

Brazil, trade multilateralism and the WTO: a medium term perspective

Final Report | July 2012

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Task Force

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Presentation

The constitution of the Task Force *O Brasil, o multilateralismo comercial e a OMC: uma perspectiva de médio prazo* [Brazil, trade multilateralism and the WTO: a medium term perspective] was aimed at gathering varied views of Brazilian specialists on trade and trade policy in order to propose a Brazilian agenda for the multilateral trade system.

Carried out in a period in which multilateralism – not only in trade – is going through a deep crisis, and the Doha Round has reached a prolonged impasse difficult to overcome, the exercise aimed to identify the characteristics and the agenda of multilateralism matching the interests of Brazil, considering a medium term reflection perspective (10 years).

Despite having a 10-year horizon as reference, the Task Force members recognise the importance that the Doha Round come to a conclusion that, even being unambitious from the point of view of its original objectives, it builds a bridge between the troubled present and a future that is expected to be more foreseeable and promising.

The participants in this initiative were invited due to their experience and personal interest, irrespective of their institutional links.

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This Report is the result of an effort to synthesize views, not always coincident, among the members of the Task Force. However, strong convergence of views is noted in relation to the characteristics and multilateral thematic agenda of interest to Brazil. Only in the case of one issue of the group agenda (the relations between exchange rates and trade and their treatment in international forums, including the WTO) it was not possible to reach consensus on a text in the Report. The divergent views in relation to this theme are synthetically presented at the end of the Report.

Summary

1. Introduction.....	2
2. The international context and the trade multilateralism.....	4
2.1. A context unfavourable to liberalisation and multilateralism.....	5
2.2. But a growing demand for multilateral governance.....	9
3. Brazil in face of trade multilateralism.....	10
3.1. From the GATT to the WTO: a defensive pathway.....	11
3.2. Brazil and the perspectives of multilateralism.....	13
4. Brazil's multilateral trade agenda: drivers and components.....	21
4.1. Issues associated to the economic and political priority attributed to multilateralism.....	22
4.2. Issues associated to the global transformations and their implications for competition among companies and national policies.....	29
4.3. Issues related to the productive transformation in Brazil and its implications.....	37
5. Exchange rates and trade: divergent views.....	42

1. Introduction

Trade multilateralism is going through a period of crisis, the impasses of the Doha Round being its most visible manifestation, but they are no more than a symptom. The crisis of multilateralism is rooted in deep changes in progress in the economy and in the mechanisms of governance ruling the international economic relations.

The crisis of multilateralism has given rise to the formulation of a vast array of proposals aimed at recovery of the functionality of trade multilateralism, to “update” it so that it can meet the new challenges. It is the case, for example, of initiatives like the Sutherland Report¹, sponsored by the WTO to discuss its future, and the Warwick Commission Report², which presents challenges and recommendations for reforming and strengthening of the multilateral trade system.

Some of the proposals for multilateral trade reform emphasise procedural aspects of the negotiations, which cause enormous difficulties to advance. It is argued, for example, that negotiations in a single undertaking regime and the consensus rule for approval of the main decisions are mechanisms that render the closing of agreements unviable and prevent groups of interested countries in negotiating specific themes from doing so with a certain freedom.

Other proposals focus on the question of the negotiations agenda, which – today centred on traditional themes, such as market access for agricultural and industrial goods – would be completely out-of-date in relation to the current characteristics of trade and international investment (where other themes gain importance).

¹ WTO (2004) - *The Sutherland Report: A Report of the Consultative Board to the Director-General, Supachai Panitchpakdi, The Future of the WTO: Addressing institutional challenges in the new millennium*, Geneva.

² The Warwick Commission (2007) - *The multilateral trade regime: which way forward?* The University of Warwick.

In this line, there is a series of proposals whose focus are specific aspects of the “reform agenda” of multilateralism in the WTO: how to escape from the problems that the adoption of the single undertaking poses for advance in the negotiations? How to deal with competition from preferential agreements? What modifications to introduce into the dispute settlement system to make it more effective? What themes to introduce into the negotiations agenda so that this recovers, at least in part, from its delay in relation to the phenomena emerging in the global economy?

The constitution of the Task Force to deal with the topic, *Brazil, trade multilateralism and the WTO: a medium term perspective*, intends to contribute to deepening the debate about these themes in Brazil. There is consensus regarding the importance of multilateralism for trade strategy, and, more broadly, for the international engagement of Brazil, a country characterised by diversified trade in terms of products and partners. Besides this, Brazil has always prioritised the multilateral instances of negotiation and gained protagonism in the Doha Round, there being solid reasons for contributing to the effort to remove multilateralism from the path to irrelevance. Brazil must participate in the discussions about the reform of trade multilateralism, with a proactive responsible posture that will give credibility to its proposals in the process of definition of the agenda of the new multilateralism – which may be delayed, but will not fail to occur.

The group centred its reflections and debates on some issues that are, in our opinion, essential:

- *What factors are behind the crisis multilateralism is suffering, and what is the relative weight of external and internal factors to the negotiating process in this evolution?*
- *What factors – domestic and external – will mold the strategy of Brazil’s engagement in trade, and, in the considering these factors, what should be its trade strategy and the place of multilateralism in this?*
- *What characteristics must trade multilateralism have so as to correspond to Brazil’s interests and policy preferences?*

2. The international context and trade multilateralism

The conception of trade multilateralism that lay at the origin of the GATT and dominated the successive rounds of negotiation up to the Uruguay Round was based on principles, such as non-discrimination and the offer of liberalisation without a reciprocity requirement – principles that the notion of most favoured nation (MFN) expresses clearly. This conception admitted implicitly that developing countries acted in the GATT as free riders and was adapted to a world in which the negotiation involved essentially the USA and Europe.

The Uruguay Round was developed in a period dominated by liberal policy paradigms in developed and developing countries, and marked by multiplication of explicitly WTO-plus preferential agreements, also informed by the liberal matrix of policies. The Uruguay Round, with the impulse of the developed countries, aggregated new themes to the traditional agenda of the GATT and multilateralised some agreements signed in previous rounds. In adopting the single undertaking as the criterion for conclusion of the negotiations, it offered a guarantee to developing countries that the themes of interest to them would be effectively incorporated into the negotiation agenda, but, as a counterpart, it increased the cost of free riding.

After the Uruguay Round and the creation of the WTO, some sectoral negotiations continued (due to the so-called built-in agenda), and the expansionary trend of the agenda to include new themes was consolidated. Again, the impulse came from the developed countries and was resisted by the developing ones. This context stimulated the return to the model of plurilateral agreements, with or without critical mass, and also with or without adoption of the MFN principle.

In any case, the economic and political concept was still shaped by liberal views and policies. Besides this, there were only outlines of the structural processes that would, throughout the first decade of the XXI century, radically change the

economic and political context in which multilateral trade operates, reducing its legitimacy and functionality.

The reversal of the expansion process of the thematic agenda of trade negotiations, evident throughout the Doha Round of the WTO, and the failure of the Free Trade Area of the Americas (FTAA) negotiations are eloquent examples of trends that gain strength in the new scenario that would become consolidated as of the year 2000. The domestic agendas would acquire enormous importance vis-à-vis the international ones, the costs of liberalisation came to be perceived as excessive and growing, and the domestic and international pro-liberalisation consensuses lost their solidity.

