

THE MULTISYSTEM OF GLOBAL TRADE REGULATION: PROPOSAL FOR A NEW THEORETICAL REFERENCE AND A NEW ANALYSIS METHODOLOGY*

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ABSTRACT

Due to the current complexity of international trade regulatory framework, our aim is to propose a new theoretical approach that allows the analysis of the different systems of rules that intervene in commercial activities. Such approach is necessary in face of the new challenges in formulating Brazil's International Trade Policy.

RESUMO

Diante da atual complexidade do quadro regulatório sobre o comércio internacional, o objetivo deste artigo é propor uma nova abordagem teórica que permita o exame dos diferentes sistemas de regras que intervêm nas atividades comerciais. Tal abordagem se faz cada vez mais necessária em face dos novos desafios enfrentados na formulação da política de comércio internacional do Brasil.

1 A NEW APPROACH TO INTERNATIONAL TRADE REGULATION

Activities related to international trade represent an increasingly significant part of the development process of Brazil. In the global scenario, the country stands out among the twenty biggest importers and exporters of goods. Domestically, the activities related to trade have been growing and, nowadays, they represent about 25% of the GDP. The presence of Brazil in the services area still has little significance, but its participation has been increasing.

Brazil's role as an actor in the international trade scenario has been growing due to a framework of accelerated development and expansion of the internal market. The Country has turned into a great exporter of value-added agricultural products, so as of a wide range of industrial products. At the same time, due to its economical and political stability, it acquired a presence of increasingly importance in several international economic forums.

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The major question being asked is how to define international trade and which elements must be included in the policy agenda for foreign trade. Nowadays, the activities related to trade aren't comprised only of exports and imports of agricultural and industrial goods, but also of a wide range of services, that include the most diverse sectors, such as financial, telecommunications, transportation, distribution, construction, tourism, as well as professional services. It is increasingly harder to separate the economical activities connected to the production of goods to the ones related to the performance of services. Even more, the expansion of economical activities depends not only on the interaction between different international actors, but it is also subject to several policies that reflect determinants of economical nature. Determinants that are broader than the ones related to pure trade, but essential to its execution, such as international and national regulations for investments, competition, intellectual property rights, concerns about the environment and climate change, labor and human rights. It is also important to highlight the role of the regulation of transnational firms' trade and its impact in global value chains. This is the global view of the governance of international trade, which has been redefined as global trade.

In today's world, political and economical conflicts are solved by a wide range of rules and regulations that are negotiated between the main international actors and, more recently, involving a large number of countries. With arduously agreed rules, the supervision mechanisms for the execution of these regulations and political-legal systems (diplomatic-legal) for dispute settlement, the stability and the predictability of the international system regulations have been allowing longer economical growth periods.

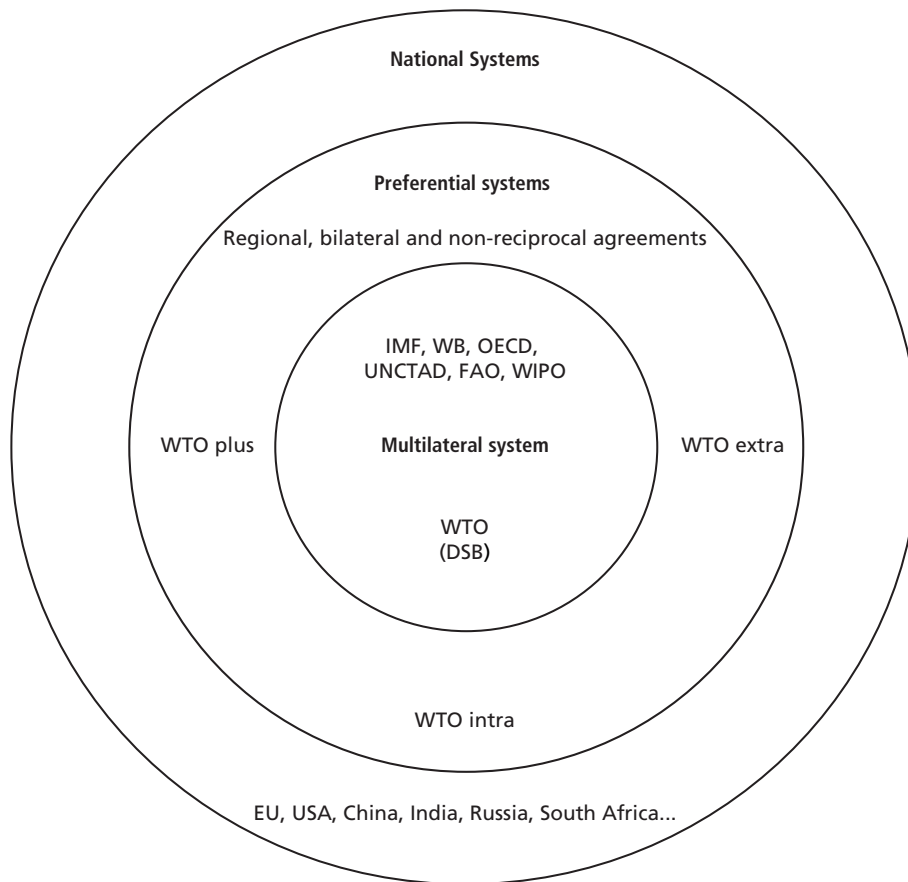
Since the 1950's and throughout the last few years, the negotiations of different regulatory frameworks for global trade have been taking place in different forums. The most comprehensive milestone, in terms of the number of parties involved and of its evolution, is the multilateral trade system, initiated with the General Agreement on Tariffs and Trade – GATT, and that now has the World Trade Organization (WTO) as reference. At the same time, over the years, there has been an increase on the expressive number of regional, bilateral and non-reciprocal regulatory frameworks, through preferential agreements, that includes countries from several regions or distant partners, but with more intense commercial interests. Ultimately, great international partners also define regulatory frameworks for trade by establishing their own policies, following and expanding the multilateral and preferential frameworks, under pressure of the main political and economical agents.

