



International Legal Options to Address Global Steel Overcapacity

March 27, 2024

Benjamin Blase Caryl
Associate General Counsel—International Trade & Public Policy
United States Steel Corporation

Executive Summary

- **The need grows for global rules and remedies to address global steel overcapacity, its causes, and impact**
- **To maximize the effectiveness of any such new global rules and remedies, they should be both enforceable and contemplated within members' World Trade Organization (WTO) commitments**
- **The primary purpose of this briefing is to:**
 - **provide an overview of the international legal options and key features of any international steel overcapacity agreement, and**
 - **identify which options warrant further consideration**

Situation, Challenge and Goal

Situation

- Increasing massive global steel overcapacity and imports are fueled by foreign government support and unfair trade practices
- Global decarbonization may exacerbate global overcapacity over next several decades

2023 Global Raw Steel Capacity Production Gap of 552 million metric tons (mmt):

- Nearly double global steel trade (282 mmt)
- More than any continent's capacity (except Asia)
- More than any country's capacity (except China)

Challenge

- Unilateral trade action can address the worst impact from imports, but does not address overcapacity's impact on exports and does not reduce overcapacity or its underlying causes
- Multilateral solutions could be more effective to address global overcapacity, but decades of multilateral efforts have failed (see slide 5)

Goal: New enforceable rules and remedies that

- address global steel overcapacity, its causes, and impact and
- result in a significant net reduction of global steel overcapacity

