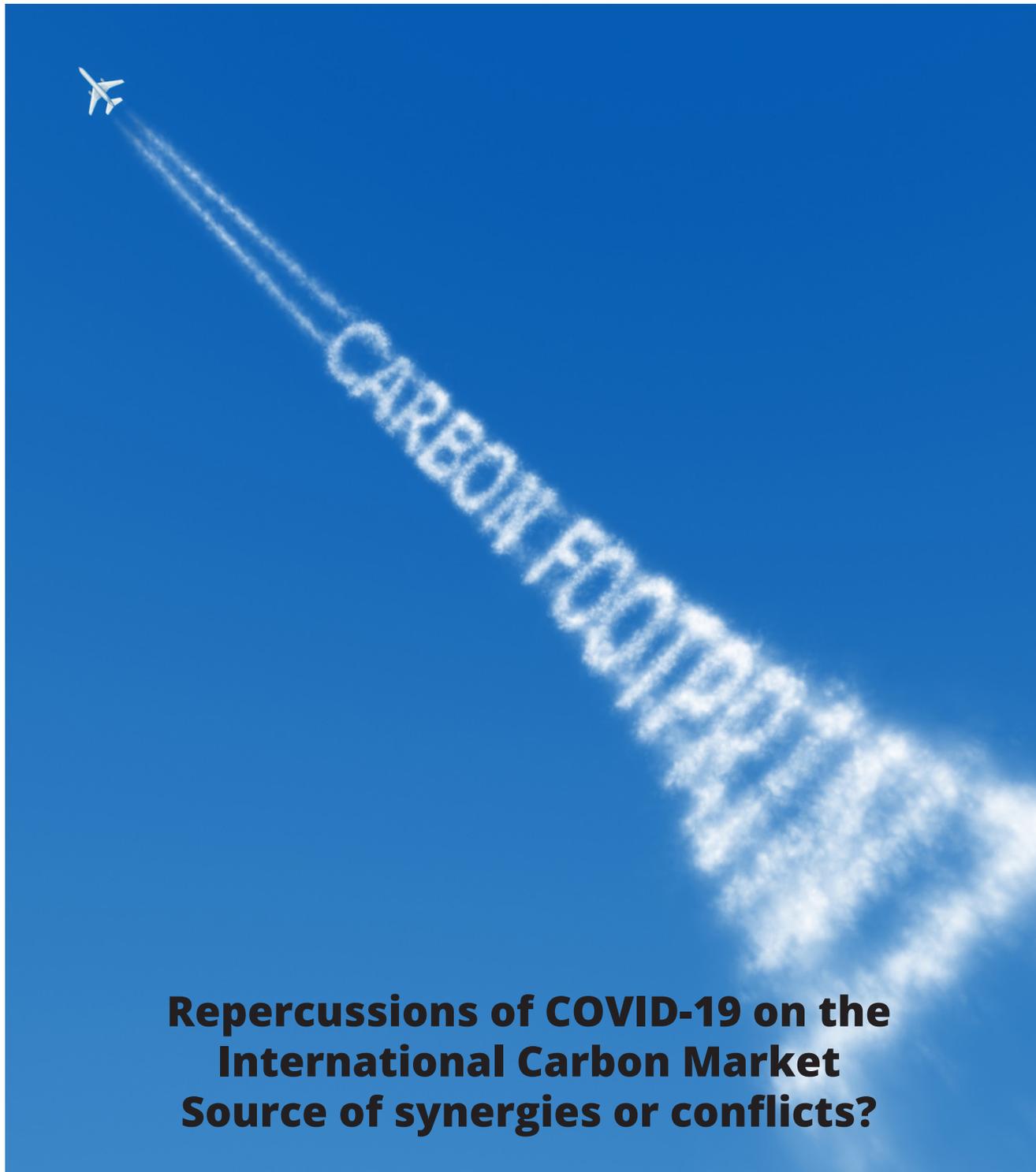


terrurum.