These three great regulatory systems comprehend the most diverse operating areas of global governance, related to trade or, even if they're not directly linked to trade, that end up affecting it. All these elements have direct impact in the formulation of different countries' foreign trade policy, as well in the strategic decisions of economical agents. Under this point of view, both government and sector producers begun to follow more closely the evolution of regulatory frameworks defined in the multilateral scope, so as the regulations negotiated in the preferential scopes (regional, bilateral, non-reciprocal) and certain national policies that might impact on the definition of each country's foreign trade policy and of the competitiveness in productive sectors. The analysis of the issues linked to international trade and to investments, therefore, demands a broader view, that is, a multisystem view of global trade.

To summarize it, the most relevant issues on global trade and investment field now demand not only a more comprehensive theoretical reference, but also a more integrated methodological analysis that takes into consideration the several sources of international trade regulations. Thus, the aim of this paper is to propose a new conceptual approach for the study of trade regulations – through the multisystem of global trade regulation – and a new analysis methodology for specific products or sectors – the crosssectional analysis of the global trade regulations.

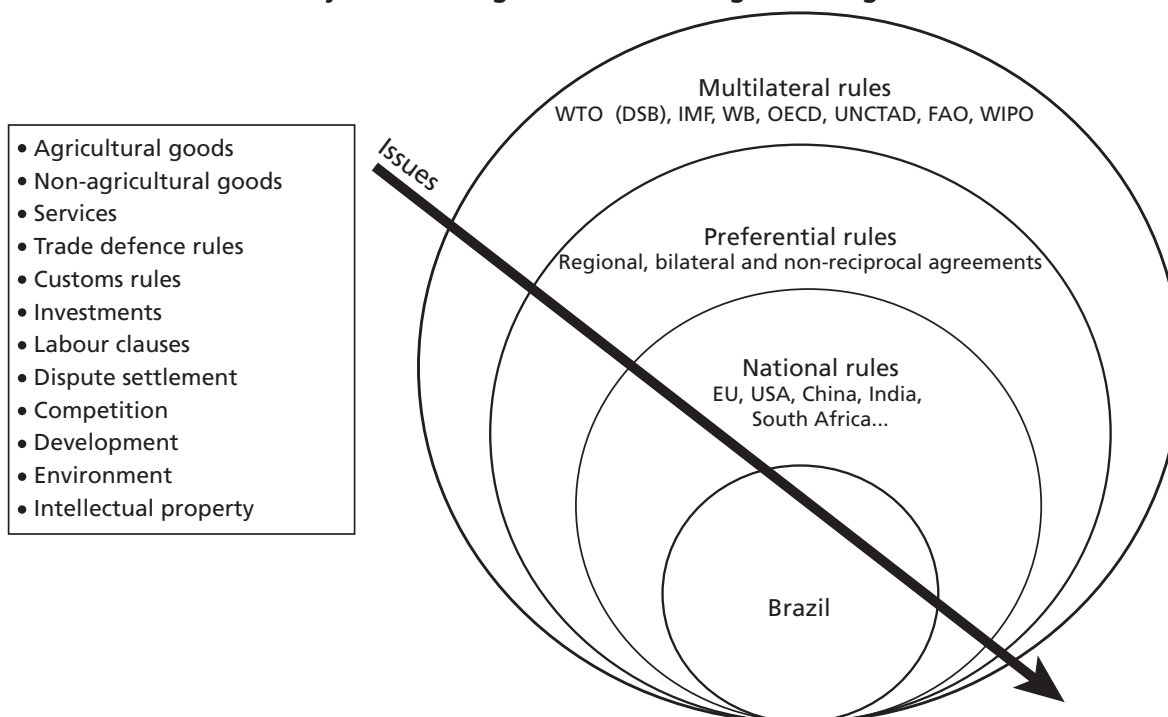
In other words, the new theoretical reference, the multisystem of global trade, must comprehend the rules of the multilateral system, including: *i*) the World Trade Organization (WTO) and other organizations and international conventions directly or indirectly related to trading, such as the International Monetary Fund (IMF), the World Bank (WB), the Organization for Economic Cooperation and Development (OECD), the United Nations (UN) and its affiliates – the United Nations Conference on Trade and Development (UNCTAD); the World Intellectual Property Organization (WIPO); the International Labour Organization (ILO); United Nations Framework Convention on Climate Change (UNFCCC) etc; *ii*) the preferential systems (regional, bilateral, non-reciprocal) centered in the most important economic poles; and *iii*) the national systems, including the trade policies, the decisive structures and the instruments of the main international trade partners instruments (picture 1).

PICTURE 1
Multisystem of the global trade regulation



The crosssectional sectorial analysis, in turn, must highlight the details of the regulatory framework for each one of the main issue of international trade – agricultural, non-agricultural and services – and the specificities of the rules for each sector, such as customs rules, trade defense rules and rules against technical barriers to trade (picture 2).

PICTURE 2

Crosssectional analysis of the regulation for the big issue of global trade

Only after this comprehensive analysis, countries, including Brazil, will be prepared to formulate their own trading policies, to define their trading structure and instruments and to assess the impacts of those regulations on their interests.

Given this situation, there is an increasingly necessity to create a new generation of specialists in the international trade and investment areas, integrating economics, law, administration and international relations students, as well as reformulating the post-graduation courses in the area. It would also be necessary to create new forums for discussion between the government, entrepreneurs and academics about the most pressing matters on global governance that affect international trade.

2 THE MULTISYSTEM OF GLOBAL TRADE REGULATION

An integrated view on the regulation of global trade, under this point of view, now includes not only the subsequent analysis of the different regulation systems that define international trade – including issues directly linked to trade, issues related to trade and issues that affect trade – but also, and above all, a greater understanding of the crossed effects between the several systems: *i*) the multilateral-plurilateral system, created through international negotiations between members of international organizations and/or international treaties negotiated by a significant number of countries; *ii*) the preferential systems (regional, bilateral, non-reciprocal), negotiated by the parties of trading agreements in different levels of economic integration; and

iii) all national foreign trade systems, negotiated internally by the main international partners, and defined by its foreign trade policies.

Each defining rules system comprises its own negotiation, decision making, theme comprehensiveness, supervision of implementation and conflict resolution structure.

