



ABCI Note

November 2022

Dear reader:

ABCI Institute is happy to share the November 2022 edition of ABCI newsletter.

The present newsletter provides the reader with a quick glimpse of the most important recent trade facts, and information about relevant seminars and events recently carried out or about to happen. This edition brings the contribution of ABCI members Renata Amaral and Rafael Benke. They present, respectively, their analysis of the trade perspectives after the Brazilian elections and the Midterm elections in the U.S., and an analysis of the recently held Climate Change Conference (COP27).

Enjoy the reading; comments are welcome!

Short notes:

- **Highlights from the COP 27 (by Rafael Benke)**

As expectations for UNFCCC COP27 were low, minor advancements were found to be some success, although way below what is really needed to reach the Paris Agreement objective of limiting global warming to 1.5 degrees Celsius.

It is undoubtable that the world will need deep and sustained reductions in carbon emissions, and it is key to accelerate its transition towards a lower carbon economy. In this context, two relevant developments can be considered highlights from this COP.

Firstly, the transition will require massive investments. Average figures touch USD 3-4 Trillion a year, while recent projections by Mckinsey estimate that capital spending on physical assets for energy and land-use systems in the net-zero transition towards 2050 could entail over USD 9 trillion per year on average. So, the fact that an agreement was reached to create a “loss and damage” fund for vulnerable countries is an important step in recognizing the need for such a funding – even if it is still not clear how this funding will occur (and developed countries still have not delivered the USD 100 Bi/year promised in COP15).

Another relevant development is the increasing awareness for the need of a ‘just transition’, whereby the environmental challenges and goals be pursued in a way that is fair and inclusive to everyone concerned, particularly having in mind that risks and impacts will be inflicted in disproportionately in different regions, countries, and groups of world’s population, and that potential social opportunities stemming from the transition will need to be fostered for their realization.

ABCI Board

Aluisio de Lima-Campos, Miriam Campos, Victor Leite, Sergio Goldbaum



A final note on Brazil's historical role in the UNFCCC process and the changes in political wind. In that regard, President Elect Lula's participation in COP 27 was considered by the engaged climate community as a positive omen for the next COPs to come under his government.

- **Trade and Climate Change**

The relationship between trade and environment has always been dual. On the one hand, there has been concern about the use of environmental reasoning as protectionist measures "in disguise." Some of the most well-known examples include the Tuna-Dolphin I and II, and the Retreated Tires cases. On the other hand, international trade rules have been designed to help nations achieve environmental improvements, like the WTO green subsidies.

The [2022 WTO World Trade Report: Climate Change and the International Trade](#) unequivocally takes the second perspective. The report was timely released on November 7th. The objective of the report is to explore "the complex interlinkages between climate change and international trade, revealing how international trade and trade rules can contribute to addressing climate change." Moreover, it also opens a third and somewhat new perspective: the impact of climate change and other environmental issues on trade flows.

The report has 152 pages, divided into five sections:

- The role of trade in adapting to climate change;
- The trade implications of a low carbon economy;
- Carbon pricing and international trade;
- The decarbonization of international trade; and
- The contribution of trade in environmental goods and services.

The report argues that trade can help countries to better prepare and respond to Climate Change challenges through access to technology and critical goods and services like food and healthcare products. Trade policies such as eliminating tariffs and reducing non-tariff measures on a subset of energy-related environmental goods can support world exports, increase energy efficiency, and speed up renewables uptake, helping nations to cut global GHG emissions, and simultaneously creating jobs.

Finally, it warns against unilateral measures taken by countries that could "stoke trade tensions, create investment-discouraging uncertainty, and impose disproportionate costs (...) in developing countries." This last remark calls for a more proactive role of the WTO in the climate change discussion. According to the report, the



organization “could play a more valuable role as a venue for transparency, comparability and potential harmonization of such measures.

In a sense, either international trade manages to be part of the climate change solution, or it can be one of its victims. The discussion of a Trade-related aspects of the Environment and Climate Change Agreement could be part of the agenda of the WTO in the near future.

- **EU Ban on Forced Labor Products**

In the path of the U.S. Uyghur Forced Labor Prevention Act (UFLPA) that became law on December 23, 2021 and following the import prohibition of goods, wares, articles, or merchandise that went into effect on June 21, 2022 in the United States (see ABCI Note Summer/Fall 2022), the European Commission proposed on September 14, 2022 to prohibit products made with forced labor in the EU market. The proposal covers all products, namely those made in the EU for domestic consumption and exports, and imported goods, without targeting specific companies or industries.

