



ABCI NOTE



ABCI NOTE SPRING 2026

ABCI Chairman

Dear reader:

In these turbulent times, we release the 2026 ABCI Spring Newsletter with a measure of humility. Developments are unfolding so rapidly that the issues we address here may already appear outdated even as they are published, despite being written only days ago.

This 2026 ABCI Spring Newsletter discusses:

- The increased use of trade as a geopolitical instrument of leverage: the European Union and Brazil examples,
- The prospects of the Integrated Forum for Climate Change and Trade (IFCCT) to manage trade tensions among nations,
- The rise of trade defense measures in Brazil in 2025, and
- The United States Supreme Court's decision prohibiting the President from imposing tariffs under the International Emergency Economic Powers Act (IEEPA).

In the early eighteenth Century, Montesquieu advanced the proposition that commerce among nations could foster mutual understanding and political moderation, an idea encapsulated in his concept of "doux commerce" or "sweet" commerce. As of early March 2026, however, recent events remind us that economic interdependence alone has not proven sufficient to prevent the eruption of violent conflicts.

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WHEN TRADE BECOMES A WEAPON: THE EUROPEAN UNION'S EXPERIENCE AND A PARALLEL WITH THE BRAZILIAN REGULATORY FRAMEWORK

Vera Kanas

In our ABCI Note of Fall 2025, we discussed in detail the Brazilian procedure for suspending trade concessions. Here, we will address the development of the European regulatory framework and draw parallels between the European and Brazilian experiences.

In January 2026, the United States threatened to impose new tariffs on imports from seven European countries until “an agreement is reached for the complete and integral sale of Greenland.” The tariffs would start at 10% in February and rise to 25% in June. In anticipation of the potential surcharge, France has raised the possibility of using, for the first time, the European Union’s Anti-Coercion Instrument (ACI) against the United States.

The ACI was developed in 2023 in response to various trade restrictions imposed by China on Lithuania after that country’s open support for Taiwan in 2021. In early 2022, the European Union initiated a dispute settlement proceeding at the World Trade Organization against China for discriminatory trade practices (a case later closed by the EU at the end of 2025). The episode exposed the limitations of the multilateral trading system when confronted with indirect, yet effective, economic pressure.

The ACI was designed to address this reality. It is often described as a “trade bazooka” because it enables the adoption of powerful countermeasures within a relatively short timeframe. It functions primarily as a deterrent, aimed at preventing third countries from using trade or investment-related measures to pressure EU Member States into adopting a particular position or behavior.

Under Regulation (EU) 2023/2675, the European Commission may initiate, on its own initiative or upon a substantiated request from Member States, companies, or other affected stakeholders, a procedure to assess the existence of economic coercion. This assessment phase lasts approximately four months. If coercion is found, the Commission engages in negotiations with the third country concerned in order to secure the termination of the coercive measures.

If negotiations fail, the EU may adopt response measures. These may include restrictions on access to the EU market, limitations on investments, measures affecting services, public procurement, and intellectual property, export controls, and even restrictions on financing. Any such measures must be proportionate, tailored to the specific circum-

tances, and suspended once the coercion ceases. They may also be accompanied by claims for reparation.

As in the European case, Brazilian law was initially conceived for a different purpose: to retaliate against European rules establishing environmental standards that, if not complied with, could trigger trade restrictions, particularly in relation to deforestation. The bill was later expanded to allow Brazil to impose countermeasures against any such measures, thereby enabling the country to respond to those imposed by the United States in mid-2025.

The scope of the EU regulatory framework is also similar to that of Brazil. They differ in persuasive strength because Brazil's political and economic weight on the global stage is more limited. As a result, the Brazilian instrument has a more compensatory or rebalancing character than a deterrent one. In other words, the European mechanism is primarily designed to prevent another country from adopting a coercive measure, while the Brazilian framework empowers the country to react to a trade attack already carried out by another State.