2.1. A context unfavourable to liberalisation and multilateralism

It was in the first decade of the century that trends matured, in the international economic and political context, which converged to bring into question the legitimacy of the multilateral institutions of governance, established after the Second World War, among which was the WTO, the successor of the GATT. It is not opportune here to make a detailed analysis of this process, but it is possible to list, in stylised form, the processes and phenomena – closely related among them – that have been behind the erosion of the legitimacy of multilateral trade, in the last 10 years:

- The emergence of the “South”, which synthesises different phenomena that compete to reduce the capacity of definition, by the developed countries, of the agenda and the rules of international trade. Such phenomena are: (i) the increase in the economic and political weight of the major developing countries in the international scenario; and (ii) the rising of the Asia-Pacific region as a dynamic pole of world capitalism. If it is taken into account that a great part of the countries that have gained weight in this new scenario follow economic policies that are distant from the liberal paradigms, it is understood that the power in the world has shifted in favour of countries whose policy preferences

have little commitment to liberal principles. On the international arena, the emerging powers question the *de facto* and *de jure* leadership exercised by the USA and the European Union on the institutions of the world economic order, and demand changes that would promote a shift to a new distribution of economic power in the world;

- The meteoric rise of China – which entered the WTO in 2001 – as a giant actor in international trade, radically altering the trade flows and competitive conditions in the global market. Maintaining practices of economic policy formulation and instruments that can be characterised as State capitalism, the entry of China into the WTO has a significant impact on the negotiating strategies of the other members, particularly with regard to the offer of liberalisation with granting of the MFN benefit;
- The erosion of the “liberal consensus”, especially in the developed countries, as the effects of North-South competition are disseminated by the labour markets of these countries – also affecting sectors that, until then, had naturally been protected from foreign competition. On the domestic context, the developed countries are submitted to pressures that test the resilience of the mechanisms of social cohesion that gave support to their growth strategies open to the world;
- The frustration with the results of the Uruguay Round in the countries of the South. In these countries the erosion of the “liberal consensus” is, at least partly, associated to a more or less generalised frustration with the results of the Uruguay Round and the unilateral processes of liberalisation put into effect in many countries in the 80s and 90s. The promise of overcoming the economic difficulties undergone by many developing countries in those decades, thanks to the adoption of liberal policies, was not fulfilled, and there spread, among these countries, the perception that the results of the Uruguay Round were unbalanced, essentially benefiting the developed countries;
- The growth in the number of WTO members. They are 155 today, and, since 2000, it has absorbed as much countries of marginal weight in the world economy, as China and Russia, two of the BRICs. This means that the composition of members has become increasingly heterogeneous, not

only in relation to the structural characteristics of the national economies of these countries, but also to their policy preferences. In an institution where the decisions are adopted by consensus, this heterogeneity may come at a high price for the advance of the negotiations;

- The multiplication of preferential agreements, which may be seen as cause and effect of the difficulties faced by the multilateral negotiations, as they increasingly compete with multilateralism as the main instance of negotiation for developed and developing countries. The preferential agreements are also quite heterogeneous, there not being a single model. However, in a context where countries are refractory towards ambitious movements of liberalisation, many agreements have been characterised by their low quality and high potential for generating distortions – associated to complex, varied rules of origin and long lists of exceptions to the liberalisation. This generates negative implications for the multilateral trade system, producing a complex network of agreements with high potential for discrimination among the WTO members; and
- The growing disconnection between the agendas of large transnational companies and national priorities and objectives. This disconnection results from the distribution of company activities and functions in different countries – according to the attributes of competitiveness required by each activity/function – and from the articulation of different stages of production in global or regional value chains. The disconnection between corporate and government agendas – the latter based on the mercantilist logic of defence of national firms and jobs – reduces the interest of major transnationals – important players in previous rounds – in the multilateral negotiations. In some regions and countries, companies’ interest tends to shift to preferential negotiations, whose agendas have greater capacity to absorb the concerns and interests of internationally structured companies.

To this set of factors, one can add the effects of the international economic crisis that arose in 2008. It added new sources of tensions and conflicts to an international political environment already quite critical of globalisation. In recent years, there has been a proliferation of government measures limiting and distorting trade

and investment flows. Although this trend has not led to a clear reversal, on a global scale, of the degree of liberalisation enjoyed prior to the crisis, this political environment of greater hostility to the processes of trade liberalisation – in the developed and developing countries – has made the conclusion of the Doha Round negotiations unfeasible.

The internal mechanisms of negotiation adopted in the WTO must also be taken into account when listing the factors that contribute to the difficulties faced by multilateral trade. The adoption of the rule of consensus and the principle of single undertaking in an institution with a large number of participants – highly heterogeneous from the point of view of economic and policy preferences – increase the legitimacy of the decisions adopted, but at the same time strengthen the “veto coalitions”, and block the decision-making process and the conclusion of the negotiations.

Despite the intense use of the system of dispute settlement among members, this mechanism has implementation problems, associated to delay in the adoption of recommendations emanated from the panels, on the part of “loser” countries. Such problems reduce its effectiveness, and, thus, hurt the legitimacy of a governance system based on rules, as the trade multilateralism has been.

An assessment of the factors that converge to reduce the effectiveness and legitimacy of trade multilateralism cannot but conclude that the factors external to the WTO, related to the evolution of the international political and economic context, perform the determinant role in the process.

These are the factors which radically subvert the context on which multilateralism had been based until the 90s. Beyond that, they are the factors responsible for blocking the necessary process of adaptation of trade multilateralism and its institutions to the new globalisation features and trends. Factors inherent to the functioning of the WTO and the negotiating process play a secondary, but important, role, as they create additional difficulties for the adaptation of the WTO to the political and economic conditions in which it now operates.

2.2. But a growing demand for multilateral governance

The political environment, in the developed and in many developing countries, is, today, broadly dominated by concerns about the costs of globalisation. The agenda of policies is focused on issues like deindustrialisation, social impacts of doubling the labour supply in the world, economic and environmental effects of the intensification of pressure on the natural resource reserves, food and security. The foreign policy of the main global actors seeks to respond to these challenges with unilateral mechanisms or bilateral arrangements with supplier countries to guarantee, for example, the supply of raw materials or food.

However by its very nature, and taking into account the great potential for generating conflicts implicit in the unilateral responses and bilateral arrangements, this is (or should be) a systemic and global agenda, one that would, much more adequately, be dealt with at the multilateral level – at least from the point of view of the generation of positive global effects. It must not necessarily be treated in the sphere of trade multilateralism, but the WTO will, in some way and at some moment in the future, have to take into consideration in its agenda the intersections between trade and other international agendas, such as those of climate change or food security.

In synthesis, the hypothesis of a trade multilateralism, which is renewed and adapted to new characteristics and trends of the world economy, makes sense, both from the economic and the governance points of views, but there are scarce reasons for expecting that such a hypothesis will materialize in the short term.

In the short run, the main functionality of the WTO seems to be the preservation of a global trade order that is reasonably open in the face of national initiatives that challenge the benefits of liberalization and non-multilateral arrangements that reduce such benefits for the great majority of its members.

In this sense, it should act as a “warrantor of last resort” of the advances overtaken during the second half of the XX century, as far as opening markets and setting

trade rules to discipline national governments are concerned. In the medium term, however, the challenge of trade multilateralism is to recover its functionality, relying not only on a defensive strategy – one of mitigation of damages caused by an unfavourable political context – but also on an agenda of reforms with a greater degree of ambition.

Therefore, in order to envisage prospects for reform of the multilateral trade system, it is necessary to look beyond the short term, and it is on the basis of this broadened horizon that the theme will be addressed in this report.

3. Brazil in face of trade multilateralism

Multilateralism is the negotiating forum historically prioritised by Brazil in the trade area, and this priority is the object of something close to consensus among analysts and policy-makers. This situation was little altered in the period when the Brazilian trade strategy was under influence of the “cycle” of open regionalism, which characterised Latin America in the 90s. As a matter of fact, Brazil does not feel comfortable in the “world” of regional and preferential agreements.

In its negotiations with developed countries, the key Brazilian interests concentrate on issues that are identified as the “hard core” protectionism in these markets (market access and rules for agricultural products). At the same time, the Brazilian government resists negotiating rules and disciplines in areas such as the protection of investment, intellectual property rights, services and government procurement, which have been incorporated by industrialised countries in the majority of their recent preferential agreements. With developing countries, except for MERCOSUL, the results of the Brazilian negotiations with relevant partners, such as India and SACU, have been, until now, of little significance, reflecting the difficulties of emerging countries to overcome conflicts of interest between their trade agendas.

In the first decade of the XXI century, the priority attributed to multilateralism over regionalism in Brazil’s trade agenda has become even more noticeable, but the recent evolution of its economic policies has led Brazil to adopt an increasingly defensive position in the WTO.

