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He wrote his doctoral thesis for the Geneva School of Diplomacy entitled "Brazil: investment facilitation and the WTO", which was adapted into book format and published by the Alexandre de Gusmão Foundation (FUNAG).

Given its ascendant role in global politics, Brazil led on critical issues, particularly in international institutions such as the World Trade Organization (WTO). How the country shaped policy agenda and formed coalitions with the aim of pursuing it is a topic worthy of well-researched analysis, by both policymakers and scholars.

Written by a diplomat who witnessed the negotiations surrounding investment facilitation first-hand, this book is a well-argued testament to the growing significance of developing countries in the world economic system. Entire chapters and sections on the coalitions of diverse states which have taken part in the investment facilitation negotiations give an inside look into how policymaking has been irrevocably changed as fast-growing economies attempt to change the rules.

Through each of these chapters, the book successfully paints a portrait of Brazil as it exists today: a complex economic giant which has sought to modernize and reform the international system.

The global trade landscape and Brazil's history are intertwined to illustrate how contemporary negotiation and policymaking shapes the world we inhabit today.

Alexandre Guido Lopes Parola

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Alexandre de Pádua Ramos Souto

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BRASIL

This thesis argues that Brazil contributes to the reform of the World Trade Organization (WTO) through its leadership in plurilateral negotiations on investment facilitation (IF). Brazil's leadership role in these negotiations stems from its size, expertise within bilateral investment treaties, and diplomatic approach with the Global South. Brazilian participation in the WTO increased between 2000 and 2020 as its liberalization policies turned it from a host country of foreign investment to a country with flows in both directions. During this time, the WTO has been mired in lethargy and stagnation, necessitating changes in order to be a relevant organization. More specifically, IF discussions serve as a case study of how Brazil and other developing countries have evolved and are forcing changes within the WTO. This thesis analyses how Brazil's involvement in the WTO has changed over the last several years, and how its strong contribution has helped to improve changes in the WTO, through a turn to plurilateral agreements (i.e., agreements that do not necessarily include the totality of members).

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Alexandre de Pádua Ramos Souto

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PREFACE

The past quarter-century has seen significant developments in the evolving global order. Crises have uncovered cracks in the multilateral system; rising powers have challenged historical hegemonies; and developing countries have come to take an increasingly central role in the world economy. Perhaps no contemporary state better epitomizes this final point than Brazil; on the back of its large domestic market and seasoned negotiating tradition, the country has emerged as a rising world power and leader in the multilateral system.

Given its ascendant role in global politics, Brazil led on critical issues, particularly in international institutions such as the World Trade Organization (WTO). How the country shaped policy agenda and formed coalitions with the aim of pursuing it is a topic worthy of well-researched analysis, by both policymakers and scholars. With this book, Alexandre Ramos Souto has produced such an analysis and, more generally, a valuable contribution to the study of Brazilian diplomacy and its effects on the norms of international trade.

As the Head of Brazil's Mission to the WTO, I know first-hand that this book comes at a time when the organization finds itself in crisis. Competing agendas following the failure of the last negotiating round, coupled with institutional failures, and economic tensions between the two most powerful member states, have all contributed to a growing need for reform. The WTO finds itself not quite at risk of disappearance, but at severe risk of irrelevance. In light of this, flexible initiatives designed to address pressing issues for member countries serve as a potential means for reinvigoration of the organization.

Through documenting the origins and development of the investment facilitation initiative, in which Brazil has played and continues to play a vital role, this book provides an essential case study of how developing countries like Brazil are increasingly setting the agenda for international organizations such as the WTO. It not only outlines how Brazil brought investment to the agenda of the world's largest international economic organization, but also how Brazilian diplomats have been proactive in negotiating with like-minded partners from around the world to transform a mere bilateral initiative into a full-fledged development proposal.

The intricacies of Brazil's own domestic development since democratization and are raised too, including the country's growing significance as an exporter and major diplomatic player. The country's experiences with foreign investment and specifically investment facilitation help explain why its representatives at the WTO proceeded to take a proactive negotiating role in bringing their facilitation model to the international system. Meanwhile, the ever-changing global landscape, including China's entry into the organization and the failure of the Doha Round of negotiations in the 2000s, is also relevant for understanding Brazil's defence of pragmatic approaches, balanced with regional or even bilateral agreements, and of a renewed debate about the tool kit of multilateral negotiations.

Written by a diplomat who witnessed the negotiations surrounding investment facilitation first-hand, this book is a well-argued testament to the growing significance of developing countries in the world economic system. Entire chapters and sections on the coalitions of diverse states which have taken part in the investment facilitation negotiations—from Nigeria and China to Argentina and South Africa to the United States and members of the European Union—give an inside look into how policymaking has been irrevocably changed as fast-growing economies attempt to change the rules. As this manuscript will successfully argue, this

change is a positive development, not just for economic prosperity but for the betterment of the norms and traditions governing international policymaking.

Through each of these chapters, the book successfully paints a portrait of Brazil as it exists today: a complex economic giant which has sought to modernize and reform the international system. From the Ministerial Conferences to informal dialogues and working-groups held in tandem with other reform-hungry member countries, Brazil's role lies in advancing both investment facilitation and innovation in the rule-making processes of the WTO. Pragmatism, ambition, and flexibility all mark the country's approach to advancing these causes; no doubt, the emphasis on voluntary, plurilateral negotiations instead of an entrenched consensus-based process plays its own significant part.

Nearly two decades after negotiations in the Doha Round fell through, this book serves to assess where the World Trade Organization lies today. Its institutional explainers and foreign policy backdrop provide a clear-eyed look into how Brazil has evolved into an increasingly active influence on the organization's agenda. The global trade landscape and Brazil's history are intertwined to illustrate how contemporary negotiation and policymaking shapes the world we inhabit today.

As someone who played his own role in propelling these negotiations, I appreciate this timely account. I am sure the reader will as well.