We may conclude that both the European and the Brazilian frameworks stem from the same diagnosis: trade, financial, and investment measures have increasingly been used as instruments of political coercion, interfering with legitimate sovereign choices. In this context, traditional tools of international trade law are no longer sufficient to provide avenues for countries to resolve conflicts, and geoeconomic mechanisms enable more effective responses.



COP30, TRADE, AND A NEW MECHANISM TO MANAGE TRADE TENSIONS

Chiara Pappalardo

From a trade perspective, COP30, which concluded last November in Belém, Brazil, is the first Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) to explicitly connect climate change policy with trade policy. Trade and climate governance have always been intertwined, but the friction between ambitious climate policies and international trade law has grown increasingly pronounced. These tensions, and nations' desire to address them, are reflected in Section III Paragraphs 55–56 of the Global Mutirão Decision, one key text within the broader Belém Package approved by all 195 participating countries.

Paragraph 55 reaffirms UNFCCC Article 3.5, stating that measures to combat climate change, including unilateral ones, should not constitute a means to arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Paragraph 56 calls upon UNFCCC subsidiary bodies to convene recurring technical dialogues involving Parties and relevant stakeholders, including the World Trade Organisation, the United Nations Trade and Development, International Trade Centre. These technical dialogues are intended to identify opportunities, challenges, and barriers to strengthening coordination between the trade and climate agendas. The idea is to guide unilateral climate measures so that they are fair, proportionate, and consistent with open trade principles.

On November 7th, during the climate summit, President Luis Inácio Lula da Silva launched the Integrated Forum on Climate Change and Trade (IFCCT), a new global platform open to all UNFCCC Parties. The initiative responds to concerns from countries like India and China that carbon border adjustment measures, green subsidies, supply-chain standards, deforestation-linked trade measures, and the like, could be disguised as trade restrictions. The underlying vision for IFCCT is “to foster collaboration on policies, partnerships and reforms that deliver broad-based economic and social gain and drive progress toward the 1.5-degree target and climate resiliency”.

IFCCT is designed to complement and not replace UNFCCC and WTO mandates by building shared understanding and policy coherence through dialogue, transparency, and policy alignment rather than formal legal harmonization. It does not make rules, create financial obligations, or set legal precedents. Instead, it works through informal Chatham House-style discussions. It is open to governments and also to experts, industry, researchers, and civil society organizations, giving developing countries that may be disproportionately affected by climate-linked trade measures an avenue to address equity concerns.

IFCCT has two initial working groups:

- The Climate and Trade Pathways Working Group, which looks at policy approaches and cooperation opportunities, like decarbonizing supply chains and green industrial policy.
- The Climate and Trade Tools Working Group, which focuses on technical and analytical frameworks such as, for example, carbon accounting methods, interoperability of standards.

It is co-chaired by Brazil and a yet-to-be-designated developed country partner for an initial term of three years. At the COP30 launch and in subsequent discussions, a wide range of countries expressed support for participating in the initial consultative process, including major economies such as China, the European Union, the United Kingdom, Australia, and New Zealand, as well as broader engagement from developing and least-developed countries.

Ultimately, IFCCT is intended to reposition trade from a perceived constraint on climate ambition to a constructive instrument for advancing it. Its broader aim is not to subordinate one regime to the other, but to harness trade governance as a lever for more ambitious, equitable, and cooperative climate action, ensuring that climate measures reinforce, rather than destabilize, the multilateral trading system. Its success will depend on political, institutional, and substantive factors:

First, political will. If major economies treat the forum as a meaningful venue for coordination, rather than a diplomatic placeholder, its work can shape how climate-related trade measures are designed and justified.

Second, institutional clarity. Clear terms of reference, defined workstreams, and predictable dialogue formats will determine whether the IFCCT becomes a structured coordination mechanism or remains a loose discussion platform.