Briefing, analysis, opinion and insight of legal affairs in Mexico. Digital publication by Abogados Sierra

“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”



Repercussions of COVID-19 on the International Carbon Market Source of synergies or conflicts?

September 15, 2020 year 09 | No. 04

Repercussions of COVID-19 on the International Carbon Market Source of synergies or conflicts?

by Viridiana Barquín.

“As the world plans its economic recovery from the coronavirus pandemic, it faces a crossroads - turn towards a greener, more resilient future or tip into a carbon-heavy trap that fails to limit global warming”.

On December 12nd, 2015, during the United Nations Conference on Climate Change of 2015 (“COP21”) held in Paris, the parties to the United Nations Framework Convention on Climate Change (“UNFCCC”)² reached a landmark agreement to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future (the “Paris Agreement”)³. The Paris Agreement builds upon the UNFCCC brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so. As such, it charts a new course in the global climate effort ⁴.

Under the Paris Agreement, the parties committed to shifting the world’s course towards sustainable development and “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”⁵ In order to achieve this goal, the countries are required to set national gas emissions reduction targets (Nationally Determined Contributions (“NDC”)).

“And how would not be contentious something as peculiar as a mechanism to allow trading activities for emissions? Of course, the sale, purchase or creation of carbon credits has led to disagreements either regarding the parameters or the criteria to be applied between countries...”

After the COP21, the parties to the UNFCCC had been meeting annually in order to review the compliance of the objectives set during the previous year, as well as to establish new commitments to achieve such objectives (i.e. the NDCs). However, the measures that countries have adopted to mitigate the economic effects caused by COVID19 virus have had an important impact on the international carbon markets and unfortunately they have slowed the progress that had been made and have stopped the target of establishing the rules for the implementation of international carbon markets under Article 6 of the Paris Agreement⁶, that was planned to be achieved during the COP26 that would have to take place in November 2020. Hence, COP26 set to take place in Glasgow in November has been postponed due to COVID-19 until 2021.

1.- <https://news.trust.org/item/20200722154354-f1yyq/>

2.- Entered into force on 21 March 1994, the ultimate objective of the Convention is to stabilize greenhouse gas concentrations “at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.” It states that “such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner.” <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>

3.- Full text: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf

4.- <https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>

5.- <https://iccwbo.org/media-wall/news-speeches/article-6-important/>

6.- Article 6 aims by promoting integrated, holistic and balanced approaches the implementation by the governments the NDCs through voluntary international cooperation. This cooperation mechanism, if properly designed, should make it easier to achieve reduction targets and establishes a policy foundation for an emissions trading system, which could help lead to a global price on carbon. Under this mechanism, countries with low emissions would be allowed to sell their exceeding allowance to larger emitters, with an overall cap of greenhouse gas emissions, ensuring their net reduction. Supply and demand for emissions allowances would lead to the establishment of a global carbon price that would tie the negative externalities of emissions to polluters. In other words, by paying a price on carbon, states exceeding their NDCs would bear the costs of global warming. <https://iccwbo.org/media-wall/news-speeches/article-6-important/>

The negotiations around Article 6 have proven to be highly contentious, as it remains the only article under the Paris Agreement on which the Parties have not yet reached agreement. The Paris Agreement Rulebook⁷ was agreed in relation to all other aspects of the Paris Agreement at COP24 in 2018. And how would not be contentious something as peculiar as a mechanism to allow trading activities for emissions? Of course, the sale, purchase or creation of carbon credits has led to disagreements either regarding the parameters or the criteria to be applied between countries (the parties to the Paris Agreement) or with the involvement of the private sector. Yes, it has been source of synergies but conflicts also.