Alexandre Guido Lopes Parola
Permanent Representative, Mission of Brazil to the WTO
February 2024

LIST OF ABBREVIATIONS AND KEYWORDS

BDA	Big Data and Analytics
BIT	Bilateral investment treaty
BRICS	Brazil, Russia, India, China, South Africa
CFIA	Cooperation and Facilitation Investment Agreement
CIA	Central Intelligence Agency
DDA	Doha Development Agenda
DG	Director-General
EURATOM	European Atomic Energy Community
FDI	Foreign Direct Investment
FOB	Free on board
GATT	General Agreement on Tariffs and Trade
GVC	Global value chain
IBRD	International Bank for Reconstruction and Development
IF	Investment Facilitation
IMF	International Monetary Fund
IoT	Internet of Things
IPE	International Political Economy
IR	International Relations

IT	Information technology
ITC	International Trade Centre
MAD	Mutually assured destruction
MC	Ministerial Conference
MSME	Micro, small, and medium enterprises
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
SDG	Sustainable Development Goal
SPS	Sanitary and phytosanitary
TFA	Trade Facilitation Agreement
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USSR	Union of Soviet Socialist Republics
WEF	World Economic Forum
WTO	World Trade Organization
WWII	World War II

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1. REFORM THROUGH INVESTMENT

> *Developing countries need investment, so the idea of facilitating investment is much closer to the concerns of developing countries than investment was in the past.*
>
> (Felipe Hees, 2020)

1.1. Broad Strokes

This thesis looks at the critical role played by Brazil in advancing the new plurilateral "Investment Facilitation for Development" negotiations in the World Trade Organization (WTO), beginning with the proposal by Brazil and a dozen other "friends of investment facilitation" to hold an informal dialogue in the spring of 2017, through the launch of structured discussions on investment facilitation among 83 countries based on their joint statement at the WTO's 11th ministerial conference (MC11) in Buenos Aries in December, and ending with the current efforts of over 110 countries to reach a final investment facilitation (IF) agreement, or at least the landing zone for an agreement, in the lead-up to the WTO's 12th ministerial conference in June 2022. Throughout this period, it is argued, Brazil provided critical "thought leadership" for the initiative, both by proposing the idea of an "investment facilitation" agreement in the WTO as an alternative to traditional bilateral investment treaties (BITs) and by advancing the innovative "open plurilateral" approach to policy discussions and rulemaking in the WTO. But Brazil also provided some of the critical political capital and muscle

needed to move the initiative forward. To do so, the country worked closely and creatively with other emerging economies – so-called for their large market size and/or rapid economic growth – such as China, Argentina, and Nigeria on the practical but necessary task of overcoming (or at least circumventing) entrenched opposition to bringing investment discussions into the WTO, an opposition which stemmed in part from some countries' desires to prioritize Doha Round issues. Brazilian diplomats placed investment facilitation firmly and visibly on the WTO agenda, expanded active participation in the initiative almost tenfold in less than five years, and finally shifted the focus of the initiative from an informal and open-ended dialogue to a much more focused and result-oriented negotiation aimed at producing an entirely new WTO investment agreement – an agreement that had eluded the multilateral trading system for over 75 years.

This thesis sets out to explain why Brazil has played this key role, what its role says about the growing influence of developing countries in the multilateral trading system, how investment facilitation is changing the way countries perceive multilateral economic cooperation, why this initiative is helping to shape broader efforts to reform the WTO, and how Brazil's role in the IF initiative can best be explained by existing international relations (IR) theories and models. The main premise of this thesis is that Brazil's role in the IF initiative serves as a valuable example, or case study, of how the multilateral trading system is fundamentally changing and adapting to a new global economy landscape, with new actors, issues, and modes of cooperation. Its core argument is that developing countries, like Brazil, are playing an outsized role in the system that was unimaginable even a few decades ago, and that, in the process, they are forcing a wholesale re-evaluation of not only what should be discussed in the WTO, but how and on whose terms.

One of the key thesis conclusions is that the emergence of new players with new issues, such as emerging economies seeking to prioritize investment facilitation, is a positive development – highlighting the enduring nature of multilateral trade cooperation in the 21st century economy – but that this process can also be jarring and disruptive, especially for old, established trade powers who are not used to sharing centre stage, as well as for less dynamic developing and least-developed economies who remain focused on defending traditional "development" turf. How this clash between innovation and disruption, between creation and destruction, will ultimately play out in the modern WTO remains to be seen. This thesis concludes that the jury is still out.

In explaining why Brazil has chosen to play a leadership role in the IF initiative, the thesis will explore how the Brazilian economy has changed in recent decades, why foreign investment has become a more salient issue, and how Brazil's WTO negotiating objectives have evolved, broadened, and become more proactive and less reactive. These trends have accompanied a liberalization of Brazilian trade and a subsequent opening of its market following its democratization in the 1980s, as well as a commodities boom throughout the 2000s that contributed to significant economic growth and the development of investment flows in both directions.

In assessing developing countries' growing stake in the multilateral trading system, the thesis will examine these countries' increased relevance within global trade and investment flows and explore how this has translated into larger influence in the system and greater leverage in WTO negotiations. While this dynamic has been seen with countries ranging from Brazil and India to Nigeria and South Africa, it has been especially true for China, which has emerged as a key player in WTO negotiations largely on the back of its explosive economic growth and vital role in global trade and

investment, much to the discomfort of established superpowers such as the United States.

To understand how investment facilitation marks a departure from past approaches to investment rulemaking, the thesis looks closely at the changing nexus between investment and trade in today's globally integrated and mobile production systems – especially in the context of global value chains – and highlights how investment facilitation, rather than investment protection, is arguably more relevant to the policy challenges presented by a world economy where it is the cost of doing business, not the threat of expropriation, that increasingly shapes global investment flows. Here the thesis also looks closely at the innovative features of the Organization's 2013 Trade Facilitation Agreement (TFA), a landmark agreement which also grappled with the challenges presented by integrated production networks and global supply chains, and which clearly provided a model, inspiration, and political justification for subsequently launching IF discussions. The political and macroeconomic contexts surrounding the TFA, and its role as a model for burgeoning negotiations on an IF agreement along the same lines over the past few years, form a significant part of this thesis's rhetorical structure.