3.1. From the GATT to the WTO: a defensive trajectory

Until the mid-80s, Brazil practically did not used to negotiate specific issues in the GATT, focusing its attention on the defence of some principles, among which the “special and differentiated treatment” for developing countries with regard to the commitments assumed in the multilateral arena. By then, Brazil was not targeted by the demands for liberalisation developed countries and was not a *demandeur* in relation to the other GATT members.

As of the Uruguay Round, the limits of the Brazilian strategy became clear. On the one hand, developed countries pressured the large developing countries to open their markets. On the other, Brazil became a *demandeur* in agriculture, a sector that was being fully integrated to the GATT agenda and in which the country had been able to develop new competitive advantages.

During the Doha Round, Brazil became one of the main actors in the negotiations, alongside the USA, the European Union, India and China. Brazil’s action in the G-20 and its pragmatic positions in the final stages of the Round increased the legitimacy of the Brazilian positions in the negotiations and gave it enough political capital to participate in small groups of members that would become informal mechanisms of negotiation and decision-making (the G-5, then the G-4) throughout the Round.

With the failure of the efforts to approve the “Lamy Package” (in the European summer of 2008), the debate on the factors behind the difficulties and impasses of the multilateral trade negotiations gained strength. In these debates, Brazil, in general, adopted a conservative posture in relation to issues related to the decision-

making processes, the modalities of negotiation and dispute-settlement and the scope of the WTO agenda, among others.

The defence of the *status quo* of trade multilateralism by Brazil was expressed in a particularly clear manner through the resistance to broadening the scope of the agenda of negotiations, shown by Brazil during the two last Rounds. In the Uruguay Round, Brazil opposed the introduction of the issue of trade in services in the negotiations agenda, while in Doha it challenged the inclusion of the so-called “Singapore issues” in the agenda, and strongly resisted the attempts to associate, for example, environmental issues and trade.

In general, Brazil’s defensive strategy has been successful – when assessed in the light of its objectives – since so far the country has been able to limit its commitments in the WTO. These refer essentially to the consolidation of the tariff universe – in general, at levels much higher than the tariffs actually applied – in the area of goods, a few commitments in services, the majority of which do not go beyond consolidation of the domestic regulatory *status quo*, and the engagements in the area of rules (subsidies and compensatory measures, anti-dumping, etc). Furthermore, Brazil does not participate in any of the plurilateral agreements set up under the aegis of the WTO, such as the Agreements on Government Procurement, on Information Technology goods and on Civilian Aircrafts.

Following the outbreak of the international economic crisis in the second semester of 2008, the action of Brazil in the WTO shift to reflect the concerns (already manifested by Brazil, but also by other countries, in the sphere of the G20) with the impacts of the exchange rate misalignments on the competitive conditions in international markets. Recently, this shift led Brazil, for the first time, to present what could be seen as a proposal to broaden the thematic scope of the WTO agenda.

It is interesting to note that even this initiative expressed a defensive concern, regarding the growing of Brazil imports and the increasing competition faced by domestic producers in the Brazilian market, mainly as of 2010. Lately this concern

has generated a multiplicity of trade and industrial policy measures aimed at protecting the domestic industry, increasing the local content of the manufacturing production in Brazil and raising the competitiveness of specific sectors through provisional reduction of taxation over payrolls and other taxes on production.

Generally speaking, this policy inflection reinforces the defensive stance of the Brazilian industrial and trade policies, while reducing, in the short term, the priority accorded by the Brazilian government to any discussion related to the future of multilateralism.

In this sense, both in the case of the Brazilian domestic policy environment as in the case of the international context, it is necessary to look beyond the short term in order to think of the future of the relations between Brazil and trade multilateralism.

3.2. Brazil and the perspectives of multilateralism

Two questions deserve attention in formulating a Brazilian perspective with regard to trade multilateralism:

- Which factors and interests must be taken into account in the formulation of a Brazilian agenda of trade negotiations and governance, and which should be the place of multilateralism in Brazil’s trade strategy?
- Which characteristics must trade multilateralism have so that it corresponds to the Brazilian interests and policy preferences?

a) The conditioning factors of Brazil’s multilateral trade agenda

There are domestic and external factors to take into consideration when dealing with the formulation of a multilateral trade agenda, from Brazil’s point of view.

Among the domestic factors, two deserve greater attention, one economic nature and the other of political dimension.

The domestic factors and interests

In the economic dimension, Brazil is undergoing a productive transformation whose vectors are the industrial and agribusiness segments natural resource-intensive. In the coming decades, this transformation should profoundly alter the picture of conditioning factors by which Brazilian external economic policy is driven.

Historically, the Brazilian external economic policy agenda, and, in particular, its trade agenda, was the counterpoint of the industrialisation strategy, based on imports substitution avoiding commitments perceived as restrictions to the development strategy being followed.

In the first half decade of this century, offensive interests of the agribusiness sectors emerged, but for different reasons (among which the rise in commodity prices) this impetus faded and the Brazilian trade strategy have been coming back to its historical defensive profile, now maximised by concerns with “deindustrialization”, competition from imports in the domestic market, etc.

This strategy is aimed at the preservation of a production structure that is under pressure and likely to be overcome by the transformations in progress in the Brazilian economy. These transformations are leading the structure of production towards sectors which are intensive in natural resources and whose international competitiveness is unequivocal. Such a trend will probably be accentuated by the future investments in oil and gas chain, as well as by the sustained global demand for agricultural and mineral commodities over the next years.

The production structure that seems to emerge is one of a country competitive in sectors intensive in the use of natural resources and in some services segments. The industrial structure will become more specialized to the detriment of the broadly

diversified structure of production that is currently in place. At the same time, the design of Brazil’s external strategies will have to take into account the growth of outward investments of Brazilian companies, a trend which brings new elements to the country’s agenda of trade negotiations.

There is, in the domestic side, a policy dilemma that involves (i) the “spontaneous” economic transition to a development model, in which sectors intensive in natural resource will gain more weight; and (ii) the objective of preserving a diversified industrial base, capable of generating skilled employment. This dilemma – more than international factors – promises to be the principal conditioning factor for Brazilian trade strategy in the coming years. The positions regarding the priorities of the Brazilian trade agenda and the role of multilateralism in this agenda depend on how these evolutions and the costs and benefits associated to each one are evaluated.

In this report, the point of view adopted is that the productive transformation in progress may come to generate an industrial structure where the sectors intensive in natural resources will gain weight. This trend does not mean, however, that Brazil will have to abdicate from an industry reasonably diversified and more competitive than at present.

This position differs from a stance essentially preoccupied with the preservation of all the domestic industrial sectors that currently produce in Brazil. Compared to this defensive view, the one proposed here would lead to further offensive positions in relation to the issues of the trade agenda, being at the same time concerned with the preservation of “political spaces” necessary for the adoption of measures and instruments that make the transition towards a new production structure viable at low domestic economic and social costs.

The second domestic factor to be taken into account in the setting of the Brazilian strategy refers to the political dimension of Brazil’s insertion in the international order, and, in particular, to its aspiration for international recognition, a central element in the country’s foreign policy. This objective has been pursued through

an active presence in the multilateral forums since the second half of the XX century, when the first efforts of multilateral co-ordination arose, including in the trade sphere (creation of the GATT).

This aspiration gained new impetus with the protagonism achieved by Brazil in the Doha Round, and, in a more general form, with the emergence of Brazil as a relevant actor in the different spheres of international economic negotiation. In this process, the multilateral dimension of the trade negotiations and global governance has also gained strength as a priority focus in Brazil's international strategy.

Taking into account this aspiration among the conditioning factors of the Brazilian strategy implies reaffirming the priority accorded to multilateralism as an instance of affirmation and negotiation of the Brazilian trade interests. But it also requires from Brazil to integrate systemic concerns and issues, related to the governance and the functioning of the multilateral trade system, into its agenda of interests.

To be able to maintain its outstanding profile, Brazil will have to assume growing responsibilities in relation to the multilateral trade system – which may require the country to distance itself gradually from its traditional position as developing countries' representative.

