



ABCI Note

February 2023

Dear reader:

ABCI Institute is happy to share the February 2023 edition of ABCI newsletter.

The present newsletter provides the reader with a quick glimpse of the most important recent trade facts, and information about events recently carried out. This edition brings the contribution of ABCI member Cláudia Marques. She presents her analysis on the new institutional configuration of the Brazilian trade policy under the new government. We also discuss three other relevant issues of uttermost importance to the future of the World Trade Organization (WTO): the United States steel and aluminum case, the export ban of technology from the Netherland and from Japan and the recent developments of the MPIA.

Enjoy the reading; comments are welcome!

Short notes:

- **Brazilian ministerial structure and trade policy (Claudia Marques)**

On January 2nd, 2023, Brazilian Provisional Measure No. 1154 restructured the administrative organization of the government and brought significant changes, including the fragmentation of the former Ministry of Economy into four ministries, (i) Finance; (ii) Development, Industry, Trade and Services; (iii) Planning and Budget; and (iv) Management and Innovation in Public Services.

Thirty seven ministers were appointed to the following structure, against twenty three from the former government: Agriculture and Livestock, Cities, Culture, Science, Technology and Innovation, Communications, Defense, Agriculture Development and Family Agriculture, Integration and Regional Development, Development, Social Assistance, Family and Hunger Combat, Human Rights and Citizenship, Finance, Education, Sports, Management and Innovation in Public Services, Racial Equality, Development Industry Commerce and Services, Justice and Public Security, Environment and Climate Change, Mines and Energy, Women, Fisheries and Aquaculture, Planning and Budget, Ports and Airports, Indigenous People, Social Security, Foreign Affairs, Health, Labor and Employment, Transport, Tourism, Federal Controller's Office, Staff of the Presidency, Secretariat of Institutional Relations of the Presidency, General Secretariat of the Presidency, Social Communications Secretariat, Institutional Security Office (GSI) and Attorney General's Office.

Speaking of the Ministry of Development Industry Trade and Services in particular, there is a clear sign of the strengthening of the industry and the focus on commercial and industrial contemporary strategy policies. It is important to highlight the creation of the Secretariat for the Green Economy Decarbonization and Green Industry within the Ministry, which is a significant step towards incorporating the climate and sustainability

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agenda in all trade and industrial policy discussions. The Ministry of Trade stressed that Brazil's reindustrialization will be based on sustainable development and aim at a low-carbon economy.

On the environment front, I would draw attention to the Permanent Interministerial Commission for the Prevention and Control of Deforestation, created by Decree No. 11,367/23 and aiming at coordinating action among 19 federal government departments towards zeroing deforestation. This is very relevant to the US-Brazil bilateral agenda. Another example of the transversality of environment and climate change among various ministries is the new Secretariat of Climate, Energy and Environment in the Ministry of Foreign Affairs.

The current administration's challenge will be to coordinate a contemporary, green trade and industrial policy among all the actors involved, as is already seen in other countries. One of the complexities I see will be to establish the best industrial policy approach for Brazil in a context of a large wave of green subsidies by the world's major economies. It will be interesting to see how Brazil will deal/react to the new U.S. green industrial policy.

Lastly, ministries – including Trade, Finance, Agriculture and Foreign Affairs will have a special advisor on social participation and diversity.

- **The US Steel and aluminum case**

On 9 December, the WTO released the panel reports in the cases brought by China, Norway, Switzerland, and Turkey in “United States — Certain Measures on Steel and Aluminum Products” (DS544, DS552, DS556 and DS564). Main conclusions and recommendations can be found [here](#).

According to these reports (i) the additional tariffs imposed on those countries exports of steel and aluminum by the US, and (ii) the exemptions and export quotas granted to other countries like Brazil Argentina, South Korea, Mexico, and Canada regarding the same exports were all ruled contrary to the GATT (General Agreement on Tariffs and Trade). The Panel reports recommend that the United States “bring its WTO-inconsistent measures into conformity with its obligations under the GATT 1994”.

Back in April 2017, the US, under the Trump administration, initiated a Section 232 investigation on imports of steel and aluminum. The purpose of a Section 232 investigation is to determine the effect of imports on national security. In February 2018, the US released the final results of the investigation, and it found that imports of both steel and aluminum threatened the national security of the United States. The findings of these investigations extended the meaning of “national security” concept to include “economic security” reasons. After negotiations, countries like Brazil, Argentina, South Korea, Mexico, and Canada, were exempted from the additional tariff in lieu of export quotas. China, Turkey, Norway, and Switzerland did not agree to be subject to export quotas and brought the case to the WTO.

Now that the WTO decided against the US interests, the Biden administrations must choose between (i) doing nothing, letting those countries retaliate against US exports, imposing tariffs on US products, or (ii)



appealing “into the void”, since the WTO Appellate Body system has been paralyzed for years. If the US decides to appeal, it may indefinitely postpone legal retaliations.

