for the definition of the Brazilian commercial policy, in relation to its steel producers and consumers, as 18 of the 29 commercial defense measures in force for the sector will be reviewed for effective closure and 3 others will be under final public interest analysis, regarding their continuity.

FINAL COMMENTS

The excessive capacity of steel production in the world has shown itself resistant to the natural adjustments of the market, with relevant indicators that are being supported by governmental interventions. Faced with overcapacity, the main producers have adopted a strategy known in international trade: preserve your own domestic market for profitable sales and export all of the excess at a minimum price to keep the operation as idle as possible, while generating at least a contribution margin.

However, this situation is not sustainable for the world economy in the long run, and severe adjustments will certainly occur over the next several years.

Nevertheless, the principle world economies and steelmakers have been shielding their domestic importation markets at artificially low prices to preserve the financial health of their steel sectors. Surpassing traditional anti-dumping measures, the United States has shown its tactics by applying quotas and tariffs through Section 232 (which did not precede any investigation). In response to this, the European Union and Thailand have applied safeguards, while Canada, Turkey, and the Eurasian Union have ongoing safeguard investigations.

As a result, the new Brazilian government, elected from a perspective of economic liberalism, will be put to the test by the most diverse political forces in the coming year, considering the strong changes expected in the dynamics of the international steel industry and its direct and indirect effects on the Brazilian economy.

On one hand, Brazilian producers face at least 19 restrictive measures in their exports (most of which are applied by the main Brazilian trading partners); some of these have plurilateral effects to reach several countries, like safeguards. In this case, beyond the direct effect that these measures cause on Brazilian exports, they are also capable of affecting the national internal market, since all of the countries affected by the measure should redirect the volume that has become available for sales.

On the other hand, the country has 29 trade defense measures in force on imported steel products, 21 of which are to be reviewed in the short term. In the meantime, 18 anti-dumping measures are expected to receive extensions of their applications in 2019, while the other 3 measures that are suspended should be reapplied or closed definitively.