The complexity of this regulatory framework lies on the fact that each system was created in a different period of time, reflecting different levels of influence and economic power of the several international actors, besides the interaction between the economies of each country.

2.1 THE SYSTEMS OF GLOBAL TRADE REGULATION

To give a more detailed idea of the different systems, here it follows an examination of each one of the three main regulatory structures of global trade, so that we can assess how the systems cross each other in the definition of rules that have an impact on the main issues of global trade.

The most challenging part of the global trade multisystem analysis might be the issue of the conflict of rules, since the agreements were made in different periods, involving several parties and comprehending a wide range of issues.

The expansion and proliferation of preferential agreements – accompanying the growth of importance of the issues related to trade and to non-tariff barriers present in the preferential and national scopes – intensified the possibility of conflicts between the rules present on the three levels of the multisystem of global trade. Only a deep analysis of the rules of each system will be able to provide real information on the existence and the impact of the conflicts, so as to offer solutions.

2.1.1 Multilateral and plurilateral trading system

The structure and regulations of the multilateral system represent the most comprehensive level of participation on the trade regulation. It is comprised by treaties and international conventions negotiated by a significant number of countries, that create organizations or bodies for the implementation and supervision of the negotiated rules, and determine the forum for future negotiations. Many times, they achieve an agreement with a smaller number of parties through agreements said plurilateral, that also deserve close analysis, once its implications are relevant for the parties not involved.

The most relevant organization as a source of multilateral trade regulation is the WTO, which has evolved from the GATT. Other relevant organizations, established at the same period that the GATT, were the IMF and the WB-Bretton Woods' institutions, created after World War II as the basis for a multilateral

economic system. Other relevant organizations and bodies, since its decisions impact directly on trade rules, are: WCO; WIPO and FAO, besides the organizations or bodies with different interests from developed and developing countries like OECD and UNCTAD. Among the specific bodies, we must include: ISO and Codex Alimentarius. Other treaties and conventions, because they include rules that have an impact on trading, must also be analyzed, such as: ILO; MEAs, the multilateral environmental agreements, which include trade rules; and the UNFCCC, on climate changes.

Three organizations, listed below, should be highlighted.

- WTO – The World Trade Organization: It is the main source of rules for international trade. It comprehends the GATT rules since its foundation, in 1947, until the rules of agreements approved in the Uruguay Round (1986-1994), the Marrakesh Agreement. The current negotiation round is the Doha Round, initiated in 2001 and not yet concluded, that contains important reforms to the trading system and, even though it's still not completed, it is an important indication of the content of the rules to be agreed.

The WTO's main goal is to promote the economic development through the liberalization of international trade. Its main role is to negotiate rules for international trade, assuring its fulfillment through an efficient mechanism for dispute settlement. During the GATT years, the main form of liberalization was achieved in negotiation rounds aiming tariff reductions or the elimination of tariff barriers on products. Along the years, the liberalization of trade came to involve more and more instruments that included rules on trading practices, trade barriers and trade defence. With the creation of the WTO in 1995, trade regulation comprehended a wider range of economic activities: *i*) goods (agricultural and non-agricultural), *ii*) services, through the General Agreement on Trade in Services – GATS; *iii*) intellectual property, with the Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPs); and *iv*) investments, through the Agreement on Trade-Related Investment Measures – TRIMs), the GATS and the Agreement on Subsidies and Countervailing Measures.

Still under the scope of WTO, due to its direct implications on international trade, we need to highlight the decisions of the panels and the Appellate Body (AB) of the Dispute Settlement Body (DSB). This body is a unique mechanism in the international system, since measures considered inconsistent with the rules of the multilateral trading system should be modified, otherwise they may become subject to trade retali-

ation by the winning party. This possibility gives the WTO significant power and separates it from the other international organizations that do not have such sanction power. The DSB is considered a *sui generis* system, since it applies together principles and practices from both the Civil Law and the Common Law. Thus, in spite of the decisions of panels and appeals only being applicable in case in dispute, they are transformed into jurisprudence of the system and, from then on, can guide future decision of the Dispute Settlement Body. As a result, the regulation of international trade, nowadays, is based not only in the reading of existing agreements, but also in the interpretation of the DSB decisions. The knowledge and analysis of such jurisprudence become, therefore, essential to the understanding of the multilateral regulation.

- IMF – The International Monetary Fund: one of the institutions created in 1944, after the II World War, which goals are to strengthen the international monetary cooperation and the stability of the exchange rates; to assure the financial stability through resources for the balance of the payments; to make international trade easier, to promote employment and sustainable growth; and to reduce poverty. Today it has 187 members. The IMF offers guidance and funding for members in economic trouble and for developing countries to achieve macroeconomic stability. One of its main roles is to follow-up the international monetary system, in order to assure the stability of exchange rates and to encourage the members to eliminate the exchange restrictions that affect trade. At first the system was based in the gold standard, but since the crisis in the 1970's, countries adopted different exchange policies, which make the task of supervising much more complex.

IMF stood out once again in the international scenario after the 2008 crisis, when its main members agreed not only to reinforce the resources to the fund, but also to reform its decision system, conferring more weight to developing countries.

In order to perform the follow up performed by the IMF, each member agrees to submit its economic and financial policies to the examination of the international community; commits to the adoption of policies that lead to ordered economical growth and to the price stability; avoids exchange rate manipulations that aim at obtaining unfair competition advantages; and provides economic data. The monitoring of the fund seeks to identify the problems that might cause financial and economic instability. According to what is provided in

Article IV of IMF's Articles of Agreement, the researches in the scope on the Article include the analysis, by the technical body of the fund, of the economic situation of each country, which is then discussed in the Executive Committee, for later presentation to all members. With the recent discussion about the effects of exchange rate undervaluation of important international partners like China and the US, the issue of currency wars and its impacts of "subsidization" of trade came to be examined not only by the IMF, but also by the WTO.

- WB – The World Bank: created together with the IMF, back then as the International Bank for Reconstruction and Development (IBRD), today is an institution dedicated to development and an important source of funding and technical assistance to developing countries. Its mission is to fight poverty by providing resources, knowledge, technical capacitation and incentives to partnerships between the public and private sectors. The WB Group is comprised of 187 members and, besides the bank, it also includes the International Development Association (IDA), dedicated to less developed countries; the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Dispute.