The external factors and interests

As far as the external conditioning factors are concerned, at least three of such factor should be considered in discussing the future Brazilian trade agenda and the role of multilateralism in it:

- The accession of two large emerging economies (China and Russia) to the WTO, which produced a substantial shift in the balance of power within the multilateral trade system. This change has resulted not only from the economic weight of these countries – most notably China – but also from the fact that such countries adopt development models that could be characterised

as “State capitalism” – very different, therefore, from those that prevail in the other heavyweight actors in the WTO. Notable features of this development model are the importance of State companies as well as the “blurring” of the frontiers between public and private entities and interests. As the disciplines of the WTO target public policies and State actions that distort the trade flows, these features introduce new complex challenges for the multilateral system;

- The growth in the number of preferential trade agreements, which may generate the relative erosion of market access conditions to Brazilian exports *vis-à-vis* those of the signatories of these accords. Does this phenomenon justify greater interest on the part of Brazil in comprehensive preferential agreements, as compared to the interest that Brazil showed towards these agreements so far? What characteristics should preferential agreements have to interest Brazil? These are questions not directly related to Brazil's multilateral agenda, but the answer to them affects the balance between multilateralism and regionalism in Brazilian strategy;
- The emergence of global challenges not directly associated to trade issues, but having intersections with the area of trade. The Brazilian protagonism in the WTO – especially in the more recent period – will make it difficult for the country to ignore the agenda of global challenges and governance in different negotiating forums. If this is true, the mercantilist dimension inherent to the Brazil's trade strategy should begin to be complemented by global systemic concerns and the country should actively participate in the agenda-setting processes in the forums and instances where such concerns are negotiated, among which the WTO.

From the positioning adopted in relation to the domestic policy dilemma pointed out above, and additionally taking into account the interplay of domestic and external factors, a proposal of “principles for the setting of the Brazilian trade agenda” can be formulated.

This proposal is based on the hypothesis that the most likely scenario of productive transformation includes: (i) the increase in weight of sectors intensive in natural

resources in the industrial structure; (ii) the transformation of the industry towards a less diversified, but certainly more competitive, structure; (iii) the consolidation of internationalised competitive segments in the services sector; and (iv) the growing internationalization of Brazilian companies, through outward FDI. This new scenario makes room for more offensive positions in relation to the “external” conditioning factors of Brazil’s trade strategy – like regionalism and the challenges of global governance – but concerns about the preservation of “political spaces” will not disappear.

In any scenario and whatever the policy preference that dominates the setting of the Brazilian trade agenda, multilateralism will continue to be the priority negotiating forum for Brazil. A position compatible with domestic productive transformation and with the assumption by Brazil of global responsibilities requires not only the preservation of the priority historically conferred to multilateralism, but a greater investment on the part of Brazil in this instance, expressed by the integration of global governance concerns into the country’s strategy.

In this sense, the conclusion of the Doha Round gains relevance as an essential element to overcome the current paralysis and bridge the gap between the short and medium terms. There are various proposals for agendas and mechanisms to make the Round’s conclusion viable and avoid its failure. It is not within the scope of this report to discuss them, even less formulate an agenda to conclude the Round.

It seems clear that the Round’s conclusion will have to be negotiated on the basis of an agreement that will be far from the great ambitions that might had been present 10 years ago. In the history of the GATT/WTO, there have been cases of rounds that although having ended up with limited results, were able not only to avoid failure, but also to make it evident the need for a new negotiating cycle. This is the outcome one can legitimately expect from the Doha Round.

Such a reduction of ambition does not mean, however, that the Doha Round can be concluded without reaching agreement on the current trade-off in the area of goods. In this sense, Brazil should be prepared to make some concessions in non-

agricultural goods in order to contribute to the conclusion of the Round, taking into account not only the protagonism achieved by country in the Doha Round, but also the central role that multilateralism will have in its future trade strategy. It should also be capable of making movements in issues considered by many to be part of a “minimal agenda” for the Round, such as trade facilitation and “duty free, quota free” for least developed countries.

b) Characterising trade multilateralism that interest Brazil

The definition of the desirable characteristics of trade multilateralism depends on the policy preferences in relation to the domestic and external challenges described in the previous item of this report. A trade agenda based mainly on the offensive interests of sectors intensive in natural resources would not have major restrictions to a model of multilateralism aimed at promoting, by its objectives and agenda, deeper integration levels. At the opposite pole, a trade agenda centred on defensive concerns and on the interests of poorly competitive industrial sectors would opt for a multilateralism with its current profile, and would even test, through trade and industrial policies, the resistance to its rules.

Three types of questions must be considered when discussing the characteristics of multilateralism most suited to Brazil’s interests:

- The objectives of trade multilateralism in the medium term: what should be the objectives of the multilateral trade system when one looks beyond the vicissitudes of the short term and the difficult current context? Must the focus be put on more liberalisation, more rules or in a combination of measures (liberalisation and rules) that clearly lead the system beyond the *status quo*? Or should it be sought to consolidate the outputs of the successive rounds, enhancing specific features of the existing agreements?
- The components of multilateralism: here the key question concerns the composition of the thematic agenda of trade multilateralism, an issue related to the previous one. Ambitious objectives – deriving from an offensive pattern

of policy preference – require an agenda that takes multilateralism there, which supposes the inclusion of new issues in the agenda, the adoption of new approaches to negotiate traditional themes, etc. Limited objectives – associated to a defensive bias in the policy options – probably lead to an agenda of limited scope, aimed at the negotiation of the Doha backlog, and maybe the inclusion of some “novelty”, in terms of agenda or approach to negotiations.

- The mechanisms of negotiation and governance of trade multilateralism: the discussion, in this case, involves the matching of these mechanisms (single undertaking, rule of decision by consensus and the mechanisms of implementation of the negotiated agreements) to the objectives and scope of multilateralism. There is no automatic link between the options related to objectives and agenda, on the one hand, and those that refer to the negotiating process and the decision-making mechanisms of the WTO. But there are no doubts that these mechanisms can facilitate or hinder the achievement of ambitious objectives and the broadening of the thematic agenda of negotiations.

As stressed earlier in this report, the strategy proposed here is based on a view that focus on the transformation of the Brazilian structure of production and the strengthening of the role of Brazil in the governance of the multilateral trade system. It also takes into account the aforementioned external factors, related to the accession of China and Russia to the WTO, the proliferation of preferential agreements and the emergence of global challenges that, albeit non-trade ones, will have effects on trade flows. In this sense, the main characteristics of multilateralism that fits Brazil’s interests are the following ones:

- Main objectives of the multilateral trade system: (i) the consolidation and improvement of the existing rules; and (ii) the gradual incorporation of new issues into the agenda. In this view, the capacity of the multilateral negotiations to generate results regarding the reduction of tariff barriers has been drastically reduced. At the same time, trade flows are growingly being distorted by non-tariff mechanisms. The emphasis put on rules derives to quite

an extent from these findings. New efforts of tariff liberalisation should keep the backseat in the multilateral agenda, but they can be pursued in the regional and bilateral forums.

- Components of the agenda and mechanisms for the functioning of multilateral trade: there are many proposals currently in debate on the post-Doha agenda of negotiations and the reform of the WTO’s mechanisms of governance and negotiation. This document does not intend to detail the content of the issues of a multilateral agenda suited to Brazilian interests (including those related to the functioning of the system), but aims at pointing out such issues and the specific objectives to be pursued in each of them.

4. Brazil’s multilateral trade agenda: drivers and components

It is now possible to identify the three elements that must be taken into account as priorities to define not only Brazil’s thematic agenda in the WTO, in a medium term perspective, but also the main objectives of the country in the negotiation of the selected issues.

The first element is the economic and political importance that multilateralism has and will continue to have for Brazil’s international strategy. There are objectives and issues proposed for the negotiations agenda that have been included here exactly because they are considered relevant from the point of view of strengthening multilateralism, increasing the effectiveness of its functioning and decision-making and recovering its legitimacy as an instance of negotiation and co-operation. Brazil needs to strengthen its commitment to multilateralism as an instance of global governance and its agenda must express this objective.