Presently, the document is under discussion in the European Parliament and the Council of the European Union which may adopt amendments and eventually engage in reconciliation to produce a final text. It should come into effect in two years once adopted by the two legislative bodies and published in the Official Journal of the European Union. Based on the current discussions, the big difference with the American UFLPA is that the burden of proof will not rest with the importer, but with the European investigative authorities. They will have to conduct an investigation where there is a substantiated risk of forced labor being used. If evidence of forced labor is found, the goods would need to be suspended and withdrawn from the EU market.

Other aspects are being addressed, such as the creation of an EU risk database to help competent authorities identify forced labor products, remediation for victims, unintended impacts like developing countries being locked out of supply chains, and avoidance of irresponsible disengagement when, for example, an investigated company decides to move to another country instead of cooperating with the investigation, among others.

- **Trade perspectives after the Brazilian elections and the Midterm elections in the U.S. (by Renata Amaral)**

What are the impacts of the Brazilian elections and the U.S. Midterm elections on the trade relationship between Brazil and the U.S.?

Brazil-US trade relationship: Institutional exchange between Brazil and the U.S. have always maintained continuity of work, regardless the changes of administration. Trade dialogues, trade missions, technical working groups from both countries have always been maintained throughout the changes of administration in both



sides. The sustainability agenda will be at the core of Lula's public policies - domestically and internationally - including the trade agenda. That is, without a doubt, a strong point of connection with Biden's priorities here in the U.S.

U.S. Midterms: The midterm results were positive for Democrats for very different reasons, not necessarily for economy reasons. With regard to Congress, Democrats maintained the majority in the Senate and it seems not much will change in terms of trade policy. It is not expected that the midterms will result in relevant changes in trade policy: Section 301 tariffs will be reviewed as required by statute; no big changes to the U.S.-China trade relationship are expected; and WTO reform will proceed in the same pace as it does currently within the administration.

- **WTO Reform**

On November 28, 2022, the United States prevented WTO members from appointing appeal judges for the 60th time. The US has been blocking new appointments since August 2017. According to WTO website, "[the United States said it would not agree to the launch of selection processes to fill vacancies on the Appellate Body until its systemic concerns regarding the WTO's dispute settlement system were addressed](#)". As a result, the WTO Appellate Body for Dispute Settlement has been paralyzed since the end of 2019.

The "systemic concerns" of the US are detailed in a February 2020 United States Trade Representative document, the "[Report on the Appellate Body of the WTO](#)". According to the report:

- The Appellate Body chronically violates the rules imposed by WTO members, undermining the dispute settlement system and the WTO generally, and
- Appellate Body errors in interpreting WTO Agreements raise substantive concerns, undermine WTO Members rights and create additional obligations.

However, this is only one of the many governance problems WTO has to face. A European Commission [Factsheet on WTO reform](#) also mentions:

- The inability of the WTO's 164 members to agree on new rules to tackle pressing issues such as digital trade or sustainability, and
- The inability of WTO to properly monitor how some members apply trade rules because they are not transparent enough about their national trade legislation and practices.

At the June 2022 Ministerial Conference (MC12), the Ministers committed to work towards necessary reform of the WTO, as explicitly stated in the beginning of the [MC12 Outcome Document](#). They agreed to



address the challenges that the WTO is facing and to ensure the WTO's proper functioning. Ministers recognize “the importance and urgency of addressing those challenges and concerns and commit to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024”.

The 60th US block is a harsh reminder of the urgency of the fostering of the WTO reform agenda.

Upcoming events in the Fall:

- ABCI’s XVIII Symposium on International Trade "Trade Policy Perspectives for Brazil and the World" will be held on December 8 and 9, 2022, from 11:30 AM to 1:00 PM (EST), via Zoom. On December 8, 2022, Welber Barral and Abrão Neto will present their views on "Brazil’s Trade Policy: Legacy and Perspectives." On December 9, 2022, Otaviano Canuto and Gary Hufbauer will discuss "Globalization, Industrial Policy and Inequalities." Click [here](#) to participate in the ABCI’s XVIII Symposium on International Trade.

Past Events:

- On September 16, 2022, ABCI and American University School of Law held the webinar "Energy Security Conflicts and the Role of International Trade Law" with Anna-Alexandra Marhold and Geraldo Vidigal. The recording is available [here](#).