When making the argument that investment facilitation is contributing to WTO reform, the thesis looks at some of the key challenges facing the WTO, examines the main focus of reform proposals, and demonstrates how the IF initiative – with its open plurilateral approach to negotiations, its emphasis on the importance of increased transparency, and its exploration of soft law approaches to rulemaking and dispute resolution – offers a valuable model of how multilateral trade cooperation can advance in the future. The scrapping of unanimity clauses and consensus-based decision-making, in favour of plurilateral agreements based upon voluntary inclusion, is a big part of this model, while the fact that the IF

initiative soon served as an inspiration for the launch of other Joint Statement Initiatives (JSIs) – in e-commerce, domestic services regulation, environmental issues, and more – is perhaps the strongest validation of its ground-breaking nature and relevance to WTO reform.

Lastly, while explaining how Brazil's role in the investment facilitation initiative might be explained by international relations (IR) theory, the thesis provides an overview of the relevant theories and models, assesses which insights they offer into the motives or rationales behind the initiative, and suggests that it is only by mixing and matching theories, blending their key insights, that we can fully understand what is going on in investment facilitation and the wider WTO. This is done with a look towards IR theories and models spanning realism, liberalism, constructivism, hegemony theory, and more, with an eye towards unearthing which of these theoretical frameworks best shape a modern understanding of Brazil's actions in the WTO.

Essentially, the main premise of this thesis is to demonstrate the role of Brazil as one of the main actors within the process for reform of the World Trade Organization due to its leadership in the plurilateral IF discussions. Brazilian participation in the WTO increased between 2000 and 2020, and the country is specifically credited by diplomats and foreign dignitaries with being the originator of the concept of investment facilitation. During the first two decades of the 21st century, the WTO has been mired in impasse problems, necessitating change, and making the restructuring of the WTO's negotiating pillar fundamental to the organization's transformation. The IF negotiating process is an example of a cooperative plurilateral initiative; since Brazil is a major player in these discussions, it will have a critical role in promoting plurilateral agreements as part of the WTO restructuring. IF discussions bring a new approach to investment, as well as a new type of negotiation to the WTO, one that

works through a plurilateral framework; in this vein, Novik (2020) argues that IF is different from traditional investment discussion in the WTO which concentrates on investor protection rather than facilitation.

One of the main pillars of this thesis deals with the relationship between Brazilian diplomacy and the WTO, as well as the country's influence in proposing changes to the organization's structure. Brazil's position over time in dealing with issues affecting its national economic and commercial interests is also relevant. The current status of IF discussions has also been outlined to provide a clear view of negotiating possibilities; in this sense, one of the thesis objectives is to investigate the premise that Brazil may be regarded as a prominent player in investment facilitation. This premise is connected to the central research question:

Can Brazil's leading role in investment facilitation discussions help reform the WTO?

Brazil has thus far considerably contributed to the formation of the present Joint Statement on Investment Facilitation through both its diplomatic manoeuvres and its modelling of existing facilitation mechanisms, according to both expert interviews and a study of the IF discussions. In fact, one of the main arguments of this thesis is that the Brazilian Cooperation and Facilitation Investment Agreement (CFIA) serves as a starting point, and – owing to its structure and the components covered between states – a model, for the structured discussion of investment facilitation, a preliminary first step towards a plurilateral IF agreement. Brazil's experience with CFIAs has increased the country's authority on the subject, in the process strengthening its role as an agenda-setter in IF discussions.

Conceptually, the thesis falls within the constructivist school of thought, which focuses on how international relations are socially constructed. The constructivist perspective – and its consequences

on civil societies – is fundamental in understanding the development of the notion of IF agreements, in contrast with bilateral investment treaties (BITs), which are more closely associated with the realist school of thought.

With that in mind, this thesis focuses on the relationship between Brazilian diplomacy and its participation within the WTO, reform discussions surrounding the Organization, and recent IF initiatives. Over the past few years, dialogue on investment facilitation has advanced in the WTO partially due to, as Director-General Azevêdo (2019) pointed out, its connections to trade. As progress is made towards promoting investment, the driving factor of development consequently also favours trade between countries, and as a result several WTO members have shown interest in making the environment for foreign direct investment (FDI) more dynamic, with increased transparency regarding regulations and more efficient administrative procedures.

In turn, Brazil is one of the WTO members that has most clearly positioned itself in favour of IF negotiations. The country has been active in the WTO for the past few decades, generally seeking a mediating role while defending its diplomatic and economic interests, a trend continued by its backing of these negotiations. Interestingly, investment facilitation has served to strengthen the plurilateral model within the WTO, which could contribute to modernizing the Organization's structure and resolving the negotiating deadlock.

To better understand the discussion, it is vital to first and foremost understand which theories in modern IR literature best capture the intergovernmental discussion present at the WTO. Specifically, the subfield of international political economy (IPE), which is notable for not inherently claiming the territorial nation-state as the base unit of analysis unlike many Western social sciences, shall serve as a basis for research throughout this thesis, with an

eye towards contributing to the theoretical deepening of IPE by maintaining a traditional approach of combining economic and political analyses.

Crucially, while the IR discipline may have a vast literature, profound research on ongoing WTO reform, specifically with regards to the selected case study, is rather scarce. Different approaches can be adopted to this sphere of research; however, most common are liberal, equality-centric theories or straightforward realist concepts which are employed to dictate the direction that a government may take regarding a particular issue. Ultimately, therefore, by studying the following key IR literature, professionals can better discern the motivations and objectives driving policy decisions worldwide. The principal IR theories are realism, liberalism, and constructivism; each shall be explored briefly and will be further developed later in the analysis.

Realism is a straightforward approach to IR, one which states that all nations are working to increase their power and that countries which manage to hide power most efficiently will thrive and eclipse the achievements of less powerful nations. Seen through the lens of realist theory, WTO reform can be best understood through the following research question:

How can the struggle for power among mighty members guide the WTO's reform agenda?

Liberalism is itself based on the belief that the current cooperation-based global system can engender a peaceful world order based on free trade and shared values. Rather than relying on direct force, such as military action, liberalism places an emphasis on international cooperation as a means of furthering each nation's respective interests. Liberal-oriented policymakers generally prefer the use of economic and social power in achieving their national goals (for instance, through cooperation in WTO negotiations).