The second element refers to the global transformations in progress, and, in particular, the profound changes that were introduced by the emergence of China and, moreover, of Asia. These transformations have implications not only for

the balance of power, but also for coexistence and competition among different models of capitalism. In this scenario, the convergence of objectives and policy paradigms through international negotiations has become much more difficult than previously. However, for this very reason it is essential to negotiate, in the multilateral sphere, rules that mitigate the risks of unfair competition – in new forms – and of economic conflicts and tensions.

The emergence of global actors supported by policies that are far from the western policy paradigm – which is the reference of the GATT/WTO agreements – requires that the traditional Brazilian position of defence of the space for development policies be and adapted to the new scenario and its risks for the country.

The third element arises from the prospect of productive transformation opening up for the Brazilian economy, whose characteristics have been described in the previous section. This perspective allows for less defensive positions in issues such as services and investments, while, at the same time, making it palatable for Brazil to include, in its multilateral trade agenda, some new issues, related to global challenges (which are also relevant for the objective of strengthening multilateralism).

The issues included in the proposed agenda of Brazilian priorities in the WTO will be classified as follows, in accordance with their association to one of these three elements. In certain cases, the presence of the issue may have its rationale associated to more than one of these elements, in which case the issue will be included in the “block” in which such an association is clearer or stronger.

4.1. Issues associated to the economic and political priority attributed to multilateralism

Rules for preferential agreements

Although there is a provision in the WTO rules for preferential agreements to be submitted to examination on the part of its members and the majority of the

agreements notified present various conflicts with the established multilateral rules, there has never been an effective effort to demand changes in these agreements. In general, there is no formal approval of the agreements because the majority of the countries prefer to preserve the opportunity of presenting queries in the future. On the other hand, there is also no formal disapproval, as all the current members of the WTO are involved in some regional trade agreements (RTA) and there is an implicit recognition that all the arrangements incorporate vulnerabilities in relation to the WTO rules.

The rationale for prioritisation of this issue in the Brazilian agenda refers to:

- The fact that Brazil does not move easily in the sphere of preferential negotiations in a period in which these have been multiplying and can be detrimental to Brazilian exports, due to “relative losses” of access to the markets of trade partners. In a scenario of productive transformations and transition to a more specialised and competitive industrial structure, the current difficulties faced by Brazil in the sphere of preferential agreements can be partially overcome, but it is not clear that these domestic shifts will generate sufficient offensive interests to push Brazil to participate actively in this kind of agreements. Besides, from the point of view of these potentially offensive interests, the negotiation of preferential or regional trade agreements will essentially involve issues directly related to market access – and not to rules, which are the object of the disciplines proposed below.
- The perception that the preferential agreements are multiplying under a variety of models and China is a growing player in these agreements, gaining preferences in access to developing countries markets that actually constitute important export destination for Brazilian manufactured goods.
- The perception that the disciplines of the WTO in this sphere refer to (i) criteria to assess the effects of formation of preferential trade zones on third countries and (ii) procedures to be followed by countries supposedly harmed to seek compensation. The WTO has three instruments for dealing with these agreements: Article XXIV of the GATT, the Enabling Clause and Article V of

the GATS. The three instruments seek to define the conditions in which the countries could infringe the fundamental principle of non-discrimination of the GATT by the negotiating preferential agreements. Although they have the objective of reducing the degree of freedom of member countries to enter into such agreements, the rules are vague and incomplete. And more importantly, little effort has been dedicated by members to enforce these rules.

Besides the fact that existing rules have never generated effective mechanisms for monitoring and supervising the preferential agreements, the trajectory of these agreements suggests that their discriminatory potential lies less in tariff rate increases in relation to the rest of the world – which has not occurred, at least in the immense majority of cases – but in certain non-tariff mechanisms of the agreements, which discriminate in favour of the participating countries.

Beyond the countless distortions that it introduces into world trade, the proliferation of regional trade agreements has been pointed out as one of the causes of distraction of the WTO members from the objectives of liberalisation via the multilateral path. The proliferation of preferential agreements affects the political economy of the multilateral negotiations, reducing incentives for countries to invest their negotiating energies in a complex process, involving countries with very heterogeneous economic and social profiles and policy preferences.

In this case, our recommendations essentially concern the following aspects:

- Defining concrete mechanisms for monitoring and revising preferential agreements – based on the model of the WTO Trade Policy Review Mechanism – TPRM – indicating in each case the main instruments and provisions of the accords with greater discriminatory potential and suggesting adjustments to reduce this bias;
- Creating disciplines for the establishment of preferential rules in issues and areas bearing the greatest potential of discrimination against third countries. The experience of the last 20 years could shed light on these issues. Rules of

origin, technical and sanitary standards and norms would be strong candidates as targets for these kind of disciplines; and

- Defining criteria and parameters that limit the use, by major medium-income economies, of the Enabling Clause, which allows partial trade agreements among developing countries.

Dispute settlement system

The WTO's mechanism for dispute settlement has been pointed out by many as one of the main reasons for Brazil to favour multilateral negotiations as the main priority of its trade policy. The country has become an active user of this mechanism, and there is a widespread idea in Brazil that this mechanism has played a relevant role in the defence of the country's trade interests, which, otherwise, would be subject to asymmetric negotiations with developed countries.

If the challenge of the recourse to the mechanism has already been overcome by Brazil, it has – like other developing country members – faced difficulties in imposing retaliation with enough economic and trade significance. This fact limits the effectiveness of the mechanism and may come to hinder its legitimacy.

Brazil has faced this difficulty. The establishment of a list of products to be targeted for tariff increases has proven to be a problematic challenge. The total imports of these products must be relevant, but at the same time, the tariff increases should not be harmful to the interests of other economic sectors. An alternative possibility, included in the “menu” of Brazil's responses in the case of cotton dispute settlement with the United States, is the cross-retaliation in intellectual property rights. The same case included, among the bilaterally negotiated measures, the payment of monetary compensation, benefiting the Brazilian entity responsible for research in the cotton sector.

The Brazilian government has insisted on dialogue as the most effective form of dealing with non-fulfilment on the part of trade partners of decisions resulting from trade disputes in the WTO.

For a country, like Brazil that has become a user of the mechanism, the central issues are related to the enforcement of the decisions adopted, taking into account that the retaliation via an increase in the bilateral trade barriers does not correspond to its interests. The question then is to assess if there are preferable alternatives, from Brazil's point of view, but also for the multilateral trade system, to the adoption of retaliatory trade measures in cases of non-fulfilment of the decisions resulting from trade disputes in the WTO.

The Brazilian experience with the dispute settlement system broadened the array of alternatives to retaliation by means of annulment or mitigation of concessions. Pecuniary compensation and authorisation for cross-retaliation, resorting to the review of the commitments assumed in the GATS and in the TRIPs Agreement, have precisely this meaning and indicate the desirable objectives with regard to the enhancement of the enforcement of the mechanism. On the one hand, it entails increasing the cost of non-fulfilment of the decisions emanating from the dispute settlement mechanism, and, on the other, it makes the compensatory mechanism more attractive for the country harmed. Ideally, an instrument combining the two objectives should be sought. A second-best would be to appeal to more than one sanction mechanism as a means to increase the cost of non-compliance.

Thus, for example, the combination of pecuniary compensation with authorisation to retaliate given to third countries that also feel harmed by the non-compliance would generate a mix of instruments at the same time potentially onerous for the violator country and attractive for the harmed one.

Plurilateral agreements in the WTO

The great number and heterogeneity of the WTO members make consensus (the decision making rule in the GATT/WTO tradition) difficult.

Besides this, the erosion of the principle of the unconditional most favoured nation (MFN) – manifested, outside the WTO, in the multiplication of preferential

agreements governed by reciprocity – reduces the policy incentives to the building of multilateral consensus, while favouring the emergence of “blocking coalitions” in the negotiations.

This situation becomes even more complex when it is considered that the last two rounds of multilateral negotiations, aimed at multi-thematic agendas, have adopted the methodology of the single undertaking – which requires agreement about each one of the issues in the agenda so that the negotiations can be considered concluded.