Third, inclusivity and trust. Developing countries' confidence that their competitiveness, development space, and equity concerns are taken seriously will shape the forum's legitimacy. If it is perceived as legitimizing unilateral climate trade measures without addressing distributional impacts, participation may weaken.

Fourth, substantive output. The production of credible technical analyses, best-practice guidance, and early warning signals about potential trade disputes will determine whether it adds practical value.

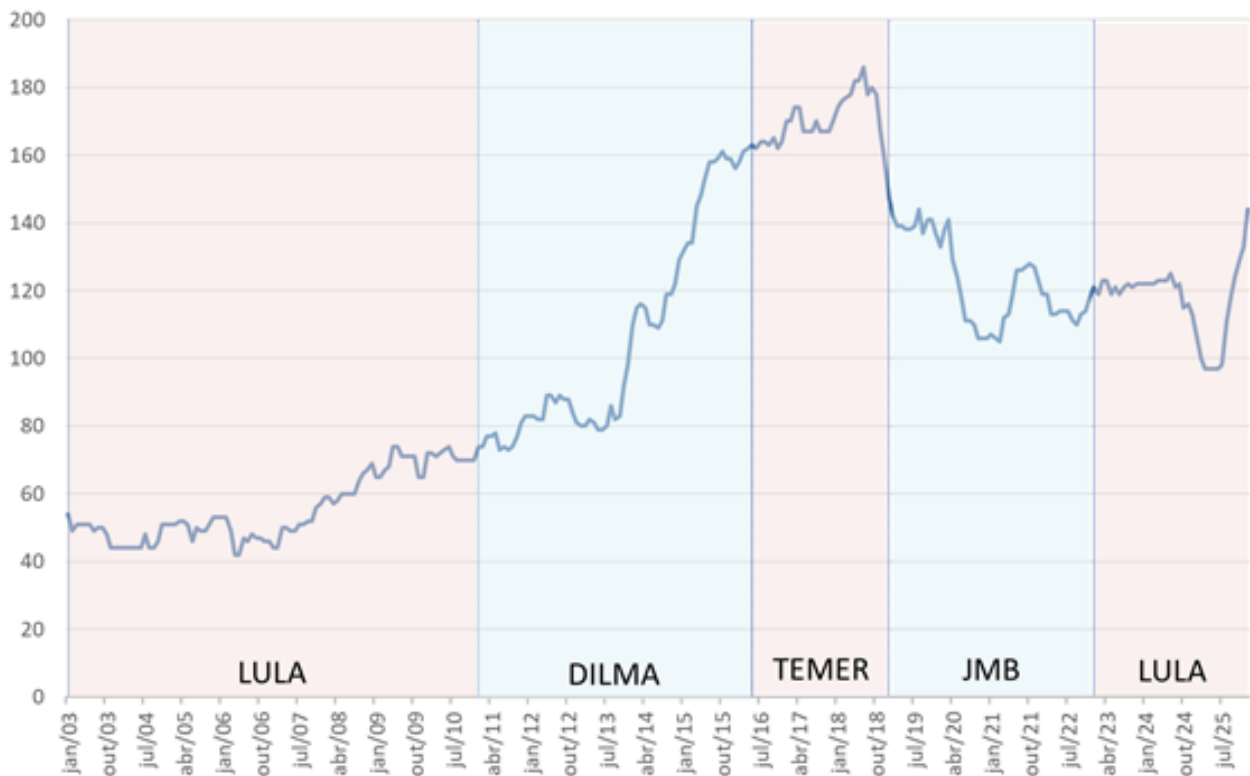
Finally, the broader geoeconomic climate. As climate policy increasingly operates through trade instruments such as subsidies, carbon border adjustments, supply-chain measures, the IFCCT's relevance will hinge on its ability to manage tensions before they escalate into formal disputes.