With time, as liberalism has become more rooted in international cooperation through an institutional embedment perhaps best exemplified by the creation of the WTO, realism has begun to wane as a viable IR school of thought. Having emerged in a different global context marked far more by competition and conflict than meaningful international and multilateral cooperation, realism's decline represents the acknowledgement of some of the theoretical gaps present in the school of thought.

It can be argued that the liberal school of thought, historically backed by the United States, has constituted the dominant system of ideas in modern IR, as the US has established international institutions to regulate this order per its core professed values. Within liberalism, the concept of an international regime accommodates the rise of non-state actors and complex interdependence within state-centric realist theory; as a result, analysis, such as this one of the Brazilian role as a key contributor to the WTO's reform process, adds value to contemporary studies of liberal internationalism, as research on the Brazilian role in the modernization of the rules-based multilateral trade system is complementary to international regime literature.

The final primary IR school of thought, constructivism, rests on the notion that rather than the outright pursuit of material interests, it is a nation's belief systems – historical, cultural, and social – that best explain its foreign policy trends and behaviour. This theory also argues that while states are not the most important actors in IR, international institutions and other non-state actors can prove quite valuable in influencing state behaviour. For this reason, constructivism has become a popular and important theory in recent decades as international organizations such as the WTO have gained political influence.

In theoretical terms, IF discussions go beyond the traditional realist or liberal IR theories, falling rather into the constructivist perspective, given that facilitation is a process of cooperation and social construction. Due in part to its plurilateral character, IF also differs from traditional bilateral treaties, which maintain characteristics of realism. Moreover, while much modern literature has been developed to characterize hegemony between countries within the context of international regimes, the current IF discussions move away from these issues, as they are conducted primarily through soft power and in a proposal of mutual favourability for the members involved. Given the premises of game theory, it appears that cooperation can be achieved – and misunderstandings largely avoided – as there is a solution that is beneficial to all parties. In turn, variable geometry theory emphasizes possibilities in creating agreements that are adjustable as they are being negotiated or applied, as in the case of IF negotiations or even WTO reform, while cooperation theory would denote that cooperating on these negotiations is possible, given there are potential gains for all involved.

Current WTO literature dates back to early writings about the General Agreement on Tariffs and Trade (GATT), which emerged in 1947 as the outcome of wartime and post-war negotiations that aimed to establish a stable, multilateral economic order. In principle, the GATT itself was an interim accord, one which sought to codify the rules of the emerging trade regime and to proceed with important reductions in national barriers to trade. It in turn led to the WTO in 1992; upon members' ratification of the Final Act of the Uruguay Round, the WTO replaced the GATT as the global multilateral trade organization, and various agreements associated with – but legally distinct from – the GATT were thence placed under the WTO umbrella.

A great deal has been written about the impasse of the Doha Round and subsequent WTO stagnation. The Doha Round was

launched in 2001 and sought to decrease trade barriers in agriculture, industry, and services. Because of ongoing disagreements among members, the Round, which was initially intended to conclude by the end of 2006, was prolonged, with negotiations having remained stalled since 2008. The most prominent disagreement surrounded the elimination of price-distorting agricultural subsidies and the opening of agricultural and industrial markets for more competitive practices internationally. There is a vast literature concerning the Doha Round; however, a research gap on post-Doha developments, such as paralysis of the Organization through conflicts in the Appellate Body and other organs, remains. This thesis seeks to contribute to filling this research gap.

Furthermore, the literature on ongoing WTO reform is rare, due to its novelty in the international sphere. Among the existing literature, most writings were published before 2019 in the format of books or theses. Media writings from 2019 include "The Path Forward on WTO Reform" from Chatham House, "How to Rescue the WTO", or "WTO Reform and the Rule of Law" from *Opinio Juris*. Considering that WTO members put their reform agenda on track in 2019, this thesis aims to also help fill the research gap in IR literature on this important subject.

Ultimately, this work is situated at the crossroads of two promising pathways for research within the existing literature, both of which are lacking in terms of depth of research and empirical foundation. On the one hand, there is the post-Doha field of research; on the other, the WTO's formal reform process as a research subject. In both cases, there is a clear research gap. More crucially, however, this thesis aims to synthesize these spheres of research, in order to explore new insights that have only recently begun to gather academic interest.

Given the possibility of great change and reform in the WTO, Brazilian involvement in the Organization's IF negotiations is an important factor to be analysed, either for its leadership role or for its position as a historically powerful (as in soft power) member country. In fact, the WTO itself represents an important channel for Brazilian diplomacy, as Brazil has been involved over the past few decades in various issues – such as agriculture, fishing, e-commerce, and trade facilitation – at the Organization. This participation has culminated in many ways in the accession of Brazilian national Roberto Azevêdo to the position of Director-General.

From a methodological point of view, the main question to be answered by this thesis is to what degree Brazilian participation in the IF discussions has impacted the modernization of the WTO. To do so, it will observe the historical cases that involve Brazil, as well as the key issues that have hindered the WTO's efficiency. It also analyses perspectives on the future, based primarily around interviews with several specialists in the field, specifically in academia, diplomacy, and policymaking. The thesis has also utilised embassy telegrams, notes, and other communication tools gained through the author's employment as a member of Brazil's diplomatic corps in Geneva, combining independent research with professional expertise.

Analysis of WTO history allows for a better understanding of the proposed research questions and alludes to the main challenges faced by the Organization since its creation. Despite the maturity of the organization and its centrality in global trade, discussions of its modernization have become increasingly relevant in recent years. In addition, the multilateral paradigm and the principle of single undertaking have been questioned to the degree that some have advocated a reformation that favours plurilateral initiatives, which they argue could provide greater efficiency. It is also worth highlighting key events such as the global financial crisis of 2008, which brought about a worldwide recession and contributed to the

challenge of WTO negotiations. Other critical trends that have challenged international trade include an escalating dispute between the United States and China and, more recently, the COVID-19 pandemic.