In the Doha Round, given the difficulties of achieving progress with such a broad agenda as the one agreed at the beginning of the process, the Singapore themes (transparency in government purchases, investments and competition policy) were formally withdrawn from the agenda, other issues were informally relegated to a secondary plane and the members decided to concentrate on the “core” and more traditional market access issues (agriculture and industrial goods).

The difficulties in advancing in the multilateral level, partially related to the rule of consensus and the single undertaking methodology, made the preferential negotiations outside the WTO an alternative path of trade and investment negotiations for many developed and developing countries.

The risks of “emptying out” trade multilateralism became manifest during the Doha Round. This perception fostered the presentation of proposals aimed at “pushing” plurilateral (issues-based and/or sectoral) agreements, involving only countries interested in such agreements. The adoption of the criterion of “critical mass” (i.e. the support of a number of members with substantial weight in international trade) for launching this type of negotiation, especially when aimed at market access for specific industrial sectors, was widely discussed throughout the Round.

The WTO has quite restrictive criteria with regard to the plurilateral negotiations of issues covered by Annex 1 of the Marrakech Agreement (goods, services and intellectual property) and other extra-Annex 1 issues (government procurement, for

example). Such criteria limit the possibility of adoption of plurilateral agreements on new issues (extra-Annex 1) – that could have a conditional MFN clause – in requiring consensus for the approval of these agreements and their inclusion in Annex 4 of the Treaty, which instituted the WTO.

Brazil has traditionally opposed the negotiation of plurilateral agreements in the WTO, reproducing in the multilateral sphere the discomfort that characterises the Brazilian strategy when dealing with negotiations of this type of agreement outside the WTO. Coherent with this stance, Brazil has not signed any of the plurilateral agreements in force in the WTO, regardless of whether these included or not an unconditional NMF clause.

Nevertheless, in the light of the thematic agenda corresponding to Brazilian interests, such as that formulated here, and considering the multiplication of preferential agreements outside the WTO – as well as the risk of growing irrelevance that threatens the future of multilateralism – some flexibilisation of Brazil's stance in relation to the negotiation of plurilateral agreements in the WTO seems recommendable.

We do not intend to formulate concepts or criteria – as in the example of the “critical mass” – to be adopted for the launching of this type of negotiation in the WTO, and even less to propose a review of the rules applicable to such negotiations, according to the Marrakech Agreement. Negotiations that give rise to agreements with an unconditional MFN clause are desirable in principle, but can lead to impasses similar to those verified today in negotiating multilateral arrangements.

Although the adoption of the unconditional MFN clause in plurilateral accords of the WTO is the best option for Brazil, from the point of view of the thematic agenda proposed here, plurilateral agreements with a conditional MFN clause may be necessary to allow the negotiations to advance, as much in traditional areas (subsidies and agriculture), as in new issues (climate and energy).

4.2. Issues associated to the global transformations and their implications for competition among companies and national policies

Industrial subsidies

The proposal for a review of the Agreement on Subsidies and Countervailing Measures (ASCM), from the viewpoint expressed by this document, combines three objectives:

- The need to reduce the space for granting subsidies on the part of the WTO members that adopt a State capitalism model, which makes proof of the practice of subsidization difficult to prove;
- The limitation of the space for granting subsidies on the part of countries with a high fiscal capacity, with which Brazil will have difficulty competing;
- The need to accommodate (i) policies aimed at productive restructuring (especially in the industrial area) and innovation, which will be important for Brazil in the period; and (ii) government measures that may have a subsidy component, but that are adopted to pursue legitimate global objectives, such as the fighting of global warming or environmental preservation.

In this sense, the proposal contemplates the following elements:

- Strengthening of the disciplines applicable to export subsidies, especially regarding the notion of “*de facto* contingency” to exports;
- The inclusion, among the prohibited subsidies, of domestic public mechanisms that may have distorting effects on trade while pursuing objectives that prevent industrial restructuring and rationalisation, by covering company losses or forgiving companies' debts, for example;
- The setting of parameters and criteria that allow identification as to whether State commercial banks and State-owned enterprises act as “public entities” –

that is, exercising a governmental function – for the purposes of determination of the existence of subsidies;

- The reintroduction of a broadened concept of non-actionable subsidies, including the subsidies contemplated by Article 8 – aimed at activities of pre-competitive R&D, aid for backward regions, and environmental investments – but also subsidies that may be characterised as “climatic”. The criteria and parameters should be carefully crafted and negotiated and should not necessarily reproduce those of the old Article 8 –imported from the Treaty of Rome.

Agricultural subsidies

Absent from the old GATT, agriculture was incorporated into the Uruguay Round agenda, which produced the Agreement on Agriculture, introducing a minimum level of multilateral rules in agricultural trade. The text agreed in 1994, in general lines, consolidated the *status quo* of market access and subsidies, and, even if it did not provide advances, it was useful to prevent setbacks.

The timid results achieved the liberalisation of agricultural trade and the disciplining of subsidies in the sector led to the inclusion of an article in the Agreement, committing the members to an automatic relaunch of the agricultural negotiations in 2000.

The Ministerial Declaration launching the Doha Round set an agenda for agriculture negotiations with three objectives: (i) elimination of export subsidies; (ii) reduction of domestic support subsidies; and (iii) increasing the opening of agricultural markets.

The negotiations began within the structure inherited from the Uruguay Round, the talks being divided into three pillars: market access, domestic support measures and export subsidies. In the ministerial meeting in Hong Kong, in 2005, the pillar of export subsidisation was settled, although the “single undertaking” of the Round is still being awaited.

In the last 20 years, agricultural trade has changed a lot. Brazil has become a great exporter, China a great importer. More recently, the general level of commodity prices has risen. Would it not be time to review the structure of the negotiation?

The rise in agricultural commodity prices in the international market, together with the productivity gains obtained by Brazil in this sector were responsible by the very favourable results shown by agricultural exports in the last few years, despite the persistence of protectionism. This performance reduced the pressure exerted by the agribusiness sectors to secure liberalisation commitments through trade negotiations. However, the conjuncture can change, and a country like Brazil cannot give up its offensive interests in the opening of markets and the reduction of agricultural subsidies.

The eventual resumption of the negotiations in agriculture should concentrate efforts on commitments to limit the domestic measures of support that distort trade. Also, an enhanced classification of the green box subsidies (non-distortive) will be necessary, as there is an evident “leakage” of the support measures to this box.

Even if new limits to subsidies that distort trade were agreed upon, the treatment of agriculture would remain different from that applied to the transformation industry. Brazil’s interest rests on a progressive convergence of the treatments accorded to industry and agriculture.

In the transition period, it would be important to count on a rule to facilitate the characterisation of damage when the good supported by subsidies that distort trade is exported. For example, the product would not be eligible to receive domestic support subsidies that distort trade if the country’s exports of this good represent over 5% of the product’s world exports.

The idea would be to make it illegal to export with domestic subsidies that distort trade. The rule proposed would eliminate the need for complex legal action, proof of causal relation, etc. In short: a product exported by a country, which,

indicatively, occupies over 5% of the international market of this product cannot be subsidised by a measure classified in the yellow box.

This idea converges with our proposal to limit the space for the use of actionable subsidies. The other cases would fit into the general rules already negotiated in the WTO and the export subsidies would be prohibited, as in the case of industry.

Certainly, domestic support measures cause damage even when production is not exported, as they displace trade. But as the complete withdrawn of domestic support measures seems politically unfeasible, a second-best for agricultural exporters that do not count on domestic subsidies would be the setting of limits to the recourse to such measures and the reduction of space for long dispute settlement processes.

The reduction in tariffs and the treatment of quotas continue to be very important for the Brazilian agriculture, but, as stated above, this document has opted to concentrate its efforts on the deepening of the rules.

State-owned companies

The emergence of the Asian economies, not only in the sphere of trade, but also in that of direct investment flows, has raised concerns about the distortions caused by the operations of State-owned companies. The difficulties in precisely identifying the nature and limits of public-private relations in many of these economies have been a source of criticism and demands for greater regulation on the part of private actors in developed countries.

