BRAZILIAN PUBLIC POLICIES ON FOREIGN TRADE TO COMBAT COVID-19

POLÍTICAS PÚBLICAS BRASILEIRAS RELATIVAS AO COMÉRCIO EXTERIOR PARA COMBATER O COVID 19

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ABSTRACT

Objectives: The scope of this research includes the examination of the set of measures related to foreign trade adopted by Brazil in the fight against Covid-19 and enabling the understanding of its dimension and importance.

Methodology: Through the bibliographic review, examination of Brazilian legislation, and analysis of public data, the Brazilian foreign trade public policies are researched to combat the current health crisis, as well as reflect on the volume, importance, and impacts of such policies.

Results: It was found that Brazil has adopted numerous and essential foreign trade public policies to avoid importing goods' burdens and bureaucracy, and for the lack of control on exportation to compromise Brazilians' access to the products necessary to combat COVID-19. Furthermore, in the drawback regime, the policy's importance to mitigate the economic impact of the crisis on foreign trade agents was verified.

Contributions: This study allows for an understanding of the public policies to combat the health crisis adopted by Brazil, a reflection on its importance and, especially in the case of the special customs regime of drawback, examining its economic impacts. This article, due to its breadth and depth, can serve as a reference for research on the subject under different approaches, such as the economic analysis of law.

Keywords: COVID-19; Pandemic; Foreign Trade; Import; Export; Drawback; Antidumping.

RESUMO

Objetivos: *O escopo dessa pesquisa incluí examinar o conjunto de medidas relativas ao comércio exterior adotadas pelo Brasil no combate ao Covid 19 e permitir a compreensão da sua dimensão e importância.*

Metodologia: *Por meio de revisão bibliográfica, exame da legislação brasileira e análise de dados públicos, as políticas públicas brasileiras de comércio exterior são levantar para combater a atual crise de saúde, bem como refletir sobre o volume, importância e impactos de tais políticas.*

Resultado: *Verificou-se que o Brasil adotou numerosas e importantes políticas públicas no comércio exterior no sentido de evitar que a oneração e a burocracia na importação e a falta de controle na exportação comprometam o acesso dos brasileiros aos produtos necessários no combate ao Covid 19. Além disso, no caso do regime de drawback, verificou-se a importância da política adotada para atenuar o impacto econômico da crise sobre os agentes do comércio exterior.*

__Contribuições:__ Este estudo permite a compreensão das políticas públicas de combate à crise sanitária adotadas pelo Brasil e uma reflexão sobre sua importância e, especialmente no caso do regime aduaneiro especial de drawback, o exame do seu impacto econômico. Este artigo, por sua abrangência e profundidade, pode servir de referência para futuras pesquisas sobre o assunto sob diferentes abordagens, como a análise econômica do direito.

__Palavras-chave:__ Covid-19; Pandemia; Comércio Exterior; Importação; Exportação; Drawback; Antidumping.

1 INTRODUCTION

The world was surprised by a new Coronavirus called SARS-COV-2 (COVID-19). Despite States and international organizations great efforts such as the World Health Organization (WHO) - which, to contain the spread of the virus, declared a global pandemic situation, enabling the use of the strictest international health protocols - COVID-19 continues to spread rapidly throughout the world and very intensely within Brazil (PAES; MEIRA; SANTOS; SANTANA, 2020).

The first three cases of COVID-19 were recorded in Europe on January 24; in the same country, on February 15, the first death of that continent was reported. A week later another eight other countries had recorded cases. In Brazil the first case was recorded on February 25, 2020, in São Paulo. In March, measures such as social distancing, closing schools and commerce, and confinement began to be adopted in Brazil (AQUINO et al., 2020).

According to data from the Ministry of Health, on August 8, 2020, 100,000 deaths caused by COVID-19 had been reached in Brazil. On January 7, 2021, the number of deaths surpassed 200,000 people. Although vaccination started abroad in December 2020 and in Brazil on January 17, 2021, the situation remains concerning (MINISTRY OF HEALTH, 2021). On March 17, 2021, Brazil ranked as second in the world in the number of cases (more than 12 million) and the number of deaths (more than 295 thousand), behind only for the United States.

Alongside the health crisis observed is the deepening of the economic crisis. According to the January 2021 World Bank Report, the fall in Brazilian GDP in 2020 is at the level of 4.5% (THE WORLD BANK, 2021a, p. 202). The economic scenario has affected trade, services, and increased unemployment and poverty. A new wave has the potential to do even more damage to the health care system and the economy among other social aspects.

According to the 2019 UN/UNDP Annual Report, Brazil is one of the countries with the highest socioeconomic inequality. Consequently, it has difficulties in combating poverty and combating problems of education and health. In the context of the present crisis, the situation is getting worse.

In this context, this paper's scope is to precisely examine public policies on foreign trade adopted to combat the health crisis. It includes examining the import tax reductions, the suspension of anti-dumping duties collection, the procedure simplifications, and the exemption from licensing or permitting to import products considered essential in the fight against COVID-19. Concerning exports, the special licenses and the exporting prohibition of products that are important for combating coronavirus is addressed.

This work also looks at the extension of the deadline for compliance with the special drawback regime. This measure was adopted to alleviate the situation of this important customs regime's beneficiaries, who face difficulties due to the global crisis, to export their production.

2 IMPORT TAX REDUCTION IN COMBATING COVID-19

Regarding taxes, this paper addresses only the exemption from import taxes as a policy to combat COVID-19. The federal government adopts other tax policies for similar purposes, such as reducing the tax on industrialized products, however these aspects are beyond the scope of this work, as described in the introduction, which work focuses in foreign trade issues.