As the discussion of WTO modernization has grown, Brazil has been active in several topics discussed globally by members. Whether in defence of its autonomy, or seeking to protect the WTO's multilateralism and democratization, the country has been an important player since the GATT era. As the need for modernization at the WTO has become evident, the country has positioned itself pragmatically, with a clear objective of reconciling the structural issues of the organization. Director-General Roberto Azevêdo himself sought to promote multilateralism, although recently he has shown support for alternatives to this model as a way of giving dynamism to the organization.

In this context, IF discussions constitute solid plurilateral initiatives. Through a soft law approach, these negotiations could be a pragmatic alternative to strict multilateralism, one which circumvents some of the complicating factors associated with the principle of single undertaking. In this sense, IF pragmatism is aligned with the need for reform in the WTO, as it can pave the way for permanent structural changes in the organization. IF is also important for countries' development, as many depend on FDI in various economic sectors. By contributing to an active and modern WTO, the IF also serves as a model for future new topics that may be important for member countries.

It is essential to emphasize the contribution by Brazilian diplomats to the IF initiatives and discussions, due in part to their technical experience with bilateral investment agreements and the importance of FDI. The thesis therefore proposes the following secondary question:

Can the Investment Facilitation on Development negotiation reach an agreement and bolster the role of Brazil in WTO survival?

The interviews provide an almost unanimous outlook that Brazilian involvement and leadership in the discussions will likely continue in the future, and that most experts believe that both WTO reform and IF initiatives will advance. Despite holding some reservations, the interviewees tend to be optimistic regarding the solution of obstacles in the pillars of the WTO, as well as in the advancement of plurilateralism within the WTO as a more pragmatic alternative to traditional multilateralism. Given these trends, the thesis also seeks to identify the extent to which Brazil's growing role and influence in the WTO reform process reflects a burgeoning leadership of developing countries within the system and its more outward-looking and proactive multilateral trade discussions.

Indeed, my position as a diplomat with the Brazilian Mission to the WTO provides a promising basis for theoretical induction. Our approach here will thus contribute insights to grounded theory, which is a common approach within the social sciences, particularly within professions that feature academic participation. Among several other reasons, this predominance of grounded theory within certain "scholar-practitioner" professions is founded on a centring of "social beings whose experiences, ideas and assumptions can contribute to their understanding of social processes they observe" (HEATH & COWLEY, 2004).

Considering the unique access to internal communications the author has as an official representative of the Brazilian Mission to the WTO, the capacity to base the research on primary sources is significantly increased. Therefore, not only does this thesis aim to cover an existing research gap on WTO affairs within the IR discipline, but it will also endeavour to do so through analysis of

primary sources. The implications of this research focus shall be developed in a further section of this thesis. All these various data sources inherent to my professional position are useful because I enjoy an "insider" perspective as well as a scholarly one.

The effects of the ongoing worldwide pandemic have forced changes to both the scientific process and diplomacy. As a result, both components of this research have gone digital. Interviews were conducted remotely, while WTO meetings and negotiations were conducted electronically. Though it is too early to determine the scholarly impacts of this shift, technology has indubitably become an essential component of the knowledge-production process, as the digital revolution brought about by the Internet has enabled researchers to proceed with minimal losses of efficiency during such external shocks.

This thesis was composed through electronic devices, its processing of existing literature made possible thanks to software and remote access to knowledge. Thus, one could argue that the very ontological and epistemological nature of our approach is unique, not only due to current circumstances, but also due to its reach and range: I am a Brazilian researcher with a work and study background in China and Switzerland within the international context of the WTO.

1.2. Chapter Breakdown

Chapter 2: Theoretical Framework and Methodology

Chapter 2 reviews a wide diversity of theoretical strands within the discipline of international relations, as well as their relationship with other social sciences. These shall be employed throughout the analysis to demonstrate the leading role of Brazil within the current investment facilitation negotiations at the WTO. Among

the dominant paradigms that exist within IR, this chapter shall establish that constructivism is better-suited than other theories to describe and analyse the ongoing negotiations on investment facilitation within the WTO, owing to a multitude of factors present in the modern international order. By adopting a constructivist lens, the analysis will be able to better delve into the perspectives of the very experts that compose and shape the negotiating process of investment facilitation in the WTO daily. Moreover, the chapter will seek to understand a variety of theories that exist within IR, and other disciplines within the social sciences, which shall constitute a fundamental part of this analysis' constructivist approach.

Furthermore, this chapter shall argue that constructivism works in great harmony with research design procedure. Indeed, constructivism works under a holistic assumption that the collaborative actions of individuals add up to an outcome that is greater than if they had acted alone. Ultimately, investment facilitation, as shall be demonstrated, also works in such a manner: it aims to establish win-win relationships in such a way that the welfare gain for its participants rewards their cooperation. Therefore, interview-based research is best-equipped to observe such complex phenomena, and to capture for analysis this holistic residual stemming from plurilateral cooperation within the WTO. This relationship is explored in depth throughout Chapter 2.

Chapter 2 also contains an exercise in reflexivity, examining the overlapping ontological boundaries of my positions as a scholar and as a professional, without dismissing the overlap as an obstacle to valid political science. Instead, theoretical analysis will attempt to shed light upon its potential to provide greater understanding of an environment – the WTO, and diplomacy more generally – that is characterized by intersubjectivity and interpersonal exchange.

Finally, Chapter 2 will outline the data collection design of this thesis, which seeks to obtain qualitative insights from experts in the field – both Brazilian and otherwise – through a series of twenty-four semi-structured expert interviews. Simultaneously, privileged access to confidential documents from the WTO and the Mission of Brazil will provide us with a novel understanding of the issues at hand. Overall, this chapter will equip the analysis with the right tools to accomplish its final objective: demonstrating Brazil's predominant position on the WTO chessboard with regards to investment facilitation talks.

Chapter 2 employ classic works from Alexander Wendt, such as *Theory of International Politics* (1979), as well as his later texts dealing with constructivism. It also draws heavily from Hans Morgenthau's enduring contribution to the understanding of international politics, such as his magnum opus *Politics Between Nations*. In fact, the chapter bases itself on a wide range of authors from different schools of thought, as it endeavours to draw insights from a diverse set of theories pertaining to the IR discipline. Simultaneously, Chapter 2 is founded on the burgeoning WTO literature, which has grown increasingly rich since it started gaining ground in the 1990s.

