

The Nexus Between Rule of Law, Anti-Corruption and International Trade

Adjunct Professor Renata Amaral discussed the nexus of rule of law, anti-corruption and international trade on a panel organized by Women in International Trade (WIIT-DC) on October 29, 2020.

Understanding that a frail rule of law system and corruption practices can become non-tariff barriers to international trade, the panel focused in the role of the World Trade Organization (WTO), and the recent developments of anti-corruption chapters in trade agreements, especially in the anti-corruption provisions in Chapter 27 of the United States-Mexico-Canada Agreement (USMCA), and the recently signed anti-corruption chapter between the United States and Brazil under a limited scope trade package.

Renata Amaral explained that since enactment of the Foreign Corruption Practices Act (FCPA) 1977, several international actors, including the WTO, were called upon to join the fight against corruption in international business transactions. Yet, the WTO's efforts were rather timid compared to the enactment of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or the United Nations Convention Against Corruption.

She continued explaining that within WTO law, the primary anti-corruption vector was the adoption of rules that make trade more transparent and predictable, therefore reducing the scope for corrupt practices. In 2012, the revised text of the Plurilateral Agreement on Government Procurement (GPA) became the WTO's first regulatory effort to explicitly address corruption by invoking UN Convention Against Corruption in its preamble and adding Article IV.4, which requires a "procuring entity [to] conduct covered procurement in a transparent and impartial manner that (...) prevents corrupt practices."

One year later, in 2013, members signed the multilateral Trade Facilitation Agreement (TFA) with the purpose of reducing bureaucratic border red tape that actually, in many instances, increase opportunities for corruption.

In discussing the anti-corruption provisions in preferential and regional trade agreements, Renata Amaral acknowledge that over and above the WTO basic measures, negotiations among trading partners beyond the Organization are increasingly introducing instruments which deepen existing commitments to transparency at the multilateral level (WTO-plus), as well as expanding transparency provisions to policy areas which have no precedent in WTO agreements .