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The import tax is charged over foreign goods or products being imported by Brazil with rates varying typically between zero and 35%[1], with only one exception[2] for a merchandise with rate set by the "*Tarifa Externa Comum"* (TEC) at 55%[3]. These import tax rates are provided by the document called "Common External Tariff (CET)."[4] The weighted average rate of Brazilian import tax calculated by the World Bank was 8.01% in 2016. As a comparison, the American import taxes weighted average rate for the same period was 1.66%, the French was 1.79%, the Argentine was 7.42%, and the Angolan was 7.68%. (WORLD BANK, 2021b). The average rate is around 10%. The import tax plus eight other taxes charged on products being imported correspond to 50% of the imported goods' customs value (MEIRA, 2015, p777/778).

The import tax's main objective is not for raising money; it is a public policy instrument (TREVISAN, 2018, P. 23). In Brazil, not even a decree is required to change the practiced rates. The vehicle for introducing the Brazilian legal system's rates was a Resolution of the Exterior Commerce Chamber (Camex).[5] This type of determination of rates through an act of hierarchy lower than the presidential decree is only occurring for one more tax type also charged on foreign trade: the export tax.[6]

The Brazil constituents granted the freedom to change the import tax rate to provide the Executive Branch with the instruments for implementing international trade policies (e.g. national accounts balance, protection or the opening of certain

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1 CET and import tax rates are available at: http://www.camex.gov.br/tarifa-externa-comum-tec/tec-listas-em-vigor (Accessed: 15 March 2021).
2 Exception, in this case, means that this rate is not the original one from Mercosur, but has been changed by Brazil.
3 It is desiccated coconut under the classification 0801.11.00.
4 We usually use the expression "Common table of import tax rates for extra-block origin imports" to refer to the document known as "Common External Tariff (CET)". On this subject, it is recommended to check the book "Tributos sobre o Comércio Exterior" (MEIRA, 2012, p. 290/300).
5 Decree No. 10,044, of October 4, 2019, article 7, item IV, transferred the competence to establish the import tax rate to the Management Committee of the Exterior Commerce Chamber (Gecex).
6 Despite article 153, § 1st, of the Brazilian Federal Constitution assigning to the Legislative Branch the power to change some tax rates, the Brazilian Supreme court decided (RE 570.680), under general repercussion, that the infraconstitucional rule that confers to Camex the power to establish export tax rates is constitutional.

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productive sectors, always according to the public's interest).[7] Another peculiarity is that the import tax is also not subject to progressivity, nor does it require tax reduction measures concerning companies opting for "Simples Nacional" (a category named for Small Companies).[8]

Note that the import tax is not subject to principles governing other taxes, such as essentiality. Thus, there is no problem with a low import tax rate for a good considered superfluous, such as lavender perfume, whose Brazilian import tax rate is 2%. Likewise, there is no illegality or problem if an essential product, a food, such as mozzarella cheese, has an import tax rate of 28%. This because, as commented previously, the Executive Branch has the competence to establish these rates following the public interest, with national interests, related to foreign trade.

Before the issue of Resolution by Camex (currently by Gecex), the procedure for setting the import tax rate passes through the approval and conformation of the so-called "Common External Tariff (CET)" within the scope of Mercosur (the Southern Common Market). However, in the Mercosur legislation itself, some mechanisms allow, under certain conditions, each country to change the common import tax rates. Such mechanisms are called exceptions, perforations, and also reductions due to shortages.

Unilateral import tax reductions can be adopted in shortages due to unexpected supply and demand imbalances (MEIRA, 2012, p .297). This matter is currently regulated in general terms by GMC[9] Resolution nº 49 of 2019 (internalized in the Brazilian legal system by Decree nº 10.291, of March 24, 2020).

[7] In this matter, we must pay attention to the injunction granted by Minister of the Brazilian Supreme Court, Luiz Edson Fachin, in ADPF nº 772 / DF. This injunction suspends the decision to zero the tax on arms imports (contained in Gecex Resolution No. 126, of December 18, 2020). In the aforementioned injunction, the competence of the Executive Branch to change the import tax rate was not denied, but the threatened public interest, related to security and human rights, was taken into account.

[8] This is because these companies, despite being in the cumulative regime, have the same contribution rate on imports as those paid by companies in the non-cumulative regime, but without the right to subsequent credit.

[9] Common Market Group (whose acronym is GMC) is the executive decision-making body of Mercosur.

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Of particular interest is the reductions related to the fight against COVID-19, which are based on Article 50, item "d", of the Montevideo Treaty of 1980 (internalized in Brazil by Legislative Decree nº 66/1981). This provision states that no provision of the Treaty will be interpreted as an impediment to the adoption and enforcement of measures to protect people, animals, and plants' lives and health. In the current health crisis, it was understood that this Montevideo Treaty provision (Treaty that instituted Aladi and overlaps with the Mercosur agreements) was a higher provision for protecting life and supported unilateral commercial opening measures products used to combat COVID-19. This description facilitates the understanding of the Brazil context and the basis of the Brazilian policy for reducing the import tax to zero for products necessary to combat COVID-19. Following, an examination of the measures effectively adopted to date is discussed.

Right at the beginning of the pandemic, through Camex Resolution nº 17, of March 17, 2020, the tax rate on the import of fifty items was reduced to zero, until September 2020, with the objective of "facilitating the fight to the Coronavirus/COVID-19 pandemic". Some examples of these products accompanied by the import tax rate provided for in the "Common External Tariff of Mercosur (CET)" are listed in the Table 1 below.[10] The exemplified items show that the list includes products that are important for combating COVID-19 such as respirators, embolism catheters, resuscitators. It is also possible to note that, for many products, the standard import tax rate is high.

[10] The complete list can be found in the updated annex of the Camex Resolution No. 17/2020, available at: <https://www.in.gov.br/web/dou/-/resolucao-n-17 -de-17-de-marco-de-2020-248564246> (Accessed: 15 March 2021).