Chapter 3: History and Landscape of the WTO

Chapter 3 shall provide an outline of the history of global trade, as well as the development of global value chains, in order to thoroughly examine the existing relationship between commerce, investment, and the World Trade Organization. The principal objective of the chapter will be to contextualize the WTO reform process through the lens of these elements, in an effort to provide a clearer picture of the position of the negotiations on investment facilitation within these historical developments that affect the organization, as well as global trade generally.

First, Chapter 3 argues – by means of historical analysis – that IF could lead to an intensification of global flows that would respond to contemporary needs inherently linked to technological progress and economic growth. Moreover, the chapter advances the idea that the WTO risks falling into irrelevance if it does not reform, given certain realities such as the necessity to accommodate a new geopolitical and geoeconomic balance of power within the Organization, the Chinese state capitalist economic model, the imperative of development, and the revision of the single-undertaking negotiating principle and consensus decision-making procedure.

Chapter 3 dismisses apparently controversial aspects of IF talks based on historical precedents set by the Tokyo Round (1973-1979), for instance, which could serve as a model on how to base and adjust current dissatisfactions with the international trade regime, in the process making significant progress on the achievement of a formal agreement on investment facilitation. In addition, the chapter examines the current trade conflict between the USA and China, which is causing profound and seemingly inexorable geopolitical and economic changes in the world system, and why these countries' so-called "trade war" has been at the centre of discussions concerning WTO reform. Issues such as a renewed definition – to the degree that it impacts eligibility of special and differential treatment – of developing countries to the removal of market-distorting subsidies and illicit technology transfer are also explored.

Chapter 3 is also based on a wide range of literature. Scholarship on the modernization process of the WTO is recent, but this does not mean the chapter has not drawn insights from more ancient schools of thought and reasoning within the social sciences. Chapter 3 pulls from classic works by authors such as Adam Smith or David Ricardo, in addition to more contemporary work such as yearly WTO reports or material from other organizations.

Chapter 4: Reform of the WTO

Following up on the overview of the landscape of international trade presented in the prior chapter, Chapter 4 tackles specifically the crises present within the World Trade Organization and the primary nodes along which reform is necessary.

While putting the process itself into political and economic context, Chapter 4 thoroughly explores how the current WTO crisis impacts each of the three main pillars of the organization (Dispute Settlement; Monitoring and Transparency, and Negotiation), the last of which is deemed the most essential as it constitutes the most significant aspect to be considered when it comes to WTO reform. Contended issues such as the principle of single-undertaking, or the deadlocked themes of the Doha Development Agenda, are developed in depth, as are the contribution of Joint Statement Initiatives to the process of reforming the organization.

Ultimately, Chapter 4 synthesizes insights from various expert interviews regarding the prospects of WTO reform. On the one hand, there are proponents of the idea that reform is inevitable, due to the unsustainable nature of the status quo. However, others doubt that reform is even possible at the current stage, due to more pressing global matters and irreconcilable interests between the two key WTO members, the United States and China.

Chapter 5: Brazil and the WTO

Chapter 5 examines the evolution of Brazil's position within the WTO and, more generally, across the international trade regime historically. It examines the long history Brazil shares with multilateral institutions such as the WTO, and places specific emphasis on the failure of the Doha Development Round (DDR) to achieve concrete results, as this failure is considered by many to be a turning point from which Brazil's position evolved into a more pragmatic direction.

One instance of this newfound pragmatism is exemplified by the country's willingness to move past DDR themes to pursue more pressing matters such as e-commerce that had higher potential for international agreement, even if achieved plurilaterally. Brazil's IF focus can be seen as indicative of this new diplomatic direction.

As Chapter 5 argues, Brazil began to endeavour towards a more open economy and to intensify its trade flows globally beginning in the 1990s, experiencing increasingly high growth rates following a difficult economic situation in the 1980s. Inevitably, as the country's economy began to devote more attention to international trade, it unsurprisingly also began to push for better and more pragmatic gains within the WTO. This chapter argues that the 2013 election of a Brazilian, Roberto Azevêdo, to serve as Director-General of the WTO embodied the country's successful leadership among developing countries throughout the previous decade.

The chapter thus analytically discusses the Brazilian position across several key spheres of the organization that are relevant for the country's productive characteristics. These range from agriculture, historically the country's main priority within the WTO, to fishery negotiations and even e-commerce. In general, the chapter both considers the dysfunction of the main WTO pillars and the Brazilian diplomatic position on the main challenges facing developing countries. Finally, Chapter 5 explores the idea that Brazil's role in the WTO has only grown with its steadily increasing commercial and economic liberalization over the last 30 years.

In Chapter 5, most literature is related to Brazil's history, foreign policy, and economics. Thus, one encounters a variety of Brazilian writings, such as in the case of historian Sombra Saraiva's great *História das Relações Internacionais do século XIX à era da globalização* (2008), or *Formação econômica do Brasil* (1959) from famed Brazilian economist Celso Furtado. More recent work on Brazil's relationship

with the WTO, as well as insights provided by the interviewees, are also taken into consideration.

Chapter 6: Investment Facilitation in the WTO

This chapter specifically deals with the new paradigm of investment facilitation in the WTO. In particular, Chapter 6 highlights the interview mechanism upon which this thesis works, as it outlines the constructivist perspective and the principal arguments of the thesis. The chapter demonstrates, in brief, the diplomatic perspective of investment facilitation within the WTO since it began to appear in 2016. The chapter also illustrates how the leading position of Brazil on IF is perceived by the experts interviewed, most specifically as it relates to the key research issue at hand, the degree to which Brazil's role in IF negotiations has contributed to WTO reshaping.