While this is a predominantly Asian phenomenon, it cannot be denied that the model has spread. The reactions to the international financial crisis of 2008 included, in many countries, rescue packages that resulted in an increase in State participation in the capital of private enterprises. Even in Brazil, State participation in some large companies has expanded, although these companies cannot be characterised as State-owned ones.

The need to regulate the activities of State trading enterprises is stated in GATT-47. Article XVII states that members must operate these companies “in a manner consistent with the general principles of non-discriminatory treatment”. This provision was mainly focused on the trade practices of the State-owned companies.

But the recent concerns with the broadening of the activities of the State-owned companies in different relevant markets and with their growing role in direct investment flows raise additional questions beyond those directly related to exports. The implicit subsidy which derives from the role of the State as companies’ shareholder and the security concerns raised by the influence of geopolitical considerations on the internationalisation strategies of these companies have fostered, in Western countries, demands for stricter regulations regarding their activities.

Although there is a recent trend towards increased State participation in the Brazilian economy, this is not a desirable evolution for the long term. The competitiveness gains and greater specialisations of the industrial production in Brazil tend to strengthen private companies, which seek to increase their participation in international trade and their overseas investments.

For Brazil, it would be desirable the setting of disciplines that promote transparency in the shareholding control of the companies and that make it explicit the subsidies that these companies receive from their governments. Transparency is also important from Brazil’s point of view as a host of foreign investment. Foreign companies investing in Brazil should act oriented by business standards to ensure the existence of a level playing field among domestic and non-domestic companies and to guarantee a sustainable pattern of exploitation of natural resources in the country.

Non-tariff measures (NTMs)

The priority attributed to this issue relates to the risks to the competition with China and Russia, as well as to the multiplication of measures motivated by a growing

number of concerns (sanitary, food security, environmental, social, climatic) and their potential to distort trade and investments flows.

Those measures express public policy objectives, which, in general, enjoy a high level of social legitimacy in the countries that impose them. They can hardly be qualified a priori as expressions of sectoral protectionist demands – although they may be functional to cover this type of demand. On the other hand, norms and standards whose origin is a diversified and growing number of motivations refer to attributes of the products, but also of productive processes and supply chains, increasing the risks of discrimination against outside suppliers. Brazil is and will increasingly be an exporter of goods with an intensive natural resource component – and of food – being, therefore, strongly subject to the impact of different types of measures oriented by such concerns.

In general, the proliferation of public and private norms and standards introduce, for the Brazilian exporters, new risks and threats, as far as the predictability of access to foreign markets is concerned, especially in the developed countries. For the majority of the commodities exported by Brazil, there are, in this field, many competing initiatives geared at setting institutional arrangements at the international level.

In this new context, where NTMs are growingly relevant, Brazil's objective should be to increase the degree of transparency – and transparency obligations of WTO members – regarding the use of these measures, their motivations and possible impacts on trade and investments flows. Given the diversity of policy preferences and levels of development among the WTO members, it is difficult to imagine that, even in the medium term, a multilateral agreement of harmonisation or mutual recognition of rules could advance. This does not prevent the issues from progressing in the WTO through a plurilateral agreement, which – by the characteristics of the issues – could include an MFN clause benefiting all the members, whether signatories or not.

On the other hand, the TPRM mechanism could be used to assess the adequacy of non-tariff measures to deal with its explicit objectives of public policy – and, therefore, identify possible motivations, protectionist or related to competitiveness.

In parallel, the negotiations in the WTO should seek the establishment of disciplines that limit the distortive effects on trade of regional norms and standards. As the World Trade Report 2012³ stresses, “existing studies indicate that harmonisation at regional level distorts trade. Such diversion of trade negatively affects, in a special way, exports from developing countries (...) Harmonisation based on a regional standard may increase the costs of subsequent multilateral liberalisation” and “regional provisions may act as a stumbling block for multilateral co-operation”.

Private norms and standards

Societal concerns like those referred to above have led, especially in developed countries, to the setting of private norms and standards. This issue introduces a new challenge to the traditional limits of the WTO agenda, targeted to public measures and policies. The relations between, on the one hand, private norms and standards, and on the other, the WTO rules – applicable to public policies and government measures – as it constitutes a “grey zone” favourable to *de facto* discrimination against imported products.

Private-driven requirements – the fulfilling of particular norms or compliance with “voluntary” labelling – may have a significant impact on Brazil's food exports. Measures whose origin is the concern with emissions related to the transport of goods, for example, tend to benefit producers that are closer to the consumption centres. In this case, the Brazilian suppliers are at a clear disadvantage in the European markets in relation to the local or nearest regional competitors.

³ WTO (2012) - *Trade and Public Policies: A Closer Look at NTMs in the 21st Century*, World Trade Report.

This issue has been generating intense debate among the WTO members. The Sanitary and Phyto-Sanitary Measures Committee has been working on the theme, but there are doubts among the Committee members themselves about the pertinence of dealing with private standards in an organ whose attribution is to deal with government measures⁴.

As Mbengue stated⁵, “*the multilateral trading system was conceived primarily to deal with “public” standards, i.e. standards formulated by public regulatory agencies and/or elaborated by agreed international standardization organizations like the Codex Alimentarius. Unless an evolutionary interpretation of some of the core WTO Agreements involved in private standards is fashioned, the import of private standards into the WTO may be limited by legal impediments. For the time being, discussions on a so-called integration of private and commercial standards within the WTO framework remain slow and cautious, not to say controversial.*”

The proliferation of private norms and standards has been affecting not only the trade of agricultural products, but also, increasingly, industrial goods and services. The emergence of the agenda of climate change mitigation and transition to low carbon economies adds new stimuli for the setting of private norms, increasingly related to productive methods and processes. This is, therefore, a question that cut across different WTO Committees and Councils.

The Technical Barriers to Trade Agreement (TBT) incorporates a *TBT Code of Good Practices for the Preparation, Adoption and Application of Standards*, which is applied to governments and para-governmental standard-setting institutions. But it is not clear that this code applies to private actors.

⁴ G/SPS/GEN/746 de 24 de Janeiro de 2007.

⁵ Mbengue, M.M. (2011) - Private standards and the WTO Law, In BioRes Review. Volume 5. Issue 1. Spring.

The WTO is an organisation that regulates relations between governments. But in a context in which the importance of private agents grows in the setting of norms and standards that affect trade and investment flows, the need to confront this question becomes evident. This discussion should not be restricted to specific Committees, but incorporated into the WTO agenda as such.

4.3. Issues related to the productive transformation in Brazil and its implications

Investment

The position of the Brazilian government towards intergovernmental initiatives related to foreign investment has been clearly defensive. In the WTO, Brazil has resisted the inclusion of investment issues in the negotiation agenda. In preferential negotiations, Brazil has adopted postures aimed at limiting the scope of the negotiations and the reach of the disciplines.

These positions are rooted in the aim of preserving, in the international regimes, the national autonomy to formulate and implement active industrial policies, as well as in the fact of Brazil being a traditional host of foreign direct investment, and, until recently, a marginal emitter of this type of flow.

Brazil continues to be a major host of foreign direct investment and maintains – having actually intensified, in the last few years – its preference for active industrial policies. What has been changing, among the conditioning factors of Brazil’s official positions in relation to this issue, is the weight of foreign direct investment originating from the country.

These outward FDI flows grew significantly throughout the first decade of the XXI century, but this evolution has not altered the Brazilian position regarding the investment protection agreements. Furthermore, in the Doha Round negotiations, Brazil has always held a defensive position in negotiations for investments, as already mentioned.

Over the last few years, the growing criticism, on a global scale, of the bilateral for agreements on investment protection has generated a series of new instruments aimed at making investors responsible for impacts – especially socio-environmental ones – of their activities in the host countries. Some of these initiatives can be considered the functional equivalents, in the area of investments, of the standards and certifications applied to the trade of goods.

As a consequence, there is a multiplication of public and private instruments applicable to the flows of foreign direct investment, producing a “regulatory pulverization” that does not seem to be of interest to an economy that is the origin of the growing flow of FDI, such as Brazil. This could be an appropriate moment for reconsidering the traditional Brazilian stance regarding agreements on investments protection.