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Table 1 - Examples of Products and their Import Tax Rate

NCM	Description	Rate - CET
2207.20.19	Ex 001 - Ethyl alcohol with an alcoholic strength, by volume, equal to or greater than 70% vol, unfit for human consumption	20%
3808.94.29	Ex 001 - Antiseptic gel, based on 70% ethyl alcohol, containing, among others, humectants, thickener, and pH regulator, suitable for hand hygiene	8%
3926.20.00	Ex 001 - Plastic protective clothing and accessories	18%
	Ex 002 – Plastic protective gloves	18%
3926.90.90	Ex 001 - Plastic clip for individual protection mask, suitable for attaching the tie rod to the user's head	18%
	Ex 002 - Plastic nasal clip, suitable for individual protection mask	18%
6210.20.00	Ex 001 - Men's protective capes, coats, and similar articles, of impregnated, coated, covered, or laminated fabrics, with plastics or other materials, or of rubberized fabrics	35%
6307.90.10	Ex 001 - Protective masks, surgical masks, protective caps, disposable covers, disposable hospital supplies, foot protectors, made of false fabric	35%
9004.90.20	Safety glasses	18%
9004.90.90	Ex 001 - Safety visors	18%
9018.39.22	Poly (vinyl chloride) catheters for arterial embolectomy	2%
9019.20.30	Resuscitation Respirators	14%
9019.20.40	Automatic respirators (steel lungs)	14%
9020.00.10	Gas masks	16%
9025.11.10	Clinical thermometers	18%

Source: Authors, selection of items extracted from Camex Resolution nº 17/2020 and CET.

Soon after, Camex Resolution nº 22 of March 25, 2020 was issued with the same objective: "facilitate the fight against the Coronavirus/COVID-19 pandemic". This regulation added 61 other items to the list conveyed by CAmex Resolution nº 17/2020. Some products from the new list are shown in Table 2 accompanied by their respective tax rates on regular imports provided for in the "Common External Tariff of Mercosur (TEC)":[11] This table reviews that some items already had a low or below average Brazilian import tax rate, such as compressed air, chloroquine; while others were close to the average level of taxation, such as non-woven surgical

[11] The complete list can be found in the updated annex of the Camex Resolution nº 22/2020.

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drapes and PCR Kits. There also was a reduction of taxes concerning products with an initially high tax rate, such as false fabrics, even impregnated. Note that, among the 61 items exempted by the second Resolution, 14 of them had chloroquine or azithromycin, which shows the Government's initial understanding that these products would be relevant in combating the disease.

Table 2 - Examples of Products and their Import Tax Rate from Resolution 22 from 3/25/2020

NCM	Description	Rate - CET
2207.10.90	Ex 001 - Solution of non-denatured ethyl alcohol, containing, by volume, 80% or more of ethyl alcohol	20%
2853.90.90	Ex 001 - Medical compressed air	2%
2933.49.90	Ex 001 - Chloroquine	2%
	Ex 002 - Chloroquine diphosphate	2%
	Ex 003- Chloroquine dihydrochloride	2%
	Ex 004 - Hydroxychloroquine sulfate	2%
2941.90.59	Ex 001 - Azithromycin	2%
3004.60.00	Ex 001 - Containing Chloroquine	8%
3004.90.69	Ex 043 - Containing chloroquine diphosphate	8%
3005.90.20	Surgical drapes, non-woven	12%
3822.00.90	Ex 001 - Test kits for COVID-19, based on the polymerase chain reaction (PCR) nucleic acid test	14%
5603.12.40	Ex 001 - False fabrics, whether or not impregnated, coated, covered, or laminated, of polypropylene, weighing more than 25 g / m², but not exceeding 70 g / m²	26%
6116.10.00	Ex 001 - Protective mesh gloves, impregnated or covered with plastic or rubber	35%
6216.00.00	Ex 001 - Textile protective gloves, except knitted	35%
	Ex 011 - Intubation kits	16%
9019.20.90	Ex 018 - Medical ventilators (artificial respiration devices)	14%
9027.80.99	Ex 481 - Instruments and devices used in clinical laboratories for in vitro	14%

	diagnostics	

Source: Authors, sample selected from the Camex Resolution nº 22/2020 and CET.

Afterwords there were additional several acts of Camex zeroing the import tax rate with the same objective of combating Covid. A list of all the acts published so far that impact on the health crisis in regards to the regulation of Brazilian foreign trade products include: Camex Resolution nº 22, of March 25, 2020, Camex Resolution nº 28, of April 1, 2020, Camex Resolution nº. 31, of April 8, 2020, Camex Resolution nº. 32, of April 17, 2020, Camex Resolution nº. 33, of April 29, 2020, Camex Resolution nº. 34, of April 29, 2020, Camex Resolution nº. 44, of May 14, 2020, Camex Resolution nº. 51, of June 17, 2020, Camex Resolution nº. 67, of July 10, 2020, Camex Resolution nº. 75, of August 28, 2020, Camex Resolution nº. 90, of September 16, 2020, Resolution Gecex nº. 103, of October 20, 2020, Gecex Resolution nº. 118, of November 11, 2020, Gecex Resolution nº. 133, of December 24, 2020, Gecex Resolution nº. 144, of January 6, 2021, Gecex Resolution nº. 146, of December 15, January 2021, Gecex Resolution nº. 162, of February 22, 2021. This amounts to currently 564 items exempt from import taxes consolidated in the Single Annex of Camex Resolution nº 17, of March 17, 2020. In summary, the import tax rate reduction to zero covers the following products intended to fight the pandemic: [12]

- medicines and active ingredients;
- medical and hospital equipment;
- inputs for the manufacture of medical and hospital equipment;
- alcohol gel and input for the manufacture of alcohol gel;
- medical aprons, masks, and gloves;
- component of thermal measurement cameras;
- equipment for diagnostics and virus detection tests;
- respiratory aid equipment;

[12] The complete list can be found in the updated annex of the Camex Resolution No. 17/2020.

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- products for cleaning and sanitizing.