History of Global Steel Production

1996: China becomes top steel producer in world

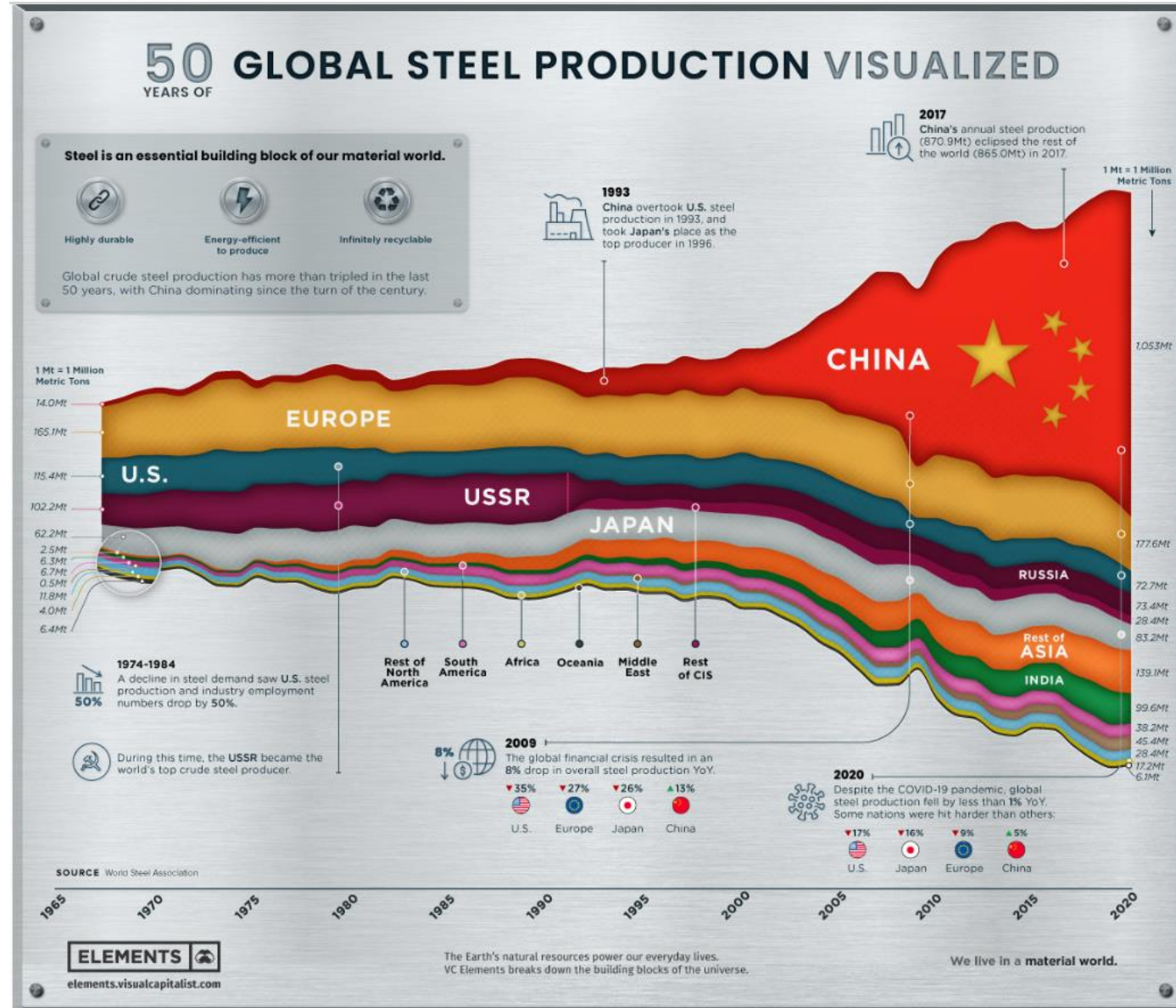
2001: China joins WTO

2009: China +13% and ROW -21%

2017: China > ROW

2020: China +6.9% and ROW -7.6%

2020: China produces 1 billion mt of steel (vs ROW 813 mmt)



Reproduced with permission from Elements by Visual Capitalist.
<https://elements.visualcapitalist.com/50-years-of-global-steel-production/>

History of Multilateral Efforts to Address Steel Overcapacity

- **1978:** Creation of the OECD's Steel Committee
- **1983:** U.S.-China Joint Commission on Commerce and Trade
- **1989:** U.S. launches negotiations for a multilateral agreement to abolish steel subsidies
- **1990s:** U.S. proposes a Global Steel Action Plan
- **1995:** WTO established
- **2002-05:** OECD negotiations on internationally-binding agreement on subsidies
- **2003:** U.S., Canada, and Mexico form North American Steel Trade Committee
- **2006:** (U.S.-China) Strategic Economic Dialogue
- **2009:** U.S.-China Strategic *and* Economic Dialogue
- **2016:** G20 launches Global Forum on Steel Excess Capacity (GFSEC)
- **2017:** U.S., Japan, and European Union (EU) trilateral joint statement initiative on industrial subsidies
- **2019:** China leaves GFSEC
- **2021:** U.S. and EU commit to negotiate a “global sustainable steel arrangement” on overcapacity and decarbonization

“Overcapacity” Definition & Scope

- ➔ Consider a definition of “overcapacity” based on steel capacity in excess of “true steel use” (or at least demand) to unmask steel overcapacity being consumed by uneconomical production and excess exports
- ➔ Consider expanding scope to include all steel products actually traded
- OECD = raw steel capacity – raw steel production (611mmt in 2023)
 - At national or regional level, this definition masks uneconomic and export-driven production
- GFSEC = raw steel capacity – total steel demand
 - Demand = “apparent steel use” = total finished production + total finished imports – total finished exports (World Steel Association)
- True steel use = apparent steel use – net indirect steel exports
 - China now exports more steel-intensive products than steel

Methodological Considerations

- **Time periods:** multi-year average with a demand growth factor
 - Thresholds for membership, agreement commitments, and remedies
 - Raw steel vs product level vs indirect steel trade
- ➔ Consider collecting data for all options and definitions, by country and product/groups, to see magnitude of differences between options/definitions

Key Features of Steel Overcapacity Agreement

1. Definitions (see slide 6)
2. Transparency and reporting commitments
3. Committee for monitoring and collecting data
4. Disciplines on government measures that contribute to overcapacity
5. Quantitative commitments (net capacity reduction or max allowed overcapacity; absolute or relative to total capacity/demand)
6. Remedies and dispute settlement provisions (members):
 - a. Special safeguard mechanism if members fail to meet quantitative commitments
 - b. Dispute settlement for breach of other commitments backed by retaliation
7. Remedies on sources of overcapacity (non-members): see slides 12-13