These five institutions provide loans for developing countries at reduced interest rates, credit without interest and donations for investments in education, health, public administration, infrastructure, financial development, agriculture, administration and natural resources.

The World Bank Group supports international trade as a platform for sustainable growth and for development through funding programs and technical assistance that aim to improve the global competitiveness of countries. These programs aim at the promotion of a global trading system that supports development, includes competitiveness in countries' strategies and that encourages reforms in trade policies and trade facilitation, in the scope of the "aid for trade".

2.1.2 Preferential trading systems (Regional, bilateral and non-reciprocal)

Together with the multilateral regulation derived from WTO, the preferential regulation created by preferential trade agreements is becoming more important. It includes regional, bilateral and non-reciprocal agreements, especially the ones centered on important trading actors, like the European Union (EU) and the US, and agreements negotiated by emerging countries like China, India, South Africa and Brazil, and also Russia, that has recently acceded to the WTO.

The knowledge of such regulation is important not only because it presents rules that go beyond the ones established by the WTO in several areas like services, intellectual property and trade-related investment measures, but also because it includes rules for areas that are still not integrated to the WTO, such as investment, competition, environment, and labor standards.

It is also important to carefully analyze the typology of the preferential agreements negotiated by relevant partners, since the expansion of the number of countries with agreements centered on a hub country end up determining regulation standards that later will be taken to multilateral instances. Moreover, when a significant number of countries follow a certain agreement model, in later negotiations the level of freedom for countries interested in integrating the group decreases.

Thus, the regulation system for preferential trade agreements includes an extensive network of regional, bilateral and non-reciprocal agreements, with an estimate by the WTO of about 400 signed agreements that, like the WTO, have the objective of promoting economic development, whether through trade liberalization, or through economic integration. Historically, the first generation of preferential agreements aimed mainly the elimination or reduction of tariffs; the second and the third (current) generations of preferential agreements, in turn, contain a wide range of rules on several aspects of international trade, having the WTO as basis, but also including areas in which the OMC still has not agreed on trade rules.

Like the generations of preferential trade agreements, the literature also evolved and multiplied. The first generation of studies, following Viner's line of thought, focused on the impacts of preferential trade agreements on the trade creation and trade diversion and their impacts on the multilateral system. The second generation developed several economic theories to identify if the preferential trade agreements were building blocs or stumbling blocs of the multilateral trade liberalization. The current generation of studies starts with these approaches, but it focuses on the real world: it analyses each one of the existing preferential trade agreements, examining its features and identifying the rules derived from the WTO and the rules that go beyond its scope, so that they can perform a compatibility analysis of them with the principles of the WTO and analyze how these new rules could be multilateral.

Among the main studies that follow this third approach, the pioneer work, developed by the IDB and the WTO Office, is called *Regional Rules in the Global Trading System*, edited by Estevadeordal, Suominen e Teh (2009). This study developed an analytical mapping of the regional and bilateral regulations in six trade topics: market access, trade defence, technical barriers, services, invest-

ments and competition. It aims at providing a wider basis for discussion and for the elaboration of policies related to the preferential trade agreements. The conclusions the study presents are important lessons: *i*) preferential trade agreements are multiplying and consolidating; *ii*) regionalism and the multilateralism are being constructed together; and *iii*) preferential trade agreements cannot be ignored by the multilateral system. More significantly, the study highlights that the preferential trade agreements can be used as a political objective, but also as an instrument for increasing multilateral liberalization.

Another relevant study is *Multilateralizing Regionalism: Challenges for the Global Trading System*, by Baldwin and Low (2009). This study caught the attention to the fact that the proliferation of preferential trade agreements is causing incoherence, costs, instability and unpredictability in the international trade relations. The basic idea of the study is that the entanglement of overlapping trade agreements will end up creating an increasing interest for the multilateralization of such agreements, which will gather to create bigger entities, getting closer to a multilateral system.

A third relevant study addresses families of agreements, especially the models of the EU and the EC. In *Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements*, by Horn, Mavroidis and Sapir (2009) identified the existing rules for these agreements, rating them as WTO plus rules (that deepen multilateral rules) and WTO extra (that are beyond multilateral rules). Afterwards, they also assessed if such rules were legally binding. The authors concluded that: *i*) the preferential trade agreements of the EU and the US chose different strategies to include rules that go beyond the WTO agreements. A fourth study is *The Rise of Bilateralism: Comparing American, European and Asian Approaches to Preferential Trade Agreements*, by Heydon and Woolcock (2009). This study questions if bilateral agreements are based in generally accepted principles – which could mean compatibility with multilateral efforts – or if such agreements establish distinct standards that would make future multilateralization harder.

This and other works consider the multiplication of the current preferential trade agreements as a clear sign that the members of the WTO are bypassing the multilateral rules, but accepting bilateral, regional or non-reciprocal rules. The problem is that these rules are including and disseminating different kinds of discipline for trade. In these agreement, there are rules already included in the WTO (WTO intra), others that are deeper than the WTO rules (WTO plus) and some out of the WTO scope (WTO extra). Considering the political impasse to complete the Doha Round, in this moment, two scenarios can be foreseen for the next future: preferential trade agreements being negotiated to reinforce rules of the WTO and to allow a general multilateralization or the opposite, to weaken

the whole multilateral regulation system, transforming the WTO into a discussion group about international trade.

The multiplication of preferential trade agreements throughout the years and the variety of regulations they include demonstrate that analyzing systematically the main existing preferential trade agreements would be interesting for the formulators of the foreign trade policy in Brazil, the main agents of foreign trade, the productive sector, and even the academics interested in the area.

2.1.3 National trading systems

Subsequently, the analysis of the regulation of global trade must examine the wide system of rules derived from the national regulatory frameworks of the main international actors, like the European Union, the United States, China, India, South Africa, Russia and other countries of interest.