Note that the reduction of import tax in response to the health crisis through the Ordinance of the Ministry of Economy nº 158, of April 15, 2020 reduced again the import tax from 60% to zero until September 2020, for importing products under the Simplified Taxation Regime (RTS) of 113 medical items to combat COVID-19 (e.g. medicinal oxygen, tissues, needle, components for the production of respirators, among others). The RTS is used in cases of products sent through postal services or international aerials order, and the reduction was applied for each value transaction up to ten thounsand dollars.

3 SUSPENSION OF ANTI-DUMPING DUTIES COLLECTION TO COMBAT COVID-19

Brazil has historically used anti-dumping measures (which constitute one of the three types of trade defense measure and, by far, the most applied by Brazil). Dumping is the introduction of foreign products at a value below the regular price that causes or threatens to cause material damage to a productive domestic sector or it can even significantly slow down the establishment of an industry or productive sector in the importing country (MEIRA, 2012, p. 225).

Anti-dumping duties can be understood as the amount of money owed by the importer at the same time that the import tax is collected with the objective of restoring the balance between the cost of the imported product and its normal price in the international market. This requirement is due to a competing national sector request, precisely to avoid the damage resulting from importing a product with a price well below normal price.

Thus, anti-dumping rights are added to the import tax and to other taxes due on imports, burdening imported products. The anti-dumping rights can be percentages or have specific rates in dollars. The amount can reach very expressive values, exceeding the imported product's cost, as shown in Table 3.

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In the context of combating the current health crisis, simultaneously with the initial measures to reduce the import tax to zero, the Brazilian government suspended the incidence of anti-dumping rights over some imported items.

Throughthe Camex Resolution nº 23, of March 25, 2020, anti-dumping rights on plastic disposable syringes (with a capacity of 1 ml, 3 ml, 5 ml, 10 ml, or 20 ml) made in China, which were no longer collected (initially until September 2020). This anti-dumping right charged on the import of these syringes was US$ 4.55 / kg. Other examples of products that anti-dumping rights stopped being charged and collected include plastic tubes for collecting vacuum blood,[13] originated in the Federal Republic of Germany, the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the People's Republic of China. The anti-dumping rights charged in relation to these tubes varied depending on the origin and the producer. The incidental values prior the suspention of charges are shown in Table 3 below:

Table 3 - Anti-Dumping Charges Examples

País	**Empresas**	**Direitos *antidumping***
Germany	Sarstedt AG & Co	11,1%
Germany	Others	93,3%
China	Guangzhou Improve Medical Instruments Co. Ltd.=	49,5%
China	Weihai Hongyu Medical Devices Co. Ltd	97,8%
China	Zhejiang Gongdong Medical Plastic Factory	80,7%
China	Others	638,1%
USA	Becton Dickinson and Company	45,3%
USA	Others	86,5%
UK	Becton Dickinson and Company	71,5%
UK	Others	492,8%

Source: Authors, based on Gecex Resolution nº 145/2021and on TEC.

Following this practice, the Resolution Gecex nº 145, of January 6, 2021, extended until June 2021 the suspension of anti-dumping rights on disposable syringes, and Resolution Gecex nº 147, of January 15, 2021, extended until June

[13] NCM/SH classification 822.00.90, 3926.90.40 e 9018.39.99.

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2021 the suspension of anti-dumping rights on collection tubes as the health crisis still continues.

4 SIMPLIFICATION OF THE IMPORT PROCEDURE

All merchandise coming from abroad, subject or not to tax payment, must be submitted to "customs clearance," which is processed based on a declaration registered in the specific system. The import inspection procedure begins with the registration by the importer or his representative, of the declaration[14] of the importing goods in the Integrated Foreign Trade System (SISCOMEX)[15] , thus the importation takes place and the process is concluded with the release of the goods (customs clearance) (MEIRA, 2018b, p. 53/54).

Since March 2020, importing goods simplification measures have been adopted to expedite customs procedures and make it more straightforward for the related goods to combat COVID-19. RFB[16] Normative Instruction No. 1927, of March 18, 2020, provided for early delivery that is delivery before the fiscal verification and customs clearance, as well as priority processing of the import declaration and priority storage of the goods destined to fight the disease while the public emergency lasts. These products destined to combat COVID-19 with early delivery and priority treatment are capital goods consisting of raw materials in general and goods such as ethyl alcohol, disinfectants, gel alcohol, clothing, protective masks and gloves, articles for surgical use, catheters, clinical thermometers. This means that if there are

[14] "The importer must carry out the import declaration. He must insert it in the proper fields of the declaration available in the Siscomex all requested information, such as quantity, value, country of origin, importer, exporter, tax classification of the imported goods." (MEIRA, 2020, p. 3)

[15] "The procedures adopted in Brazil to import and export goods are carried out through a system called the Foreign Trade System (whose acronym is Siscomex). Siscomex is an integrated computerized system, used to record, monitor and control information related to foreign trade. It is available at the website: http://www.siscomex.gov.br." (MEIRA, 2020, p. 3)

[16] RFB is the acronym of the Brazilian Federal Revenue Secretariat, which includes the Brazilian Customs Administration.

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any problems or tax requirements for these operations, these cases must be resolved after the delivery of the imported goods.

RFB Normative Instruction No. 1929 of March 27, 2020, provided for priority customs clearance for chloroquine products and their derivatives, azithromycin, and test kits for COVID-19 and automatic DNA sequencers gases ligatures for medical use. Note that the goods destined to combat COVID-19 and subject to early delivery and priority treatment have been listed in Annex II of IN SRF[17] No. 680/2006 and this Annex II was introduced by IN RFB nº 1927/2020 and amended by RFB Normative Instructions nº 1929/2020. The same happened through RFB Normative Instructions nº 1936, of April 15, 2020, nº 1944, of May 4, 2020, and nº 1955, of May 25, 2020. These changes correspond to insertions of items that were perceived as essential and became part of public policies to combat Covid.

