

Daily Tax Report: International

American Elections, Brazilian Taxation, and the Multilateral Trading System

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The U.S. elections could bring changes to trade policy beyond the country's borders. Leonardo Branco of the University of Sao Paulo looks at the current status of global trade and how a new American administration could change it. The author also examines challenges facing Brazil and obstacles presented by the country's tax system and bureaucracy.

With the early departure of the General Director of the World Trade Organization (WTO), Brazilian diplomat Roberto Azevêdo, the organization's succession committee announced the name of Nigerian Ngozi Okonjo-Iweala as best placed to occupy the position, which was considered as a blocking factor by the U.S., which now supports Yoo Myung-hee, the first woman to serve as the South Korean Minister of Commerce. The meeting, which would decide the designation as the new General Director—scheduled to take place at the beginning of November 2020—has been postponed indefinitely.

On Nov. 5, at the closure of the "Course on Customs Law and Taxation of International Trade" (*Curso de Direito Aduaneiro e Tributação do Comércio Internacional*), promoted by the Brazilian Institute of Tax Law, the absence of international leadership with regards to mobilizing the international community was debated with the purpose of measures being taken favor post-pandemic economic recovery. As a background, the deepening of the dispute between China and the U.S. makes cooperation less and less likely, which is why the result of the American elections matters: any decision regarding the definition of the name to head the WTO is considered unlikely before Jan. 20, the date of the presidential inauguration.

Despite a longstanding advocate of "free trade," having defended China's entry into the World Trade Organization, NAFTA, and the Trans-Pacific Partnership, Joe Biden has signalled he does not intend to reduce trade tariffs, and the economic plan "Made in all of America" from the Democrat promises a WTO reform and "aggressive trade actions" against practices deemed to be unfair or disloyal, making it impossible to further consider the pre-Trump trade consensus of continually reducing trade barriers.

Still, the ability of the U.S. to exercise some leadership directly impacts the role of the WTO and the G20, whose last meeting in Osaka was marked more by bilateral meetings than by a coordinated exit from the health crisis. The current American blockade regarding the choice of the General Director of the WTO and the very existence of a court of appeal of last resort, which confirms the violation of the rules, weakens the legal building aimed at regulating international trade and makes it difficult for the body to play the forum role aimed at facilitating post-pandemic coordination.

Such background is of particular relevance to Brazil when considering China's growing participation with regard to international trade to the detriment of other countries with which a closer trade relationship would be possible. The good performance of the primary sector, in particular the growth in the volume of agribusiness products exported to the Asian country, contrasts with what occurs with products of greater technological sophistication. Even though the situation in Argentina, the main destination of the segment, contributed to such numbers, the weak performance of the industry can be placed in an even more worrying context of a trade flow retreat, which is indicative of a propensity to isolate Brazil from the international market. Despite less exposure to risk, isolation is undesirable if the commercial agenda moves towards establishing a greater number of partnerships, requiring a multifaceted analysis of this problem. And one of the facets of the so-called "Brazil cost" (*custo Brasil*) is customs and tax-related par excellence.

Bureaucratic obstacles, such as high tariffs charged by ports, airports, and consenting agencies; the excessive time it takes to release goods; the complexity of documents; non-standard clearance procedures; and the regulatory cost have been presented as challenges to the competitiveness of Brazilian companies in the international scene.

As responses to such difficulties, measures such as the implementation of the Trade Facilitation Agreement (*Acordo de Facilitação do Comércio*) have become more important in order to provide transparency in the relationship between government and foreign trade operators and to reduce bureaucratic impacts on imports and exports. In such context, projects such as the Single Portal (*Portal Único*) which bequeathed the Single Import Declaration (Duimp) (*Declaração Única de Importação*) appear as priorities and, in parallel to such initiative, the brilliant staff from the Brazilian Federal Revenue and the Ministry of Economy, in partnership with the civil society, have sought to compose a unique product catalog aimed at reducing the time for clearance and cargo release, meeting the "Time Release Study" from the World Customs Organization. Priority is given to measures such as the Authorized Economic Operator, the elimination of legal incompatibilities, the adoption of good regulatory practices, and the respect of agreements and conventions. As part of the process of reducing bureaucracy and improving the business environment, the government announced the definitive shutdown of *Siscoserv* and opened a public consultation in order to provide discipline in the waiver of customs transit steps with the edition of new rules aiming to combat customs fraud and decrease the retention period of goods.

All such measures are aimed at reducing time and costs in the cross-border flow and making international trade more fluid, as well as promoting customs cooperation with differentiated treatment towards developing countries, transforming them into strategic measures for Brazil, alongside the implementation of the Mercosur Customs Code, in the search for the improvement and modernization of customs and the harmonization, integration and elimination of barriers and the indication of a commercial policy, which involves the review of export restrictions.

It is necessary to monitor, both by the private sector and the Brazilian government, the large number of recent decisions taken not only by the Administrative Council for Tax Appeals but also by the Superior Court of Justice and the Supreme Federal Court in tax matters related to international trade. Examples may be taken as binding regarding the release of withheld goods to the payment of the difference in taxes which the customs authority deems due, the form of the levy of contributions on the import of auto parts, the inclusion of the expenses of foreman in the base of the taxes levied on the import, among others.

It is worth highlighting, against the initiatives aimed at the inclusion of the country in the global regulatory environment and the facilitation of trade flows, the recent judgment regarding the constitutionality of the collection of the tax on industrialized products (IPI) (*imposto sobre produtos industrializados*) in the resale of imported products, which implies usurpation on the part of the Federal Union, which is the responsibility of the states to tax the circulation of goods. The recent decision of the Supreme Federal Court ends up endorsing the use of a domestic tax rule, which provides unfavorable treatment to industrialized goods of foreign origin in relation to those of domestic production.

It is utterly necessary to admit that, more than collecting, some taxes perform an economic function, and that of the *IPI* is to promote fiscal justice by taxing in a higher way the goods considered superfluous, and less those which happen to be considered essential. Contrastingly, if the state's intention is one to provide protection to the national industry, the Administration may take advantage of customs taxes aimed precisely at the promotion of fiscal policies. Using the *IPI* for protection purposes is similar to using idling instead of the brakes to slow the car on a downhill: the intended purpose is achieved, at the cost of unnecessary wear on the machine, whose repairs may be more expensive than expected.

It does not matter, for this conclusion, when the tax is collected, either in the internalization of the goods in the national territory with the customs clearance (import), or at the time of departure in the domestic market (circulation), since the effect is the violation by Brazil regarding an international agreement. The *IPI* charged on the resale of the imported product, when levying on the exit of the goods, implies greater fiscal pressure on the goods of foreign origin in relation to what is produced nationally, which has the effect of frustrating competitive expectations and the textual violation of the General Agreement of Tariffs and Trade (GATT), a group of rules aimed at promoting precisely the reduction of obstacles regarding the trade among countries.

If the American election represents a new breath for international organizations created in the post-war period, Brazilian tax rules cannot be incompatible with the multilateral trading system. Exchanges among countries can help in the economic recovery of a world in the process of post-pandemic convalescence, none the less, as long as the bet is on a logic that is less focused on protectionism and nationalism, and more focused on a geopolitical connection between Brazil and the international environment, open to the impetus to simplify and promote a more favorable environment for foreign investment in the country.

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