BRAZIL: TRADE DEFENSE MEASURES ON THE RISE AGAIN

Sergio Goldbaum and Luiza Nonato

In the 2025 Winter edition of the ABCI Newsletter, our fellow board member Luiza Nonato highlighted the notable increase in trade defense investigations in 2024. Now it shows the results: the number of trade defense measures in force at the end of 2025, including anti-dumping duties and countervailing measures, on a country-product basis, sharply increased to 146 (see Figure 1).

FIGURE 1: BRAZIL: TRADE DEFENSE MEASURES IN FORCE, COUNTRY-PRODUCT PAIR BASIS, 2003-2026.



Source: Based on DECOM/MDIC.

In 2025, the DECOM/MDIC approved or renewed 48 trade defense measures. Among them, 15 targeted Iron and Steel products (NCM-2 72 and 73), six Rubber products (NCM-2 40), and five Glass and glassware (NCM-2 70). China was, as usual, the main targeted origin: 20 of the 48 measures implemented in 2025 were against China’s exports to Brazil, followed by Taiwan (five) and the United States, Thailand, India, and South Korea (three duties each). Table 1 shows the cross-distribution of targeted countries and NCM-2 products.

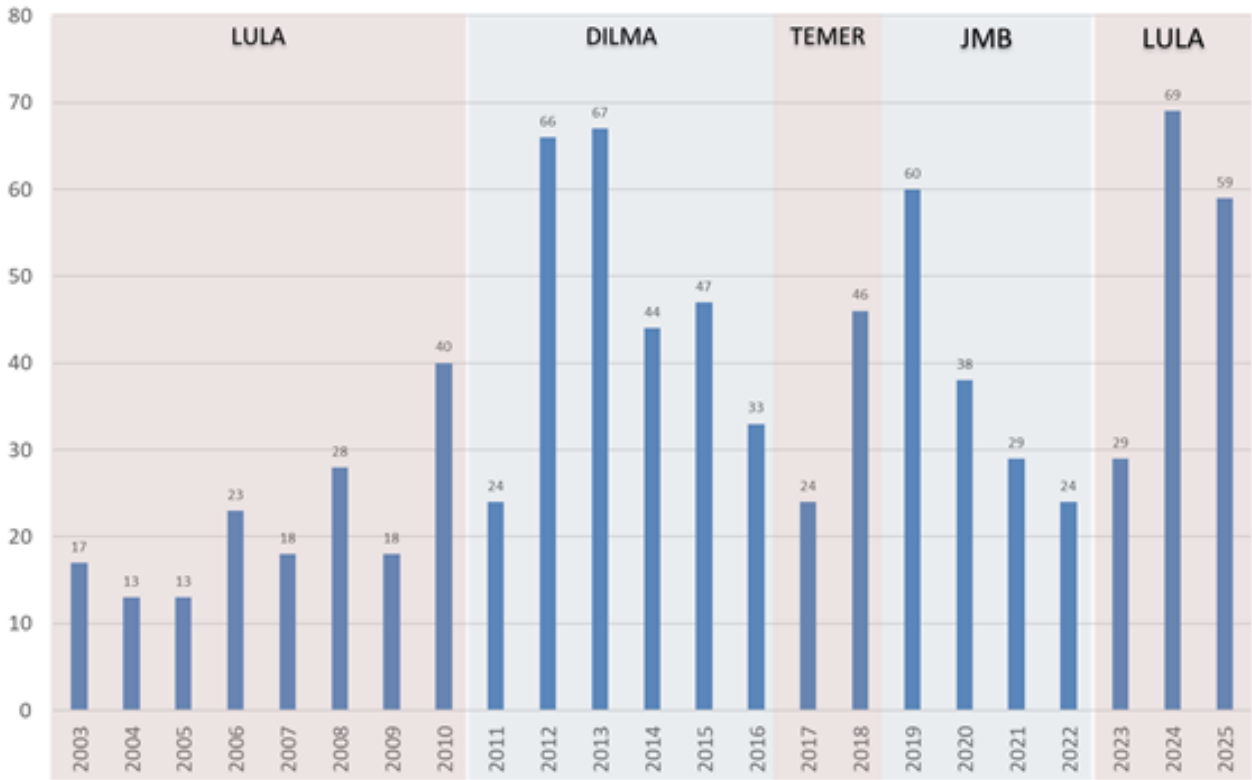
TABLE 1: BRAZIL, NEW AND RENEWED TRADE DEFENSE MEASURES, TARGETED COUNTRIES AND PRODUCTS, 2025