The agenda of the negotiations in this area should not be restricted to the dimension of “market access” for investment. There is an opportunity to conduct a comprehensive assessment of international experiences with the bilateral investment agreements and the chapters on investment in the various free trade agreements in force.

The negotiating agenda of a multilateral investment agreement should allow convergence and adaptation of the rules in force in the bilateral agreements to what can be learnt from the recent experience – particularly with regard to the mechanisms of dispute settlement between investors and States and the balance between the space for regulation left to host States and the rights of foreign investors.

Services

This issue is brought to the Brazilian agenda of priorities due to the need to increase productivity and competitiveness in the services sector in a period of productive transformation and restructuring, such as the one industry will be undergoing in Brazil over the next few years.

In this context, the economic rationale for horizontal protection of the service sector – already scarce in other periods – is reduced even more, as such a position would increase the cost of industrial transformation for the manufacturing sectors involved, besides negatively impacting the development of new competitive advantages in manufacturing and other industrial (and agribusiness) sectors.

Climate and Trade

There are several forms of interaction between the climate and trade agendas. But, in general, they can be grouped into two major sets: (i) the impacts of the phenomenon of climate change on the production and distribution of goods based on natural resources; and (ii) the effects on the competition and competitiveness conditions derived from policies and measures adopted by countries to mitigate the climate changes.

The phenomena related to the risks of excessive heating of the Earth and the resulting extreme climatic events have impacts on conditions for the production of intensive natural resources goods, altering the natural comparative advantages and, therefore, the trade flows between countries. These are long term effects and still do not occupy space at the centre of the debate about climatic change and trade.

But the debate has concentrated on the second set of interactions – the effects that different government policies and measures to promote mitigation of climate change may have on the competitiveness of companies. These concerns originate from the fact that the Climate Convention recognised and incorporated the principle of “common, but differentiated, responsibilities” between developed and developing countries.

Even if it is not possible to advance in a multilateral agreement on climate change with compulsory goals of mitigation of emissions, countries willing to adopt unilateral policies of transition to low carbon economies tend to implement measures that protect local production from negative impacts on the competitiveness of their

companies resulting from their climate policies. Such measures affect, or may affect, the conditions of trade and market access for goods.

Among the national policies of mitigation and adaptation to climate change, it is possible to identify four categories with potentially damaging impacts on trade:

- Norms and regulations for products and/or production processes, such as requirements for labelling, energy efficiency standards, etc. In case these norms and regulations are discriminatory, they may represent technical barriers to trade.
- Border Adjustment Measures (BCAs): used to “match” the costs of the imported products to the increase in domestic costs, caused by the introduction of legislation that affects the national production costs. There are two types of measures under discussion, in general, associated with the type of regime adopted domestically.
 - a. Import taxation: associated to policies of taxation on carbon emission. The imported products would be subject to payment of taxes at an amount equivalent to the taxation cost national producers would have to incur to produce the same goods domestically. By this logic, the exported products would benefit from the unburdening of the taxes paid internally.
 - b. Purchase of emission licences: this is associated to cap-and-trade schemes, that is, commercialisation systems for emission licences. In this case, the national governments define a cap for emissions and require that the domestic importers or foreign exporters purchase licenses based on the total amount of carbon emissions during the production process of the good traded. Such a requirement would result in making imported products more expensive.
- Free allocation or with discounts for licences to emit: these are instruments to reduce the costs of adjusting the requirements of domestic regulations regarding climate for the more vulnerable industries. These industries would receive a certain volume of emission licences for free or with a discount in relation to the prices that would be charged for such licences.

- Subsidies for production and investment: mechanisms to support industry in transition to less intensive emissions production process, in particular for reduction of the costs of adjustment for those industrial sectors that are energy-intensive and exposed to trade.

Not all sectors will be subject to the impacts of competitiveness that give rise to the border adjustment measures described above. The most vulnerable products are concentrated in the intensive natural resource sectors, whose production processes are energy-intensive or are in the energy generating sector.

Brazil is increasingly becoming an exporter country of products that are carbon-intensive and, therefore, a potential target for “climatic measures” that distort trade. Traditionally, the Brazilian government has been refractory to inclusion of environmental themes in the trade negotiation agendas. However, the Brazilian exporting companies are already and will be increasingly harmed by trade barriers related with transitional efforts towards a green economy.

Therefore, it seems preferable for Brazil to support the negotiation of an agreement in the WTO that is capable of clarifying the grey areas that exist in the GATT rules in this area – restrictions to trade based on objectives of health and human, animal and vegetal life preservation or conservation of non-renewable natural resources — rather than be submitted to discretionary trade barriers.

On the other hand, in line with the transformations in the Brazilian productive structure, incorporated in the view presented in Section 3 of this document, the country may benefit from the possibility of adopting fiscal and credit incentives that support the transition to a green economy, including with the development of “green technologies and products”. A clarification about a set of incentives classified as “green subsidies” would be of benefit to the convergence of the country’s industrial and climate policies.

The agenda of negotiations of the relations between climate and trade in the WTO should incorporate:

- Rules for imposition of border adjustment measures (BCAs);
- Rules and parameters for permitted subsidies to stimulate the transition to a low carbon economy;
- Enforcement of the disciplines applicable to the formulation and implementation of technical norms motivated by climate concerns (in conformity with the proposal for the non-tariff measures and private norms and standards) to avoid them representing non-tariff barriers.

5. Exchange rates and trade: divergent views

As mentioned in Section 3 of this document, the concern with the impacts of misalignments of exchange rates on the conditions of competition prevailing in the international markets – and, principally, on the competition with imports in the Brazilian consumer market – has begun to determine Brazil's strategies in the WTO as of 2008.

Although the theme is already at the centre of the concerns with the evolution of the international monetary system since the outbreak of the world crisis in 2008, the Brazilian government has been a pioneer in drawing attention to the risks of an “exchange war” and in formally presenting the proposal to deal with the theme in the Working Group on Trade, Debt and Finance of the WTO⁶ Strictly, the Brazilian proposal does not presuppose the treatment of the exchange rates question as a new theme, but rather the discussion of the instruments already available in the ambit of the multilateral trade system to compensate exchange rates manipulation and monetary policies that promote artificial devaluation of domestic currencies.

⁶ WT/WGTDF/W/53 , of April 13 2011 and WT/WGTDF/W/56 – 20 Sep 2011.

It is important to register that the concern with the misalignments of exchange rates and the risks of competitive devaluations was already on the table of the main multilateral economic forums before the movement made by Brazil. The concern that interventionist policies in the exchange rate markets adopted by various countries had deliberate aims to promote gains of exchange-rate-induced comparative advantages was registered in a pronouncement of the Director-General of the WTO in October 2010⁷.

If, on the one hand, there is growing consensus about the impacts of managed exchange rates on the competitive conditions in the international markets for goods and services, on the other, there is reduced convergence regarding the most suitable forum to deal with the matter.

The articles of the IMF Agreement prohibit countries from manipulating their exchange rates with the aim of gaining unfair trade advantage, but the institution does not have instruments to oblige a country to alter its exchange rate policy. The WTO has rules for subsidies, but these are not sufficiently comprehensive to qualify the manipulation of an exchange rate as a subsidy .

The absence of consensus in the international debate about the theme was reproduced in the Task Force's debates. This was the only theme on the agenda in which it was not possible to reach consensus among the Task Force members. Some participants defend the view that it is up to the WTO to establish compensatory mechanisms to deal with the distortive effects of exchange rate manipulation on trade flows. Another group consists of those who consider that the question of exchange rate regimes must be dealt with in the ambit of the negotiations on global macroeconomic imbalances. For this group, the use of trade policy instruments to correct distortions caused by differences in exchange regimes will create new distortions and increase the uncertainties regarding trade transactions.

⁷ http://www.wto.org/english/news_e/news10_e/tnc_dg_stat_19oct10_e.htm

⁸ Sanford, Jonathan (2011) - Currency Manipulation: the IMF and the WTO. Congressional Research Service 7-5700. www.crs.gov