“If we can succeed in greening the economic stimulus measures, we will effect a major course correction - one of the greatest ones in history”

In Mexico, there is a market simulator (the Emissions Trading System in Mexico (*“Sistema de Comercio de Emisiones en México” - “SICEM”*)), that seeks to prepare the country to have a real carbon market. The simulator started with companies such as the one with the oil and hydrocarbon monopoly (PEMEX) and other sectors such as steel, chemical, food, aviation and paper companies. It was expected to have during 2020 the specific rules and clarification of processes of the SICEM and then have the pilot project running with real operations, thus one more thing postponed due to COVID19. Therefore, Mexico continues being ruled by the General Law on Climate Change⁸ pursuant to which the national policy on climate change is subject to periodic and systematic assessment taking into consideration the Reports of an intergovernmental panel of experts in climate change, as well as the periodic assessments established within the Paris Agreement, to propose, where appropriate, its modification, addition, or reorientation totally or partially. However, although it raises certain minor tax benefit, no real economic incentive is contemplated.

But is the emissions trading system actually a suitable market instrument to set a maximum limit for the total amount of greenhouse gases in the economic sectors of each country? Taking as an example the European Emissions Trading System (EU ETS), which is currently the largest scheme in the world and the first to be established we can conclude that it is effectively an instrument that produces changes in the behavior of producers, consumers and investors, so that they have a motivation to reduce their emissions and companies can minimize the costs associated with reducing emissions due to the incentives that it entails.

“If we can succeed in greening the economic stimulus measures, we will effect a major course correction - one of the greatest ones in history”⁹

Thus, one of the repercussions of COVID-19 on the international carbon market that can be anticipated, in addition to the delay in the progress to reach an agreement on the rules for the implementation of international carbon markets under Article 6 of the Paris Agreement, is that the enforcement policy on environmental non-compliances being temporarily suspended and the greenhouse reporting obligations put on-hold, a price increase could be triggered; provided that, while emissions for 2020 are being lower than would have been under normal circumstances, the supply of carbon credits could saturate markets if there is a long-term shutdown of industrial sectors; unless there is a real effort by the nations to promote investment in climate mitigation as part of the economic recovery packages implemented by governments, which could give greater security on the market.

G20 countries for example, have promised policy support worth \$161 billion for fuel-heavy industries such as airlines, oil, coal and roadbuilding so far - 51% of all public money committed to the energy sector¹⁰. If private investment is attracted, innovative projects and technologies will reactivate economies and create jobs in the short term, while ensuring that countries remain sustainable.

7.- Contains rules and guidelines detailing how the Paris Agreement will operate in practice and explains how countries should review their progress, individually and collectively, with a view to upgrading NDCs every five years until the long-term goals of the Paris Agreement are met.

8.- Full text: http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCC_130718.pdf

9.- Yannick Glemarec, CEO of the Green Climate Fund in an interview to Thomson Reuters Foundation. <https://news.trust.org/item/20200722154354-fyyq/>

10.- <https://news.trust.org/item/20200722154354-fyyq/>

López Obrador declares 30-day national mourning for victims of Covid-19.

President Andres Manuel Lopez Obrador decreed a 30-day national mourning period for the dead and people infected with the coronavirus in Mexico. According to the Official Journal of the Federation, the flag will be raised at half-mast from August 13 to September 11 of this year, except for the days indicated in the corresponding legislation. In fact, the federal provision also indicated that the public servants of the agencies and entities must observe a minute of silence every day at noon. www.forbes.com.mx/politica-lopez-obrador-duelo-nacional-30-dias-victimas-covid19/ 14/08/2020.

Mexican president says jobs gained back in August, reversing trend of losses.

Mexico added back 52,455 jobs in August, President Andres Manuel Lopez Obrador said, hailing the news as a sign of recovery after the country lost more than 1 million jobs in the formal economy due to the coronavirus pandemic. IMSS said that 3,907 jobs were lost in July due to the pandemic, adding to 1.1 million jobs lost between March and June. www.reuters.com/article/us-health-coronavirus-mexico-jobs/mexican-president-says-jobs-gained-back-in-august-reversing-trend-of-losses-idUSKCN25B104 15/08/2020.

Mexico will cooperate with Norway to develop a vaccine against Covid-19 disease by joining the Coalition for Innovation in Pandemic Preparedness.