Another measure adopted by the Brazilian Federal Revenue Secretariat in regards to the health crisis's was a flexible control of the imported goods origin. The term "origin" in the language of the International Trade Law, means the place of production or manufacture of a good. In contrast, the "place of acquisition" means where the commercial operation was carried out, and "country of departure" refers to the country in which the export was cleared. Rules of origin are necessary to determine the origin of imported goods and, consequently, apply trade preferences, anti-dumping rights, and countervailing measures (FERNANDES, 2018, p. 272).

The flexibility measure adopted was specifically for the deadline extension for the delivery of an origin certificate for a sixty days period after the registration of the import declaration [18] for the cases of any: an emergency, a public calamity, or a pandemic declared by the World Health Organization (WHO) also recognized by the competent authorities. This extension was provided by the RFB Normative Instruction nº 1936, of April 15, 2020, and it applies to the goods indicated in its annex including, for example, fructose syrup, some chemical inputs, vitamin D2, vitamin D3,

[17] SRF is the former acronym of the the Brazilian Federal Revenue Secretariat.
[18] Normally, the importer must have the certificate of origin at the time of the import declaration.

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pneumococcal vaccine, paracetamol, disinfectants, gases, motherboard, among others.

5 WAIVER OF LICENSING OR AUTHORIZATION FOR IMPORTING PRODUCTS

Although importing seems to be a simple commercial activity, there are aspects related to sovereignty that must be considered. In this regard, a State may or may not allow certain products to enter its territory. This decision involves both economic aspects (e.g., the import of used cars is restricted in Brazil to preserve the national industry) and non-economic (e.g., the import of used tires has been banned for environmental reasons), and this acquiescence takes place through the import licensing procedure. A Brazil general rule is that goods can be imported and are license-exempt, with some exceptions. Certain goods are subject to licensing through the permit of the Subsecretariat for Foreign Trade (SUEXT) of the Secretariat of Foreign Trade of the Ministry of Economy, or through the permit of other bodies, such as the National Institute of Metrology, Quality, and Technology (INMETRO) and National Health Surveillance Agency (ANVISA).

Examining the licensing or permit waivers implemented on March 2020 to simplify and expedite imports of items considered necessary in the fight against COVID-19 is next. The importation of several medical and hospital products was exempted from SUEXT licensing and the INMETRO permit, as well as some products also had the ANVISA permit procedures waived or simplified.

SECEX[19] Ordinance No. 18, of March 20, 2020, provided exemption for licensing plastic tubes for vacuum blood collection and disposable plastic syringes for general use while the coronavirus international state of emergency persists.[20]

[19] SECEX is the acronym of the Secretariat of Foreign Trade, which is part of the Ministry of Economy.

[20] Note that the same items (plastic tubes for vacuum blood collection from the Federal Republic of Germany, the United States of America, the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China) were subject to to the suspended anti-dumping duties, an issue addressed at section 3 of this paper.

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SISCOMEX Import News nº 11 and 12, respectively, from March 17 and March 20, 2020, published the exemption from licensing by SUEXT for products such as safety garments made with plastic or rubber for male or female use, plastic equipment for transfusion and blood infusion. There was a licensing or permit waiver from SUEXT for the importation of syringes, needles, catheters, cannulas and similar instruments, diagnostic reagents, and pharmaceutical articles for laboratory tests, according to SISCOMEX Import News nº 14, March 23, 2020. [21]

Through SECEX Ordinance No. 23, of April 8, 2020, the licensing by SUEXT of polyurethane sheets, honeycombs, vulcanized rubber threads, bicomponent fibers was waived. SECEX Ordinance No. 25, of May 8, 2020, allowed the import, during the emergency period, of used products - specifically pulmonary ventilators, vital signs monitors, infusion pumps, oximetry equipment, capnographs, and stretchers for transportation of patients.[22] Later, the SECEX Ordinance No. 40, of June 24, 2020, extended the import authorization for products used for pulmonary ventilators, vital signs monitors, infusion pumps, oximetry equipment, capnographs, and stretchers for the transportation of patients.

To make the Ordinance SECEX nº 25/2020 applicable, ANVISA also adopted regulations to import used products temporarily. ANVISA Collegiate Board Resolution No. 378/2020 granted permission to import, sell and donate pulmonary ventilators, vital sign monitors, infusion pumps, oximetry equipment, and used capnographs, provided they had or previously had a health record with ANVISA.

SISCOMEX Import 13, from March 23, 2020, dispensed hospital medical products such as sterilizers, greenhouses, cutlery from licensing by INMETRO. [23]

ANVISA (following ANVISA Collegiate Board Resolution No. 356, of March 23, 2020, and SISCOMEX Import News No. 20, of March 27, 2020) simplified the requirements for consent to import medical devices identified as a priority for use in health services due to the emergence of international public health. Laboratory and

[21] NCM/SH classifications: 6210.10.00 e 9018.90.10.
[22] For these products, the restrictions and conditions provided for in article 41 of SECEX Ordinance No. 23, 2011, which restrict the import of used products, were temporarily waived.
[23] NCM/SH classifications: 8214.90.90, 8419.89.19 e 8419.89.20

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pharmacy articles, catheters, surgical masks, particulate respirators, goggles, face shields, disposable hospital gowns, caps and props, valves, circuits, and respiratory connections for use by health services were included. Import licensing for these products during the emergency period, regardless of any other technical or procedural analysis were granted and continue to be granted automatically.

Through ANVISA Collegiate Board Resolution No. 366, of April 2, 2020, it was determined that products importation for in vitro diagnosis of coronavirus could be carried out through the Import Licensing (SICOMEX) and Express Shipping modalities.

Also important is the examination of the Law No. 14,006, of May 28, 2020, which is applicable to medical products, including vaccines against COVID-19. The Law established that ANVISA must grant exceptional and temporary authorization to import and distribute medical products that do not have registration with the agency and necessary in the fight against COVID-19 within 72 hours from the request. This authorization is subject to the verification of the product registration in at least one of the ANVISA's similar agencies in the United States, the European Union, Japan, or China. The Brazilian Presidency vetoed the 72-hour deadline because the Legislative Power period would invade the Executive's competence, but the Legislative overturned the veto.