	7	29	32	39	40	48	54	55	69	70	72	73	83	85	90	96	Total
Germany		1									1						2
Canada				1													1
Chile						1											1
China	1	1	1	1	2		1	1	1	1	4	2	1	1	1	1	20
South Korea							1				2						3
USA		1		2													3
India								1				2					3
Malaysia										2							2
Pakistan										1							1
Thailand					2			1									3
Taiwan					1		1			1	1	1					5
Turkey										1							1
Ukraine											1						1
Vietnam					1			1									2
Total	1	3	1	4	6	1	3	4	1	5	10	5	1	1	1	1	48

Source: Based on DECOM/MDIC.

The stock of trade defense in force may increase further in 2026, as 59 investigations were initiated in Brazil in 2025, including new investigations, sunset reviews, and public interest investigations.

FIGURE 2: BRAZIL: TRADE DEFENSE INVESTIGATIONS INITIATED, 2003 - 2025.



Source: Based on DECOM/MDIC.

Table 2 shows that China’s exports to Brazil remain the main target of these investigations (21), followed by India (six) and Malaysia (five). Iron and Steel and articles thereof (NCM-2 72 and 73) also remain as the main targeted product (20 investigations), followed by Plastics and articles thereof (NCM-2 39, 10 investigations).

TABLE 2: BRAZIL, NEW AND RENEWED TRADE DEFENSE MEASURES, TARGETED COUNTRIES AND PRODUCTS, 2025

	28	29	39	40	48	56	68	69	70	72	73	81	85	90	Total
South Africa			1												1
Germany										2					2
Canada	1														1
China	2	2	3	1	1	1	1	2	2	4		1	1		21
South Korea										1					1
Egypt						1			1	1					3
Spain										1					1
USA	1		1												2
India			1	2						1	1			1	6
Indonesia										1					1
Israel						1									1
Japan										1					1
Malaysia			2						1	1	1				5
Morocco	1														1
Mexico	1														1
Netherlands										1					1
Paraguay														1	1
Russia										1					1
Thailand			1	1							1				3
Taiwan				1						1					2
Ukraine											1				1
Vietnam			1	1											2
Total	6	2	10	6	1	3	1	2	4	16	4	1	1	2	59

Source: Based on DECOM/MDIC.

As for an international comparison, the WTO anti-dumping database was last updated on June 30, 2025. There were 165 anti-dumping investigations initiated from January 2025 until that date. India and the USA were the main reporting countries, with 41 and 29 investigations, respectively. The WTO antidumping database also records that 2,411 antidumping duties were in force on June 30, 2025. The main reporting countries are the United States, with 564 country-product duties, followed by India (170), the European Union (130), and Brazil (129).

Based on Official Gazette records, at least five investigations were terminated during the year without the imposition or renewal of definitive duties. Two cases were closed at the petitioner's request, one sunset review was concluded without extension of the measure; one investigation was terminated due to lack of evidence of dumping; and another was terminated on procedural grounds, as the analysis was impaired by the lack of reliable data submitted by the domestic industry.

When compared with the number of measures approved or renewed in 2025, the five investigations terminated indicate a high conversion rate from proceedings to definitive outcomes. This pattern reflects both the growing technical sophistication of domestic petitioners and the consolidation of institutional practice within the investigating authority. At the same time, withdrawals and data-related terminations highlight that evidentiary rigor remains central to the system, reinforcing incentives for more robust substantiation of dumping, injury, and causal link at the filing stage.