Overall, the objective of the chapter is to synthesize expert opinions about the questions developed in the thesis analysis, with the aim of presenting the main points of view of the specialists in general, which are further elaborated in the subsequent chapter on Brazil. Chapter 6 explores the hypothesis that investment facilitation promotes the revival of the multilateral trade system, based on insights derived from interviews with high-ranking experts from the field. The chapter thus proceeds from the notion that both developed and developing countries have a vested interest in advancing the discussions as, after all, investment facilitation does not touch upon contentious areas that could provoke deadlocks among negotiating members. Moreover, an IF agreement would further the basis established by the TFA. More crucially, however, is the assessment that nowadays developing countries are significant investors themselves, and thus seek to create win-win scenarios among nations, thereby promoting global prosperity.

Overall, chapter 6 notes numerous interviewees' belief that plurilateralism, by design, rewards all nations and builds confidence

towards trying new things, all the while proving more responsive, and less conflictual, than traditional multilateralism. It also renders the WTO more efficient to face new challenges of international trade and investment, such as nationalism or protectionism. However, obstacles subsist, many of which are linked to the current WTO landscape and need to be overcome to obtain an agreement. A glaring example would be the US-China dispute, and the potential rise of nationalism in the post-COVID world.

Crucially, this chapter carefully considers the role of developing countries, such as Brazil or China, as key members carrying negotiations forward within the WTO. In this sense, the IF initiative stems from the aspirations of these developing countries to maintain WTO functioning by exploring "new themes" following the deadlock surrounding the DDR. The specific role of China is also examined, as it is of particular interest with regards to investment facilitation due to the country's powerful position at the WTO. According to experts, through the means of investment facilitation, China reveals a strong economic interest in securing stronger rules with regards to global investment flows, as it stands among both the foremost contributors and recipients of FDI globally.

Finally, the chapter assesses the utmost relevance of IF in satisfying international investment needs, thereby helping to achieve several Sustainable Development Goals (SDGs), as well as increasing global welfare. The needs of a world investment are huge, and Brazil, among other countries that lead current IF discussions, recognize that fact. As a result, they seek to ensure the necessary international financial flows, ultimately enhancing the development of science, technology, and innovation capacity; the vital transition to a low carbon economy to halt climate change; and the welfare imperative to create employment and economic development.

Considering that Chapter 6 is solely founded on qualitative inquiry through the means of expert interviews, it does not base itself on any particular kind of literature. Naturally, this does not exclude the analysis of the chapter from drawing upon – and maintaining coherence with – the insights provided by previous sections. As elucidated in Chapter 2, the insights from the interviewed experts may be examined through the analytical lenses of constructivist thinking, insofar as they are actors who shape and co-construct continuously the social reality of the processes of the WTO at hand, namely, that of investment facilitation or formal reform.

Chapter 7: Brazil's Actions on Investment Facilitation

The main focus of chapter 7 is the role of Brazil in negotiating investment facilitation, the chronology of discussions for the agreement, and future perspectives on the agreement. Hence, Chapter 7 highlights the process by which investment facilitation gained strength in the discussions among WTO members. In particular, the chapter outlines the diplomatic development of investment facilitation within the WTO since it started to emerge in 2016 and, more formally, 2017. The chapter also underlines how Brazil's leading role consisted in delineating the discussions through the definition of what it means to talk about investment "facilitation," and therefore is linked to the main research question at hand: Brazil's protagonist role concerning investment facilitation negotiations, and how it contributed to reshaping the WTO. In other terms, the chapter seeks to evaluate the notion of potential Brazilian leadership.

Crucially, the chapter examines WTO members' general endorsement of Brazil's historical experience with the CFIAs, which embody the country's novel and positive approach to bilateral investment treaties (BITs). Additionally, the chapter studies the possible reasons explaining Brazil's designing of the CFIA model for

its investment strategy by, for instance, considering the degree to which the shift stems from domestic developments or the country's increased liberalization since 2016. Overall, the analysis outlines that Brazil's diplomatic posture on the issue of investments has become more pragmatic since 2015. Indeed, through its BITs highlighting of the notion of investment facilitation, Brazil has managed to propose an alternative way of discussing development matters. Expert interviews put forward by chapter 6 confirm that Brazil's pragmatic proposals provided systematic win-win scenarios for partner countries, and thus established the country's reputation as a consistent consensus-builder.

Notwithstanding these positive developments, the chapter also examines potential difficulties ahead for Brazil's diplomatic efforts within the WTO. These include, for instance, the prospect of convincing sceptical countries to join a plurilateral discussion, or the fact that negotiations will not include controversial topics from the past such as investment protection. Still, when considering other key countries' positions regarding IF as well as these countries' reactions to Brazil's proactive efforts, the country has emerged into a notable position. Other members have turned to Brazil in order to avoid giving headway to more suspicious or uncertain countries such as China or Russia, whose positions on contentious issues like investment protection or market access have demonstrated a degree of ambiguity. Overall, the chapter acknowledges that Brazil has been recognized by other countries as one of the leading players in the negotiations.

Chapter 7 draws in part from the vast archive of confidential communications between the Mission of Brazil and the WTO in order to address a historiographical account of the IF negotiation process within the organization, from the early informal stages of 2016 to the present formal process. In parallel, Chapter 7 draws upon Brazilian academic literature regarding the country's bilateral investment

treaties, CFIAs, that emerged around 2015 as the country's principal model for negotiations regarding investments. Across the chapter, the CFIA – as Brazil's technical basis for its exemplary role as a lead member – is analysed regarding investment facilitation at the WTO.

Chapter 8: Conclusion

Chapter 8 studies crucial insights by experts regarding the prospects of future reform within the WTO, as well as the main challenges and potential scenarios facing Brazil's foreign policy. The chapter investigates the extent to which Brazil can contribute to changes in the WTO via investment facilitation. By combining results stemming from all previous chapters, Chapter 8 therefore synthesizes the most essential insights that can inform future decisions and reduce uncertainty in a context of shifting priorities with regards to the multilateral trade system.

Considering that investment flows contribute significantly to the development of the world's economies and set global welfare on a long-term path of prosperity, this final chapter reiterates that IF initiatives have the potential to enhance cooperation between members of the World Trade Organization. More importantly, as the interviewees argue, IF talks appear capable of potentially triggering changes in the WTO, thereby allowing the modernization of the Organization and contributing to its better functioning as an international organization of global trade. For instance, these talks could set plurilateralism on a positive path, legitimizing it as a valid negotiating process within the relevant pillar of the Organization.