Anyway, the US Steel and Aluminum case poses tough questions to WTO Members: Can “economic security” reasons be extended to a “national security” claim? Can the WTO define what should be a national security reason for one of its members?

The recent Chad Bown’s Trade Talk 175 episode: The dreaded WTO ruling on Trump’s national security tariffs, tells the full story behind the US steel and aluminum case and provides further in-depth analysis. The episode’s transcription can be read [here](#).

- **The U.S., Netherlands and Japan semiconductor export ban**

On October 7, 2022, the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) [announced](#) a series of targeted updates to its export controls. The aim was to restrict the People’s Republic of China’s (PRC) ability to both purchase and manufacture certain high-end chips used in military applications. According to BIS, the export controls announced would restrict the PRC’s ability to obtain advanced computing chips, develop and maintain supercomputers, and manufacture advanced semiconductors. These items and capabilities, still according to the BIS, are used by the PRC to produce advanced military systems including weapons of mass destruction; improve the speed and accuracy of its military decision making, planning, and logistics, as well as of its autonomous military systems; and commit human rights abuses. The rules warn companies that may do business with any of the Chinese concerns targeted that they could be included in the [Entity List](#), which will impact a company’s access to U.S. technology.

For these restrictions to be effective, however, Washington needed to bring on board the Netherlands and Japan, home to chipmaking powerhouses ASML and Tokyo Electron among others. At the end of January 2023, after a long period of negotiations, Deputy Secretary of Commerce Don Graves confirmed to Reuters that an agreement between the U.S. and the two countries had been reached and offered no further comments. No details about this agreement are publicly available.

As a response to the U.S. action, the PRC filed a [complaint](#) at the WTO in December 2022. The case ([DS216](#)) is currently at the consultation phase. Apparently, a national security argument by the United States would be stronger this time than in the steel and aluminum Section 232 dispute ([DS552 panel report](#)), which may qualify the U.S. under the [“national security exception”](#) of the WTO rules and lead to a decision against the PRC.

- **The MPIA decision on French fries from Colombia.**

The Appellate Body of the World Trade Organization (WTO) became inoperative in 2019 due to a blockage in the appointment of the new Appellate Judges. The blockage in the appointment resulted in the



WTO lacking the number of judges necessary to hear an appeal. The interruption reflects the U.S. criticism that the Appellate Body overreached its jurisdiction, and took away rights and imposed new obligations through erroneous interpretations of WTO agreements. With the Appellate Body inoperative, the panel judgment will not be enforced if the losing party appeals. The trade community often refers to the appeals as being directed “to the void”, as no adjudicatory body can hear the case. The current crisis in the Appellate Body reflects the need to reform the WTO dispute settlement system.

On April 30, 2020, forty-seven WTO members notified the organization of the creation of a new Multi-Party Interim Appeal Arbitration Arrangement (MPIA), and their intention to, rather than appeal to the Appellate Body, resort to using this mechanism to arbitrate their disputes as long as the Appellate Body is not able to hear appeals of panel reports in disputes among them. The MPIA does not abrogate the first two phases of the WTO dispute settlement system (consultations and panel) and is “limited to issues of law covered by the panel report and legal interpretations developed by the panel.” The panel, in turn, is the competent forum to assess the facts of the case and the applicability of and conformity with the relevant covered agreements.

Last semester, the MPIA finalized the first two disputes. In July 2022, the appellate arbitration panel issued its first award. The parties notified the WTO of the award with a recommendation to bring measures into conformity concerning the dispute “DS583: Turkey — Certain Measures concerning the Production, Importation and Marketing of Pharmaceutical Products” the award was notified with a recommendation to bring measures into conformity. In December 2022, the parties notified the WTO of the award with a recommendation to bring measures into conformity concerning the dispute “DS591: Colombia — Antidumping Duties on Frozen Fries.”

At the Dispute Settlement Body meeting on January 27, 2023, the United States praised how the arbitrators handled, in Colombia — Antidumping Duties on Frozen Fries, the issue of the Antidumping Agreement Article 17.6(ii) legal standard of review. The positive comments will not change the United States’ position towards the Appellate Body but may indicate what may become a starting point for future negotiations. Some critics have already been contemplated at the MPIA, such as the alleged procedural defects of the Appellate Body. The substantive flaws the United States identified will be less likely to be overcome in the near future. However, the MPIA might serve as a laboratory for what might be a reformed Appellate Body.

Past Events:

- ABCI’s XVIII Symposium on International Trade "Trade Policy Perspectives for Brazil and the World" was held on December 8 and 9, 2022. On December 8, 2022, Welber Barral and Abrão Neto presented their views on [Brazil’s Trade Policy: Legacy and Perspectives.](#) On December 9, 2022, Otaviano Canuto and Gary Hufbauer discussed ["Globalization, Industrial Policy and Inequalities."](#)