This analysis should identify how the national rules internalized the multilateral and preferential rules, and also how the other policies defined by these partners can affect international trade for third parties. These rules can interfere on trade by creating obstacles to exports, as well as affecting internal production, through imports. As examples of that, we have the rules for Registration, Evaluation, Authorisation and Restriction of Chemical Substances – REACH from the EU for chemicals, the potential rules of the US and the rules already defined by the EU for trade and climate changes, or even rules in negotiation of the Anti-Counterfeiting Trade Agreement – ACTA on the protection to intellectual property.

The analysis of the national systems must include some important aspects:

- The main characteristics of the formulation of the foreign trade policy of each partner; which government bodies participate in its definition, how the private sectors articulates, how the national interests are defined;
- The main foreign trade policy instruments: tariff levels, trade defence measures, non-tariff barriers;
- Relevant elements of other policies related to trade (investment, intellectual property, and competition).
- Relevant elements of other policies related to trade (environment, labor standards, and human rights).

This analysis will allow the identification of the national regulatory framework of the most significant partners and will make it possible to examine how these countries articulate to bring the rules they consider relevant to

defend their interests to the preferential systems and the multilateral system. Moreover, this examination should proceed with the analysis of compatibility of each rule with the WTO principles and agreements and, if necessary, raise the matter in the Dispute Settlement Body of the WTO.

3 CROSSECTIONAL ANALYSIS OF THE REGULATION OF THE MAIN ISSUES OF GLOBAL TRADE

Once defined the three main systems of global trade, the next step is the cross-sectional analysis of these systems for each one of the international trade issues. That is justified because the three systems form a global trade regulatory framework that surrounds and constrains all trade activities, and it should be analyzed universally, comprehending all pertinent regulation.

The cross-sectional analysis must include not only the general principles and rules of the GATT and the WTO, such as the most favored nation clause, national treatment, transparency, but also the jurisprudence created in cases taken to the Appellate Body, since each issue or sector of global trade will have a specific application of each principle. Those issues should include the ones listed below.

Issue 1 – Agricultural goods and rules for trade in agricultural goods

Brazil has become, in the last few years, one of the most important exporters of agricultural goods of higher value-added in the world. This position allowed it to participate decisively in international forums concerning the sector, like in the WTO, in the scope of negotiations on agriculture, in FAO, for discussions on hunger, and the UNFCCC, on discussions on climate change. As a great producer of alternative energy sources, Brazil has an increasing interest in being heard in the discussions on sustainable development.

As a big exporter, Brazil is interested in following in details the negotiations and the elaboration of rules related to market access, to the quality of products and on sanitary and phytosanitary measures, which are becoming protectionist barriers in the most relevant countries to Brazilian exports.

Examples of how Brazil can successfully use the WTO dispute settlement mechanism as a supplementary form of international negotiations are the main cases of trade disputes related to agriculture, as well as the cases about sugar and cotton, that established important understandings on rules related to the agricultural sector.

Therefore, the understanding and the use of the international regulatory framework for agriculture became a priority task for the sector.

The first phase of the analysis must include the examination of the multi-lateral regulatory framework, beginning with the GATT rules, followed by the Agreement on Agriculture and including the main advances in negotiation of the Doha Round, as signalization of future rules. The examination should include the paradigmatic cases on agriculture taken to the Dispute Settlement Body of the WTO and the decision of the panels and the Appellate Body that have been complementing the interpretation of these agreements. The second phase should include the rules that are being negotiated by the main international actors in their regional and bilateral trade agreements, especially the ones centered on the EU, USA, China and India. The third phase must include the analysis of the regulatory framework of the main global trade actors, such as the EU, USA, China, India and South Africa. The fourth phase of the analysis, the final one, must include the impact of the national and international regulatory frameworks on Brazil and on the competitiveness of the Brazilian companies regarding the agricultural sector.

In detail, the cross-sectional analysis of agricultural goods trade regulation must include:

- Multilateral rules for agricultural trade established in the main articles of the GATT – Article 1 (most favored nation), Article 2 (schedule of commitments), Article 3 (national treatment) and Articles 11 and 13 (quantitative restrictions);
- The Agreement on Agriculture of the WTO and rules on the access to markets, internal support and subsidies to exports;
- Doha Round negotiation texts that allow a good glance at the new rules to be agreed in the agricultural area;
- The main panels and decision of the Appellate Body on the subject, including the cases of cotton, sugar and chicken, brought by Brazil and considered of systemic interest;
- The Agreement on Sanitary and Phytosanitary Measures and an examination of the new trade barriers that are being created in the markets that interest Brazil, such as the US, the EU, China, India and South Africa, through technical regulations and standards for agricultural products;
- Agreements on Technical Barriers to Trade, Pre-Shipping Inspection, Rules of Origin, Imports Licensing and Government Procurement and examination of the new trade barriers that are being created in markets that interest Brazil;

- Agreements negotiated in the scope of *Codex Alimentarius* and its impact on trade;
- Regulation established by the US, the EU, China, India, South Africa and Mercosur in their main preferential agreements (regional, bilateral, non-reciprocal), with emphasis on the preferential rules of origin;
- Regulatory framework of the main actors of global trade, such as the EU, the US, China, India and South Africa; and
- An analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies of the agricultural sector.

Issue 2 – Non-agricultural goods (industrial, mineral and fishing)

Brazil is also a producer and exporter of goods with different value-added levels, such as minerals, chemicals, textile, cars and aircrafts. Differently from what takes place in the agricultural sector, in which imports are reduced, the industrial area faces strong competition from external producers, especially Chinese. So it is interesting for Brazil to know and use international rules to open markets and to defend itself from imports considered unfair.

The examination of the regulatory framework of international trade must include the GATT articles, the articles related to market access, the many agreements related to the regulation of customs activities (customs valuation, imports licensing and non-preferential rules of origin), besides rules on technical barriers, an issue that is attracting increasingly attention in the international scenario. In the following step, the analysis must focus on the preferential framework of the regional, bilateral and non-reciprocal agreements and, afterwards, on the national regulatory frameworks of the main international partners. Finally, it should include the impacts of the international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies concerning the non-agricultural sector.