International Legal Options

1. International Agreement Options

A. Sectoral Agreement

- i. WTO core agreement**
- ii. WTO plurilateral agreement**
- iii. Critical mass agreement (CMA)**
- iv. Preferential trade agreement (PTA)**

B. Non-Sectoral Agreement

- i. Reform WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)**
- ii. CMA/PTA**

2. Revise most favored nation (MFN) rates under WTO GATT Art. XXVIII (could be part of 1 above or separate action)

Sectoral Agreement Options

Agreement Type	Description	Requirements	MFN Treatment	Examples
WTO Core Agreement	New agreement included as one of core treaties of WTO Agreement, Annex 1A	2/3 Members accept to go into force for accepted members. Consensus for universal force.	MFN treatment required for accepted members	Trade Facilitation Agreement
WTO Plurilateral Agreement	New agreement included in WTO Agreement, Annex 4	Consensus to go into force. Binds only members that accept.	MFN not required	Civil Aircraft; Gov't Procurement; Dairy; Bovine Meat
Critical Mass Agreement	Free-standing, under auspices of WTO, frequently begins as a Joint Statement Initiative	Only binds parties. Not <u>directly</u> incorporated into WTO or dispute settlement.	MFN required	Information Technology Financial Services E-Commerce
Preferential Trade Agreement	Part of a free trade agreement (FTA) or "phase one" interim agreement	Only binds parties. Few hard requirements for interim agreements, but dispute risk	MFN not required for non-FTA members	FTAs US-China Phase 1 US-Japan Phase 1

Non-Sectoral Agreement Options

- **Reform the SCM Agreement:**

- Despite government subsidies' significant role in overcapacity, the only multilateral rules on subsidies have been rendered ineffective in addressing "SCM" subsidies and do not mention overcapacity
- Current SCM reform proposals are insufficient to provide meaningful relief from subsidies and government measures that fuel overcapacity

- **Non-Sectoral Overcapacity Rules in CMAs/PTAs:**

- Broader scope (industry subsidy and non-subsidy measures) and possibly broader support
- Potential methodological and practical challenges

Overcapacity-based tariffs?

WTO Commitments:

- **MFN tariff rates** (GATT II and schedules, see next slide)
- **Non-discrimination:**
 - *MFN*: treat imports from all members the same (GATT Art. I)
 - *National treatment*: treat imports and domestic product the same (GATT Art. III)

WTO Exceptions:

- **Antidumping & Countervailing Duties** (GATT Art. VI)
- **Safeguards** (GATT Art. XIX)
- **General Exceptions** (GATT Art. XX)
- **Security Exceptions** (GATT Art. XXI)
- **PTAs** (GATT Art. XXIV)

Revise MFN Rates

- 100% WTO consistent: GATT Article XXVIII provides process for raising bound rates
- Mitigates retaliation risk: others can raise their rates, *but only on MFN basis*
- Controversial but could be first step for true recalibration of tariff policy for 21st century world and issues and could support overall trade liberalization (by encouraging more FTAs)

Country	Avg. Bound MFN Steel Tariff	Avg. Applied MFN Steel Tariff
India ^[2]	40.0	15.2
Indonesia ^[2]	35.5	9.5
Mexico ^[1]	34.3	7.3
Brazil ^[1]	33.9	9.8
Malaysia ^[3]	29.7	7.9
Turkey ^[3]	22.6	7.9
Vietnam ^[3]	10.8	3.9
China ^[1]	5.7	5.1
Russia ^[4]	7.2	6.9
Canada ^[1]	0.0	0.0
Korea ^[1]	0.0	0.0
Japan ^[1]	0.0	0.0
EU ^[2]	0.0	0.0
Taiwan ^[1]	0.0	0.0
USA ^[2]	0.0	0.0

Source: *WTO Tariff Download Facility*. Includes all steel-producing countries with at least 10mmt of production in 2022. Tariff data covers the 29 tariff headings that were subject to the United States' 2018 Section 232 order. The most recent tariff data available for each country is used: [1] 2023 data; [2] 2022 data; [3] 2021 data; and [4] 2019-2021 data.

Thank you

Benjamin Blase Caryl

Associate General Counsel—International Trade & Public Policy

United States Steel Corporation

bbcaryl@uss.com

+1 (202) 658-8953