Similar to the import policies, the export policies have also been impacted by recent changes motivated by the health crisis, and this is discussed next.

6 EXPORT PROHIBITION AS A MEASURE TO COMBAT COVID

International trade operations are sometimes discouraged or made impossible through import tax, export tax, and anti-dumping duty. At other times, countries use their sovereignty to prohibit or limit some operations, as it was already discussed for imports. The legal basis of this power, concerning the Public Finance interests, can be indicated such as Article 237 of the Brazilian Constitution, which expressly confers on to the Ministry of Finance (currently the Ministry of Economy) the power to supervise and control foreign trade (MEIRA, 2018a, p. 2266/2268). As a result, there is a prohibition in the Brazil legal system to import various products, such as used vehicles.

Note that there are certain items export ban to combat the current health crisis. Through Law No. 13,993, of April 23, 2020, and Decree No. 10,407, of June 29, 2020, the export of medical, hospital, and hygiene products essential to fighting the COVID-19 epidemic were prohibited in the country for the duration of the current national public health emergency. Initially, the ban covered personal protective equipment used by the health sector such as mechanical ventilators and circuits, hospital beds, and multiparameter monitors. The Law authorized the Executive Branch to include and exclude items in the ban. The products whose export was prohibited are included in the annex of the Decree nº 10.407/2020. Some of them remain prohibited, and others are being monitored by SUEXT, through the Special Export License, which we will deal with in the next item.[24]

7 SPECIAL EXPORT LICENSE FOR PRODUCTS USED IN COMBATING COVID-19

To export some products, a license, permit, certificate, and other specific documents are required. The export license request occurs when the export declaration is registered, and this request is made through SISCOMEX to the Foreign Trade Secretariat or other intervening agency. Some items considered to be of interest to combat COVID-19 may be exported, but they are subject to more effective management and control. The Executive Branch (SUEXT, ANVISA, INMETRO, among others) is monitoring the export of these items through the Special License and, when deemed necessary due to the national public interest, prohibits their export, as we will see in item 6

[24] According to SISCOMEX News nº 29 and 39/2020.

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At the beginning of the health crisis, the Special Export License for Products used in Combating COVID-19 started to be demanded through SECEX Ordinance No. 16, of March 18, 2020. This license must be requested to SUEXT, the consenting body, and examined for the requests and by the Ministry of Health. The license approval is a condition for completing the export process. The legal deadline for replying to the request is 30 days, possible to be extended for another 30 days, which is considered a long term in foreign trade transactions.

Note that SECEX Ordinance No. 16/2020 did not list the products subject to this special license, as indicated by SISCOMEX Export News.[25] Among these products are: alcohol, chemicals that are inputs, insecticides, clothing, goggles and protective gloves, masks, resuscitation respirators, lung ventilators, defibrillators, catheters, hospital beds, clinical thermometers, syringes, needles.[26] The different timing for import and export that are settle by policy needs to be presented to provide for insigths on compliance impacts.

8 EXTENSION OF THE DEADLINE FOR COMPLIANCE WITH THE SPECIAL DRAWBACK REGIME

The Drawback Special Customs Regime is of great importance in the Brazilian international trade scene. According to data from the Foreign Trade Secretariat, exports supported by the drawback regime reached US$ 49.6 billion in 2019, which represented 21% of the total value and volume exported. In the same period, imports under the special drawback customs regime were US $ 7.6 billion, corresponding to 4.2% of the total imported. As for purchases in the domestic market under the drawback regime, the value was US$ 508 million, 6.3% of the total inputs purchased through the drawback regime (SECEX, 2019).

[25] SISCOMEX Export News dealing with this special license are the following: 8/2020, 9/2020, 10/2020, 11/2020, 12/2020, 14/2020, 15/2020, 16/2020, 17/2020, 20/2020, 29/2020, 37/2020, 38/2020, 55/2020, 67/2020.
[26] SECEX News No. 014, of March 31, 2020, contains exclusively chloroquine-based products.

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Under the special drawback customs regime, the purchase of imported or national materials for industrialization or improvement in Brazil and export of the final product is allowed. There is tax exemption as long as the final product is exported. The exemption, in this regime, occurs concerning taxes levied on imports (or internal taxes levied on national input). However, the objective is to export the product with added value, therefore the legislation refers to the drawback as an incentive to export (MEIRA, 2020b, p. 717).

The Drawback Regime was initially classified in the following modalities: "Drawback/Suspension"; "Drawback/Exemption" and "Drawback/Refund" (MEIRA, 2002, p. 215).

In the special customs regime called "Drawback/Suspension," the input is imported without the payment of taxes levied on importation, provided that the resulting products are subsequently exported. National input can be purchased under the same condition (no tax burden provided that the final product is exported).

In the regime called "Drawback/Exemption," the preceding input (or even the national input) is used in a product to be exported. After the export operation is completed, a similar input, in quality and quantity, can be imported to replace the first one without paying taxes charged to importation.

In the "Drawback/Refund," the input is imported to be used in the production of the goods to be exported. After exporting the goods, the taxpayer is entitled to a refund or compensation on the amounts of taxes charged on the import.

The "Drawback/Suspension" and "Drawback/Exemption" modalities are effectively used in Brazil. The use of "Drawback/Refund" is infrequent and residual.[27]

Exporting the final industrialized product within the established period is an essential and unavoidable condition for complying with the regime. Article 388 of the Customs Regulation (Decree No. 6,759/2009) and Article 93 of Ordinance SECEX No. 23/2011 provide for the concession act's validity. As a general rule, the

[27] The Secretariat of the Federal Revenue of Brazil informs that "Drawback / Refund" is almost no longer used, information available at: <https://receita.economia.gov.br/orientacao/aduaneira/regimes-e-controles-especiais/regimes-aduaneiros-especiais/drawback> (Accessed: 25 March 2021).

exportation of products manufactured with foreign or domestic inputs exempt from taxes deadline is within one year for the regime's beneficiaries. This deadline period can be renewed for an equal time period.