The WTO rules have undergone through a significant interpretation process by the panels and Appellate Body of the Dispute Settlement Mechanism. So it is relevant to choose sensibly and to analyze cases considered to have systemic implications.

The cross-sectional analysis of the regulation of non-agricultural goods must include:

- The main articles of the GATT relevant to the industrial, mineral and fishing areas – Article 1 (most favored nation), Article 2 (schedule of commitments), Article 3 (national treatment), Article 5 (freedom of

transit), Article 7 (customs valuation), Articles 11 and 13 (quantitative restrictions);

- Texts in negotiation at the Doha Round related to market access;
- The main panels and decision of the Appellate Body of the area;
- Agreements on Technical Barriers to Trade, Pre Shipping Inspection, Rules of Origin, Imports Licensing, Government Procurement and examination of the new trade barriers that are being created in the markets that interest Brazil;
- Agreements negotiated in the scope of the International Organization for Standardization – ISO on international regulations and standards;
- Regulation established by the US, the EU, China, India, South Africa and Mercosul in their main preferential agreements, with emphasis on rules of origin;
- National regulatory frameworks of the main actors of global trade, such as the EU, the US, China, India, South Africa and Mercosul; and
- The analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies: industrial sector, mineral extraction sector and the fishing sector.

Issue 3 – Rules for trade defence: antidumping, countervailing measures and safeguards

With the growth of international trade, the interest of international partners on trade defence measures such as antidumping, countervailing duties and safeguards also increases. The detailed knowledge of those rules is becoming more and more relevant, not only as a defense instrument in case of damage to the national industry, but also in cases in which they are used against Brazilian exports.

Trade defence issues are getting special attention from panels and the WTO Appellate Body. A significant number of cases decided at the DSB refer to the trade defence area. Thus it is relevant to choose sensibly the most relevant cases, as well as to promote a deep analysis. Among them, special attention should be conferred to the cases referring to the method of zeroing used in the definition of dumping, in which the AB has been deciding against several practices by US.

A special examination must be done on the issue of subsidies and its different modalities, such as forbidden subsidies or subsidies subject to countervailing measures. The examination of the decisions of panels and of the Appellate Body of WTO will allow more detailed understanding of the practices of other international

partners that were considered incompatible with the WTO rules, and that needed to be discontinued, or that may be subject to countervailing rights. That knowledge can be interesting for the formulation of several international trade, industrial and development policies, as well as trade defence. Special attention should be given to cases about aircrafts (large and medium-sized).

With the international crisis of 2008, several countries started to subsidize their industrial activity, which certainly will affect the export activities. The examination of international rules on subsidies will allow Brazil to be prepared to sue those countries if these subsidies start to affect exports for markets in which it has interest.

The cross-sectional analysis of the regulation of trade defence rules must include:

- The main articles of GATT that are relevant to the commercial defense area: Article 6 (antidumping and countervailing measures), Article 16 (subsidies) and Article 19 (safeguards);
- Agreements on Antidumping, Subsidies and Countervailing Measures, and Safeguards from the WTO;
- Texts in negotiation at the Doha Round about antidumping and subsidies agreements;
- The main panels and decision of the Appellate Body of the area, including the case of aircrafts between Brazil and Canada, and between the US and the EU, considered cases with systemic implications;
- The regulation established by the US and the EU in their main preferential agreements (inclusion by the US of a clause on zeroing in anti-dumping);
- National regulatory frameworks of the main actors of global trade, such as the EU, the US, China, India and South Africa; and
- An analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies.

Issue 4 – Services

The activities related to the international trade of services has grown faster than the trade in goods and has represented an increasing share of the trade balance of the major international partners. The international regulatory framework of the area is more recent than the goods' one and was only included in the multilateral system with the Uruguay Round. However, the liberalization of the sector has accelerated autonomously, by pressure of the domestic demand of technological advances.

Sectors such as financial, telecommunications, tourism, transportation, civil construction, professional services, quick delivery, among others, have been occupying, with their activities, an increasingly share of international trade, which creates a special need for knowledge of the international regulation on that area.

The following modes of provision of services are relevant to the analysis: *i*) crossborder supply; *ii*) consumption abroad; *iii*) commercial presence; and *iv*) presence of natural person. For each form, countries have negotiated segments in different manners, specifying conditions for its liberalization. Since the service movement is not controlled in the borders, but through domestic regulations, the examination of the service trade becomes much more complex than the goods trade examination.

The decisions of panels and the Appellate Body of the area is less dense but important cases were still taken to the DSB in the telecommunication and internet games areas.

The liberalization of many service segments is being done quickly, outside the context of the WTO, in the scope of the preferential agreements (regional, bilateral and non-reciprocal) centered mainly in the EU and the US. So it is relevant to make a detailed analysis of the agreements of these two blocs, but also on countries that interest Brazil, like China, India, Indonesia and South Africa, besides the Protocol on Services of Mercosul.

The crosssectional analysis of the service regulation must include:

- The agreement on services (GATS) from the WTO;
- Texts in negotiation on the new liberalization concessions offered at the Doha Round;
- The main panels and decisions of the Appellate Body of the area, including the telecommunication case between Mexico and the US and the case on gambling between Barbuda and the US;
- The regulation established by the US, the EU, China, India and South Africa on their main preferential agreements and examination of the liberalization proposals offered in these agreements;
- National regulatory frameworks of the main actors of global trading, such as the EU, the US, China, India and South Africa;
- An analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies in the services area.

Issue 5 – Issue related to trade: intellectual property

The intellectual property area has been playing an important role in international trade, both for the trade of the product of the knowledge itself, under the exploration of patents, and the protection of knowledge (brands, patents, author rights, design, etc) through international trade. At the WTO, the area is regulated through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

A sensitive segment is the one referring the commercialization of drugs and the traffic of such inputs, that were treated specially on the Ministerial Decisions of the WTO on Public Health and TRIPs (2001). Recent cases brought to the Dispute Settlement Body allowed panels and the Appellate Body to decide important matters related to the TRIPs.

Like in the services area, the great international partners have been trying to establish a more dense regulation than the one determined by the TRIPs through preferential trade agreements. Thus, it is relevant to make a more detailed examination of the main partners of Brazil.

