Brazilian Trade Policy: Legality, Legitimacy, and Efficacy

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There are two trends in the recent Brazilian trade policy. On one hand, there is a widening of trade remedies' scope. On the other, trade policy became a central tool in the industrial policy toolbox. Both trends signal an increase in protectionism and can be evaluated in light of their legality, legitimacy, and efficacy.

When it comes to trade remedies, there seems to be three main characteristics. First, the issue was taken to the presidential level. Second, the Brazilian government expanded its range of mechanisms by taking additional action to fight all so-called "illegal" and "unfair" trade practices. Third, the administration of classic trade remedies tools became more aggressive, particularly in the case of antidumping duties.

Generally speaking, these measures are legal. In other words, they are compatible with multilateral rules embodied in the World Trade Organization (WTO) agreements. Its use can also be considered legitimate although the adoption by Brazil of rules applied against its own exports in the past creates a contradiction in the country's positioning. Its efficacy, however, is limited: these measures suffice to remedy, on a temporary basis, competitive challenges faced by some sectors in a certain number of products, but they are incapable of providing a solution to the widespread Chinese competition.

In the case of trade policy being used as industrial policy, there are another three characteristics. First, in the making of its new industrial policy the Brazilian government prioritized trade policy, maybe because it considered alternative tools such as the exchange rate policy, the fiscal policy, and the constitutional reforms as economically or politically unfeasible. Second, the newly announced measures are largely based on the provision of subsidies although they also include technical barriers to trade and discriminatory taxes. Third, its making disrespected the formal Brazilian trade policy-making process.

Differently from trade remedies, a substantial number of these measures can be deemed illegal. In the case of subsidies not tied to export performance and local content, any potential illegality depends on their application to specific cases. However, in the case of discriminatory taxes and subsidies tied to local content, both included in the new automotive policy framework, illegality is flagrant.

This group of illegal measures has a potential to erode Brazil's legitimacy, be it at the WTO and the G-20 negotiations level, be it in connection to the country's critique of trade barriers imposed by its main trading partners – China, the U.S., and Argentina. In addition, the efficacy of these measures is questionable. The use of (legal) subsidies is in principle more economically sound than the imposition of barriers at the border as these subsidies can be calibrated in a more precise fashion to fix some of the competitiveness challenged faced by the Brazilian manufacturing sector. However, its use is limited by the Brazilian Treasury financial capacity and by the fact that they don't address some of the structural challenges that are part of the so-called "Brazil Cost".

Nonetheless, the new industrial policy announcement demonstrates that the Brazilian government, in particular the Ministry of Finance, seems not to adequately followed its own rules related to trade policy-making as they require that measures such as these be discussed and adopted by the Foreign Trade Board (CAMEX) – and not Finance.

This episode makes clear the necessity to improve Brazil's trade policy-making process both by returning CAMEX to its original place inside the Executive Office of the President and by putting trade policy back in the hands of the Ministry of Development, Industry, and Foreign Trade (MDIC) and the Ministry of External Relations (MRE). These two agencies have as institutional missions, interests, and traditions, a greater concern in assuring the legality, legitimacy, and efficacy of trade policy measures adopted by Brazil.