This means that the final product's export within the established deadline is a condition for complying with the drawback regime. Nevertheless, in the face of international crises such as the current health crisis, the regime's beneficiary encounters difficulties exactly on placing its product on the foreign market.

There has already been an extension of the deadline for complying with the drawback regime in other crises such as Law No. 11,945, of June 4, 2009, in its article 13, which extended the deadline of the drawback concession acts of that period by one year.

The current moment is of national and global crisis with significant proportions, which justified, once again, the legal drawback special customs regime deadline extension.

However, unlike the other measures examined in the present study, this one is not related to products that are important for combating Covid. It is otherwise, a measure to face the economic crisis and the upsurge in the international market generated by the health crisis.

In this context, the deadline of the "Drawback/Suspension" expiring in 2020 was extended for another year by the Provisional Measure No. 960 of April 30, 2020 that was converted into Law No. 14,060, of September 23, 2020. This law and the confirmation of the exceptional extension of compliance periods for the drawback suspension also contemplated the extension of the drawback exemption deadline.

As speciafied in the Provisional Measure's explanatory memorandum, the extension of these deadlines was intended to prevent Brazilian companies from benefiting from the regime from being hit by fiscal defaults due to the substantial economic activity reduction abroad resulted from the COVID-19 pandemic.

According to SECEX data, 325 concessionary 2020 dues drawback exemption acts and input replacements authorized in the order of US $ 942.3 million.

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Of this authorized amount, the value of US $ 424.9 million (about 45% of the total) refers to operations that, with the new law, may be carried out in 2021.[28]

9 FINAL CONSIDERATIONS

This research and examination of public policies to combat COVID-19 adopted in Brazil in the scope of foreign trade included both the import and the export sides of trade. These policies are vital measures amid a global proportions crisis that affects almost all countries globally - to a greater or lesser extent.

As it was described, at the beginning of the health crisis, measures were taken to reduce the import tax on products considered essential in the fight against the disease, such as alcohol, antiseptic gel, protective clothing, gloves, masks, catheters, respirators. Initially, the tax on the import of 50 items was zeroed. Then, several other exempt normative acts were established, and currently there are 564 products exempt from import tax for this purpose, such as cleaning products, medicaments, and medical and hospital equipments.

In addition to the import tax, the high charges from anti-dumping duties on general-purpose disposable plastic syringes originated from China were suspended. The high anti-dumping duties on plastic tubes for vacuum blood collection from the Federal Republic of Germany, the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the People's Republic of China were suspended.

Under the same scope, measures were adopted to simplify the import procedure and waive it or simplify the consent. The number of items that benefited from this simplification has been increasing over time, through various normative acts as indicated in this study, demonstrating the country's challenge.

Among the simplification on imports measures, Brazil dealt with the Law that defines that ANVISA must grant exceptional and temporary authorization. This must

[28] According to information available on the Secex website, avaliable at: (SECEX, 2020)

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occur within 72 hours from the request, for import and distribution of medical products necessary to combat COVID-19 even without registration in the agency. However, this applies as long as there is product registration with at least one of ANVISA's similar agencies located in the United States, the European Union, Japan or China. As we noted, this important determination applies even to vaccines against coronavirus. Agility in adopting and implementing these measures are essential to combat the pandemic. Due to the high impact of the health crisis with many deaths and infected people and its adverse consequences on the economy, measures are essential to speed up importing essential items.

Brazil adopted export policies with the same purpose of combating the health crisis but different from the imports measures. Whereas the attitude adopted in the import was to relieve, expedite and simplify the trade of products considered essential in the fight against COVID-19, the attitude regarding exportation was one of recrudescence, meaning, subject to more control or even prohibition. Thus, several products were banned from being exported while others were subjected to special exporting licenses. This control is exercised by the Executive Branch (SUEXT, ANVISA INMETRO), who currently accompanies exports through a special license and has the power to prohibit products country's departure when the goods are considered of public's interest. It is essential to consider that other countries have done the same and restricted their essential items exports for combating the pandemic. As the pandemic has a global character affecting all countries, despite the stage being different in each one, these measures are necessary to guarantee the supply of these essential products in their domestic market.

In addition to the flexibilization policies on imports and restrictions on the essential products export to combat COVID-19, an economic measure was adopted: the export deadline in compliance with the special customs drawback regime (a regime of great relevance for Brazilian foreign trade) was extended so that beneficiaries can organize themselves in the face of difficulties in placing their product on the foreign market. These measures adopted to date follow the OECD's proposals for the pandemic's initial phases, especially those for suggestions of tax exemption for medical products, hygiene and cleaning (CORREIA NETO; PALOS; ARAUJO, J. E. C.; SOARES, 2020, p. 29).

The study enabled examining the set of measures related to foreign trade adopted by Brazil to combat the health crisis. Initial conclusions are that these policies cannot change the international trade flow, however it involves many factors that are very important to place Brazil at the same level as other countries in the world, which have adopted similar measures in favor of their citizens.

This way it is avoided that the difficulties in importing or the lack of control in exportation prevent or delay the access of Brazilians to medicines and other products necessary to combat COVID-19, as well as it alleviates the economic impact of the crisis on foreign trade agents benefiting from the drawback regime. The measures analyzed in this research can be evaluated in the light of other approaches, such as the economic analysis of law, in which the cost and benefit of these public policies are evaluated (TABAK, 2015). Future research may use other approaches to discuss essential impacts.

REFERENCES

AQUINO, Estela M. L. et al. *Medidas de distanciamento social no controle da pandemia de COVID-19: potenciais impactos e desafios no Brasil.* ***Ciência & Saúde Coletiva****,* vol.25 supl.1 Rio de Janeiro Junho, 2020. Avaliable at: https://www.scielo.br/scielo.php?pid=S1413-81232020006702423&script=sci_arttext> (Accessed: 24 March 2021).