The cross-sectional analysis of the intellectual property regulation must include:

- The main agreements on the regulatory framework of intellectual property: author's rights, brands, patents, design, confidential information, among others;
- Agreement on the Trade-Related Aspects of Intellectual Property Rights of the WTO;
- Texts in negotiation on the register of alcoholic beverages, traditional knowledge, geographic indication and biodiversity on the Doha Round;
- The main panels and decisions of the Appellate Body of the area, including the case on intellectual property between the US and China;
- The regulation established by the US and the EU in their main preferential agreement, which already include extensive regulation on intellectual property, besides the WTO framework.
- An examination of the preferential agreements of other partners, such as, China, India, South Africa and Mercosul partners;
- National regulatory frameworks of the main global trade actors, such as the EU, the US, China India and South Africa; and
- The analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies.

Issue 6 – Trade-related issues: investments

The international regulatory framework of the investment area is complex and scattered, because the many attempts to create a multilateral regulation for the area failed, such as it was the case of the negotiations on the scope of the OECD (Multilateral Agreement on Investment – MAI) and the WTO (Multilateral Framework on Investment – MFI). With the increasing internationalization of companies in Brazil, detailed knowledge of the international regulation on the area is increasingly urgent.

The international partners have been producing a significant typology for the agreements on investment, including a wide range of rules on: non-discrimination; national treatment; transparency; investment protection; and solution of investor conflicts against the State. That variety can be noticed in over 2,500 agreements that were put into inventory by the UNCTAD.

The regulations on investment related to trade are another relevant issue, since they determine the prohibition of incentives based in the performance of exports and in the use of local content. Those rules were negotiated at the WTO, in the Agreement on Trade-Related Investment Measures (TRIMs). However, many international partners have been expanding the prohibition list, when negotiating their preferential agreement, to include the prohibition of demands on the transfer of technology, the formation of joint-ventures or national capital shares, or limits on the number of foreign labor. It is relevant to make a more detailed examination of the agreements centered on the EU and the US, as well as partners that interest Brazil, like India, China and South Africa, and also the Mercosul partners.

The cross-sectional analysis of the regulation on investment must include:

- Agreements of the WTO related to investment, such as the Agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS – Mode 3) and the Agreement on Subsidies (Parts 1 to 4);
- Texts in negotiation on the Agreement of Subsidies of the Doha Round;
- The main panels and decisions of the Appellate Body on the subject;
- Text for negotiation (MAI) in the scope of the OECD;
- Text for negotiation in the scope of the Doha Round of the WTO, that was lately removed from the round;
- Bilateral investment agreements of the main international partners;
- Analysis of the regulation established by the US and the EU in their

main preferential agreements (inclusion by the US of clauses on investment beyond the TRIMs framework of the WTO);

- Investment agreements of the main partners of Brazil;
- National regulatory frameworks of the main actors of global trade, such as the EU, the US, China, India, South Africa and the Mercosul; and
- An analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies.

Issue 7 – Trade-related issues: competition

The regulatory framework on the area of competition is also complex and is scattered through different international agreements. Despite already being part of the national regulations of most countries, the attempts to create a multilateral framework ended up failing. The OECD has a committee on the issue and, besides doing researches, it aims at the discussion of national practices and to propose cooperation measures.

Also in the scope of the WTO, the issue was included in the Doha mandate. The negotiations progressed, but ended up being excluded from the negotiator mandate. The most interested countries created their own analysis mechanisms of national and cooperation between parties' practices, through review mechanisms, such as the International Competition Network.

The issues that have been object of discussion are related to clauses of non-discrimination, national treatment, transparency, prohibition of harmful cartels and settlement of conflicts.

However, with the expansion of the transnational activities of companies, the development of a national regulation on competition by several countries created conflicting rules, once the criteria of operation of those rules are distinct (case of fusions and purchases that are accepted in the US, but not in the EU, and vice-versa).

It is also relevant to do an examination of the clauses negotiated by the main international partners in the scope of their regional agreements.

With the greater presence of Brazilian companies abroad, the detailed knowledge of the regulation on the area of competition also deserves special attention.

The cross-sectional analysis of competition must include:

- Understanding of the OECD in the area of competition defense;
- Negotiation texts on the issues of competition related to trade in the scope of the Doha Round;

- The main panels and decision of the Appellate Body of the area;
- The implications of the commercial defense measures for the area of competition defense;
- The regulation established by the US and the EU, as well as by the main partners of Brazil in their main preferential agreements;
- National regulatory frameworks of the main actors of global trade, such as, the EU, the US, China, India and South Africa; and
- The analysis of the impact of international and national regulatory framework on Brazil and on the competitiveness of Brazilian companies.

Issue 8 – Areas that affect international trade: environment and climate change

The regulatory framework on the area of environment and on climate change is also significantly fragmented. There are over 200 agreements on the environment, and about 20 of them have specific clauses on trade, covering diverse issues, such as the protection of endangered species, the prohibition of the use of substances that affect the ozone layer, even the trade of nuclear waste. With global warming, the US and the EU are creating rules on carbon emission that affect not only internal trade, but also imports, impacting international trade.

However, since neither the environment nor the climate are parts of the trade regulatory framework, the issue became subject to the dispute settlement mechanism of the WTO. The matter is being considered on the DSB, and a series of rules has been established, based on the Article 20 of GATT, that addresses general exceptions and allows restrictions to imports in cases of threat to the health and life of people, animals and plants, or to the preservation of exhaustible natural resources (air, water or endangered species). With the attention of customers, that are increasingly more sensitive to those issues, it is important to follow the development of the rules referring to these areas.

Another aspect of the matter is the one related to the multiplication of national and regional standards, public or private, that intend to inform customers about specific aspects of the product or its production, about the use of green stamps, carbon emission stamps and stamps with the origin of each ingredient. If, on the one hand, those stamps and make it easier to sell certain assets, on the other hand, the uncontrolled proliferation of those stamps can turn into an important trade barrier.