The concentration of measures in upstream industrial inputs, particularly iron and steel and plastics, suggests that anti-dumping instruments operate not only as responses to discrete episodes of injury but also as mechanisms that shape competitive conditions in foundational industrial segments. Because these sectors supply a broad range of downstream industries, sustained protection at the first tier of the production chain may generate vertical effects.

By reducing external competitive pressure on upstream producers, trade remedies can influence domestic input prices and cost structures for downstream manufacturers. Where cost pass-through is significant and alternative sourcing options are limited, downstream firms may experience margin compression or competitive disadvantages vis-à-vis imported finished goods. In such circumstances, downstream producers may themselves become more likely to resort to trade defense instruments, potentially extending protection sequentially along the value chain.



U.S. IEEPA TARIFFS ARE GONE, BUT REPLACEMENTS ARE ON THE WAY

Aluisio de Lima-Campos

On February 20, 2026, the U.S. Supreme Court issued a 6-3 decision in *Learning Resources, Inc. v. Trump* (consolidated with related cases), ruling that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. This invalidated the sweeping tariffs President Trump had imposed under IEEPA during 2025, including:

- "Reciprocal" tariffs on imports from nearly all trading partners (baseline at least 10%, with higher rates for some countries).
- Specific tariffs tied to fentanyl/drug trafficking threats (e.g., 25% on most imports from Canada and Mexico, 10% on most from China).

These IEEPA-based tariffs had collected billions in revenue (estimates range from \$130-175 billion or more by early 2026). The ruling did not directly address refunds for paid duties, leaving that to future litigation, likely through the U.S. Court of International Trade or Customs and Border Protection (CBP) processes. Although importers may seek refunds, potentially with interest, it could take 12 to 18 months or longer, and costs passed on to consumers are unlikely to be recovered.

Immediately after the ruling, the Trump government directed agencies to cease collecting IEEPA tariffs "as soon as practicable." CBP announced it would halt collection and deactivate related tariff codes effective 12:01 a.m. EST on February 24, 2026 (though some delays in system updates meant importers continued paying briefly

after the ruling). However, other existing tariffs remain unaffected, including those under Section 232 (national security, e.g., steel/aluminum) and Section 301 (unfair trade practices).

Within hours of the ruling, President Trump issued a proclamation under Section 122 of the Trade Act of 1974, which addresses balance-of-payments deficits and allows temporary surcharges of up to 15% for 150 days. It imposed a new 10% ad valorem global import duty on most articles entering the U.S., effective February 24, 2026, through July 24, 2026, unless extended by Congress. Exemptions apply to categories like critical minerals, energy products, certain pharmaceuticals, agricultural items (e.g., beef, tomatoes, oranges), vehicles/aerospace products, and others to protect U.S. economic needs.

On February 21, 2026, Trump announced an increase to the maximum 15% rate (via social media and statements), describing it as "effective immediately" after review of the ruling. As of this writing, however, the 10% tariff remains in effect. A formal update of the proclamation, updating the rate to 15%, may come later.

The goal appears to be to maintain similar overall tariff revenue levels by layering this temporary surcharge atop remaining Section 232/301 duties and potentially shifting to other authorities later. To that end, while this Section 122 goes on for 150 days, the administration has signaled plans to pursue longer-term options to sustain or rebuild broader protections.

Except for Section 338, the options for longer-term tariffs require more time to implement due to the regulations applicable to each. They are, including the average time of decision based on precedents, as follows:

- **Section 232** (national security, with application within 9 to 12 months), **Section 301** (unfair practices such as subsidies, patent infringement, with application within 8 to 14 months), **Section 201** (safeguards, against specific products, with application within 4 to 8 months, according to the average of recent years), and **Section 338** (discrimination against American trade, with no set deadline for applying tariffs, it can cover all products from a country, but it has never been used in the modern era).