RFB - Brazilian Federal Revenue Secretariat. **Drawback**, 2021. Available at: https://receita.economia.gov.br/orientacao/aduaneira/regimes-e-controles-especiais/regimes-aduaneiros-especiais/drawback> (Accessed: 24 March 2021).

CORREIA NETO, Celso; PALOS, Lucíola Calderari da Silveira e ; ARAUJO, J. E. C. ; SOARES, Murilo R. da C. ***Tributação em Tempos de Pandemia***. 2020. Avaliable at:file:///C:/Users/CARF/Downloads/tributa%C3%A7%C3%A3o_pandemia_CorreiaNeto.pdf. (Accessed: 24 March 2021).

FERNANDES, Rodrigo Mineiro. ***Introdução ao direito aduaneiro***. São Paulo: Intelecto Editora, 2018.
MEIRA, Liziane Angelotti; PAES, J. E. S.; SANTOS, J. E. S.; SANTANA, H. L. A *CRISE AMPLIADA PELA COVID-19 E OS FUNDAMENTOS JURÍDICOS DO DEVER HORIZONTAL DE SOLIDARIEDADE NO CONTEXTO CONTEMPORÂNEO BRASILEIRO.* ***Unicuritiba Legal Journal***, v. 4, p. 552-591, 2020. Avaliable at: http://revista.unicuritiba.edu.br/index.php/RevJur/issue/view/189/showToc (Accessed: 24 March 2021).

[Received/Recebido: Janeiro 20, 2021; Accepted/Aceito: Março 23, 2021]

MEIRA, Liziane Angelotti. *Comentários ao art. 237 da Constituição do Brasil*. In: J. J. Gomes Canotilho; Gilmar Ferreira Mendes; Ingo Wolfgang Sarlet; Lenio Streck. (Org.). ***Comentários a Constituição do Brasil.*** 2ed. Brasília: Saraiva, 2018a.

MEIRA, Liziane Angelotti. *Compliance e Operações no Comércio Exterior.* In: Paulo de Barros Carvalho. (Org.). **Compliance no Direito Tributário**. 1ed. Sãop Paulo: **Journal** of the Tribunais, 2018b, v. 1, p. 51-91.

MEIRA, Liziane Angelotti. Brazilian Customs System**. *Revue Européenne et Internationale De Droit Fiscal***, v. 2, p. 272-281, 2020a.

MEIRA, Liziane Angelotti. *Regime Aduaneiro Especial de drawback*. In: Gisele Barra Bossa. (Org.). ***Eficiência Probatória e a Atual Jurisprudência do CARF*.** 1ed., São Paulo: Almedina Press, 2020b, v. 1, p. 715-743.

MEIRA, Liziane Angelotti. ***Regimes Aduaneiros Especiais***. 1. ed. Porto Alegre: IOB, 2001.

MEIRA, Liziane Angelotti. *Tributos Incidentes Sobre A Importação: Regime Jurídico E Carga Tributária Brasileira.* In: CARVALHO, Paulo de Barros. (Org.). *Direito Tributário e os novos horizontes do processo (**XII Congresso Nacional de Estudos Tributários do IBET**).* 1ed. São Paulo: Noeses, 2015, v. 1, p. 759-779.

MEIRA, Liziane Angelotti. ***Tributos sobre o Comércio Exterior*.** 1. ed. São Paulo: Saraiva Press, 2012.

[Received/Recebido: Janeiro 20, 2021; Accepted/Aceito: Março 23, 2021]

MINISTÉRIO DA SAÚDE. ***Painel Coronavírus Brasil.*** Avaliable at: https://covid.saude.gov.br/ (Accessed: 24 March 2021).

ORGANIZAÇÃO DAS NAÇÕES UNIDAS (ONU). ***Relatório Anual 2019 ONU/PNUD****.* Avaliable at: https://www.br.undp.org/content/brazil/pt/home/library/relatorio-anual-2019.html (Accessed: 24 March 2021).

SECRETARIAT OF FOREIGN TRADE (SECEX). ***Governo sanciona lei que prorroga prazos para exportadores nos regimes de drawback****.* 2020. Avaliable at: http://www.siscomex.gov.br/governo-sanciona-lei-que-prorroga-prazos-para-exportadores-nos-regimes-de-drawback/ (Accessed: 25 March 2021).

SECRETARIAT OF FOREIGN TRADE (SECEX). **Reports on Drawback Special Customs Regime**, 2019. Avaliable at: http://siscomex.gov.br/informacoes/regimes-aduaneiros/drawback/dados-oficiais-de-drawback/ (Accessed: 25 March 2021).

[Received/Recebido: Janeiro 20, 2021; Accepted/Aceito: Março 23, 2021]

TABAK, Benjamin Miranda. *Análise Econômica do Direito: Proposições legislativas e políticas públicas***.** In: **Legislative Information Journal**. Year 52, Number 205, Jan/Mar, 2015, p. 322.

THE WORLD BANK. **Global Economic Prospects**, Washington, DC: World Bank Group, 2021a. Available at: https://www.worldbank.org/en/publication/global-economic-prospects#data (Accessed: March 24, 2021).

THE WORLD BANK. **TCdata360**. Washington, DC: World Bank Group, 2021b. Avaliable at: https://tcdata360.worldbank.org/indicators/TM.TAX.MRCH.WM.AR.ZS?country=BRA&indicator=1909&viz=line_chart&years=1988,2018 (Accessed: 24 March 2021).

TREVISAN, Rosaldo. ***O Imposto de Importação e o Direito Aduaneiro Internacional****.* 1. ed. São Paulo: LEX/Aduaneiras, 2018.

[Received/Recebido: Janeiro 20, 2021; Accepted/Aceito: Março 23, 2021]