The cross-sectional analysis of the regulation of environment and climate change must include:

- The main articles of the GATT that are relevant to the environment and climate change area; Article 1 (non-discrimination of nations); Article 2 (schedules of commitment), Article 3 (national treatment), Article 20 (general exceptions);
- The agreement on sanitary and phytosanitary measures of the WTO and examination of the precaution principle;
- The agreement on technical barriers to trade of the WTO and examination of the matter of labeling and the product processing method (PPM);
- Agreements about the environment with trade clauses;
- Agreements about climate change and its implications on trade (UN-FCCC, Kyoto Protocol, Copenhagen Protocol, Cancun Agreement);
- The main panels and decisions of the Appellate Body of the area, including the cases of tuna fish, shrimps and retreated tyres;
- The regulation established by the US, the EU and partners that interest Brazil in their main regional agreements (inclusion of specific clauses about environment and climate);
- National regulatory frameworks of the main global trade actors , such as the EU, the US, China, India and South Africa; and
- The analysis of the impact of international and national regulatory frameworks on Brazil and on the competitiveness of Brazilian companies.

Issue 9 – Areas that affect international trade: labor standards, human rights and cultural diversity

The expansion and the deepening of the labor rights and human rights area in the international scenario bring to the conclusion that these factors will soon end up affecting international trade. In the context of labor, the international regulation is determined by the International Labor Organization (ILO), that has been approving several conventions referring to the discrimination of gender, freedom to organize unions and the right to strike, prohibition of children labour, equal pay for equal work, among other. The US and the EU have been including those conventions in their preferential agreements, especially the ones with developing countries.

Brazil, that until recently had no interest in negotiating rules in this area, currently is more open, due to the advance of imports of countries that do not respect labour rights.

On the WTO, Article 20 of the GATT already determines that nothing can be built to stop the adoption of measures related to the imports of goods produced with the work of prisoners. Now it is only a matter of knowing how the clause could be interpreted and used in the context of international trade. The possibility of using the concept of public order or Article 20 to stop imports of products that have violated, in its production, labour or human rights standards can also be raised.

More recently, with the consolidation of the Human Rights Board in the scope of UN and the recognized efficiency of trade to make rules on the environment operational, it is only a matter of time before a country evokes a clause on labor or human rights to justify restriction measures to imports from another country.

In the cultural area, Unesco approved, in 2005, the Convention on the Protection and the Promotion of the Diversity of Cultural Expressions. This Convention affects international trade directly by establishing rules on the trade of goods, services and people linked to cultural production. Besides craftwork goods, these rules affect directly the production of movies, CDs and DVDs, and the live musical production (special visas are provided for musicians and producers). Those areas must also receive attention, since Brazil is becoming a producer and an exporter in this segment.

The cross-sectional analysis of the regulation of labor standards, human rights and cultural diversity must include:

- Conventions of the ILO that have commercial implications;
- Conventions on human rights that have commercial implications;
- The main articles of GATT that are relevant to the labor rights defense area;
- The main panels and decision of the Appellate Body that can show possible routes of action for the inclusion of those areas in the WTO;
- Regulation established by the US and the EU in their main regional agreements (inclusion of a clause on labor rights and cultural diversity);
- National regulatory frameworks of the main actors of global trade, such as the EU, the US, China, India and South Africa; and
- An analysis of the impact of international and national regulatory frameworks on Brazil and the competitiveness of Brazilian companies.

4 CONCLUSION

The theoretical reference of the multisystem of global trade and the methodology of the cross-sectional analysis of global trade, proposed here for studying the regulation of international trade, can be summarized in some items, presented below.

1. The object of analysis should not focus only in the concept of foreign trade or international trade. More than direct exporting and importing activities, trading activities are related to broader issues, such as intellectual property, investment and competition. Moreover, trade is affected by regulations created for different issues, such as labor standards, human rights, cultural diversity, environment and climate change. The issue of floating exchange rate, that had until now been “forbidden” in the trading area, in the crisis of 2008, started having a definite space in the discussion about trade policies. With today’s reality, the concept of international trade must be expanded to comprise a broader concept – global trade.

2. The study of the regulation of global trade, to unravel all its implications, cannot be a privileged domain of only one area of knowledge, whether it is economy or administration, law or international relations. The real understanding of its details demands a new approach, a multidisciplinary approach, in which economists and administrators do not get lost in the hermetic language of the laws, but understand the legal logics and the rules for interpreting treaties; and, in turn, lawyers, attorney and internationalists will not feel frightened when facing a mathematical equation, but will understand the meaning of the cross elasticity and the results of simulations of general and partial equilibrium models. Not only the legal implications of regulations should be examined, but also their economical impact and the effect on the competitiveness of the production sectors.

3. The apprehension of the complexity of the issue demands a new theoretical, multisystemic reference, in which each one of the different regulation levels is explained and analyzed in detail, since it reveals different intensity of rules. Each regulation system reflects particular interests of each one of the actors that negotiated it. The actual complexity of the different regulatory frameworks is revealed when the analyst understands, step by step and incrementally, the interaction of rules in its different systems. This is the theoretical basis of the methodology proposed here. The regulation of global trade is actually a regulation multisystem that comprehends the multilateral, preferential and national levels.

4. The analysis of the global trade regulation also demands a step beyond, whatever it is, to leave what is general to enter the specific; start from the agreement rules and apply them to real sectors. In other words, leave the agreements on agriculture and reach the implication of the rules for the meat, soy, orange and

ethanol sectors. Leave the agreements for textiles and reach the rules of origin for towels and T-shirts, from the dumping agreements to the trade defence of footwear, from the agreements on subsidies to automobiles and aircrafts. But in these cases, the analysis of each sector demands a cross-sectional approach, leaving the multilateral and embracing the preferential, and from that to national, sector by sector or product by product.

Summarizing, the analysis of the regulation of global trade presents a great challenge in order to be done. It demands the construction of an extensive database for the regulations of different systems, as well as the different sectors which are interesting. Moreover, it demands the creating of a complete base and data of the international trading flows, country by country and its main products, which would allow the economic analysis of the implications of the rules negotiated. Only with the examination of rules and numbers an analyst can be prepared to assess its actual implications for the foreign trade policies of a country and its effects on the competitiveness of the production sectors.

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