"This pandemic demands a global response based on solidarity and renewed multilateral cooperation. By joining forces with Norway, Mexico reaffirms its commitment to social inclusion and sustainable development as core principles for addressing Covid-19," said the Ministry of Foreign Affairs, Marcelo Ebrard. In a statement, he explained that Mexico and Norway are committed and determined to coordinate multilateral action to overcome challenges on a global scale such as the current coronavirus pandemic. www.milenio.com/politica/mexico-trabaja-con-noruega-en-desarrollo-de-vacuna-contra-coronavirus 24/08/2020.

Banxico foresees a 12.8% collapse of the Mexican economy in 2020.

The Bank of Mexico (Banxico) revised its forecast for the Mexican economy for 2020, going from an extreme drop of 8.3% to a 12.8% collapse. When releasing the Quarterly Report on Inflation for the second quarter, it updated its expectations for the economy in which it includes a scenario with a profound effect on the current year. Meaning weakness of economic activity caused by the shock in the first half of 2020, extended during the rest of the year and resulting from a possible intensification of the pandemic or the reappearance of major outbreaks worldwide, in addition to more effects on demand and supply. www.eluniversal.com.mx/cartera/banxico-preve-desplome-de-128-para-economia-mexicana-en-2020 26/08/2020.

Mexico seeks access to 18 vaccine projects against COVID-19: Ebrard.

The Ministry of Foreign Affairs, Marcelo Ebrard, informed that Mexico has established conversations with China, England, Russia, Germany, France, Italy and the U.S. to gain access to multiple vaccine projects. Through the multilateral platform COVAX, the country that is part of it will have information at its immediate disposal on the progress of vaccines. Moreover, Ebrard manifested that Mexico is seeking to nail down four vaccines. Those national projects will be financed by the Secretary's resources and by the attraction of international funds. www.eluniversal.com.mx/nacion/politica/ebrard-busca-mexico-acceder-18-proyectos-de-vacuna-contra-covid 28/08/2020.

Mexico's economy could take up to 5 years to recover.

Given the historic drop in Mexico's Gross Domestic Product (GDP), the economic recovery will take much longer than expected. The economic capacity of Mexicans has been severely affected because of the unemployment generating instability in the acquisition of products (essential and non-essential). According to the weekly magazine "The Economist", the country's economy will manage to be recovered in a period of up to 5 years. www.imagenradio.com.mx/economia-de-mexico-podria-tardar-hasta-5-anos-en-recuperarse 28/08/2020.

In this month extract was prepared by A. Frago, A. De la Fuente, P. Arandia, R. Nerio, R. Mancilla, Marcos Costa, J. García.

terrum.

VIRIDIANA BARQUIN

Viridiana Barquin graduated as an attorney from Universidad La Salle, Mexico City; she has a Master's Degree in International Business by Universidad La Salle, Barcelona, and a post-graduate degree in International Arbitration by Escuela Libre de Derecho. She holds Certificate of Airline Contract Law by the International Air Transport Association (IATA- Switzerland), and Aircraft Acquisition and Financing, Aviation Insurance Law and International Air Law by IATA- Mexico. Her practice focuses on cross-border transactions dealing with aircraft financing and leasing, sales and acquisitions, securitization, trusts, insurances, escrow structures, beneficial interest and metal transfers, corporate matters, antitrust, bankruptcy and insolvency. Ms. Barquin has represented foreign companies as leading counsel in the structure and negotiation of a full range of commercial agreements and numerous disputes resulting in the successful repossession of assets through settlement and alternative methods of dispute resolution. She has been in private practice for 20 years and is in process of a certification in Environmental Law and Sustainable Tourism.

LANGUAGES: Spanish, English and Catalan.

PRACTICE AREAS: Aviation, Corporate, Commercial and International Business Law.

mail: vbarquin@asyv.com



Prol. Reforma No. 1190 25th Floor,
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com / www.asyv.aero

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.