With regards to Brazil, a widespread consensus has emerged among policymakers, scholars, and analysts surrounding the country's diplomatic importance within the organization. Thus, Chapter 8 argues that it remains in the country's interests to stay active and work in service of both the investments initiatives as well as the modernization of the organization. For instance, while the

COVID-19 pandemic may have disrupted both trade and investment flows worldwide, interviewees have encouraged countries such as Brazil to seize the moment as an opportunity to accommodate the effects of the crisis by favouring international cooperation.

Crucially, while previous chapters have explored the potential for effectively achieving an Investment Facilitation Agreement at the WTO, or successfully reforming the Organization to the consorted wishes of its various unsatisfied members, Chapter 8 goes a step further by examining the potential contained by each of these scenarios. The resulting analysis suggests that the prospect of failing on both accounts is relatively unlikely, and thus the chapter emphasizes the fact that Brazil may remain active and favourable to IF negotiations, maintaining its leadership position and seeking to increase cooperation with the members most favourable to the initiatives. Notwithstanding these continuous diplomatic efforts, the chapter concludes by reiterating the need to remain focused on development outcomes that benefit all, enshrined in the UN's *Agenda 2030*, towards which IF as it has been endorsed by Brazil certainly contributes significantly.

Chapter 8 is mainly founded on qualitative insights derived from expert interviews. As with Chapters 6 and 7, the chapter employs constructivist ideas in order to better understand WTO reform prospects from the perspectives of the experts who shape and influence this process daily. Ultimately, as a synthetic chapter, Chapter 8 also attempts to shed new light on results already obtained by all previous chapters, as a way to address relevant scenarios and potential developments to consider, some of which may shape the future of the WTO as we know it.

2. THEORETICAL FRAMEWORK AND METHODOLOGY

2.1. Introduction

The aim of this chapter is two-fold. First, it analyses the extent to which the investment facilitation initiative, as well as Brazil's role in developing and advancing it, can be explained and better understood by viewing it through the lens of various international relations theories and models. On the one hand, this chapter will attempt to show that countries' emphasis on asserting national economic interests, and using interstate bargaining to advance these interests, demonstrates that the IF initiative bears a strong resemblance to traditional "request and offer" trade negotiations, and can thus be usefully explained through realist theory. On the other hand, this chapter will also suggest that important elements of the IF initiative such as emphasising regulatory cooperation, sharing most-favoured-nation (MFN) outcomes, and improving transparency depart significantly from traditional national-interest-driven trade negotiation and can best be understood from the perspective of liberal theory and efforts to solve transnational governance challenges, particularly since the conclusion of the world wars.

With this in mind, and with attention paid to the role constructivism played in the context of the creation – and reform – of the WTO in the early 1990s, the chapter will also outline how this third major IR school of thought has shaped the theoretical framework of the thesis as a whole, owing in large part to the way in which IF is understood inside itself as a process of cooperation and social construction. Likewise, this chapter will attempt to show that Brazil's growing role in the initiative, the growing role of developing countries more broadly in reshaping the WTO, and the growing pushback from established powers against developing countries' new assertiveness and influence can be explained by a range of theories and concepts, from hegemonic stability and regime theory to concepts like soft power and the Thucydides Trap.

Chapter 2 therefore suggests that Brazil's leadership on investment facilitation can best be explained, not by trying to crowbar it into one theory of model, but by using a range of theories in tandem to understand the profound changes to the WTO, global power balances, and global governance. In fact, this raises the second goal of this chapter: to explain and justify why such a broad range of methodologies and sources have been used to buttress and weave together the analysis. Investment facilitation is a very new subject with a small but fast-growing body of secondary material devoted to understanding and explaining it, and this literature has thus been integrated into the thesis analysis.

This chapter will highlight the importance of drilling deeply into key primary sources such as statements of ministers and officials, policy documents, and minutes of meetings – many of which were uniquely available to the author – to develop the required analysis. This chapter also explains the emphasis placed on direct and focused interviews with key actors in the initiative, and how these interviews have been used to shed new light on the policy motivations of Brazil

and other countries, as well as to highlight the unique nature and trajectory of this particular WTO initiative.

In summary, the chapter is organized in such a way that Sections 2.2-2.13 present relevant contributions from IR literature analysis; sections 2.2 and 2.3 cover realist and liberal theory, respectively; 2.4 and 2.5 deal with hegemony and international regime theory, respectively; 2.6 outlines game theory; 2.7 provides a breakdown of constructivism; 2.8 elucidates on the concept of soft power; 2.9 describes the concept of the Thucydides Trap; 2.10 outlines the distinctions between hard and soft rules; 2.11 details variable geometry theory; and 2.12 goes into depth on cooperative and bargaining models. Finally, Section 2.13 details various issues of methodology. In particular, issues related to the research methodology and paradigm are addressed, as well as research methods design, scholar's reflexivity, epistemology, and qualitative data collection design.

2.2. The Aromantic Lens: Realist Theory

I think that the changing circumstances made Brazil more pragmatic, more realistic, and more constructive in relation to what was possible.
(Tatiana Prazeres, 2020)

Given the major role played by bilateral investment agreements in the World Trade Organization, realist theory is essential to understand the influence of major powers in the Organization's reform propositions of the last few decades (Chapter 4). In regard to IF negotiations specifically, the national motivations powering these discussions also draw from realist theory, as states aim to create win-win scenarios to advance their own interests – namely, two-way investment flows – abroad.

As one of the foundational paradigms of IR, realism has been prominent in the discipline's evolution (NOGUEIRA & MESSARI, 2005, p. 20-21). Based on a fundamentally conservative and pessimistic logic, this tradition strongly criticizes any political practice determined by theories and ideas about how the world "should be", as well as maintains states as the primary decision-making actors of international politics (MORGENTHAU, 2003, p. XI-XXX).

Historically, the success of realism stemmed from the inability of the institutions organized around the League of Nations system to govern the main issues of high politics in their time (SOMBRA SARAIVA, 2008, p. 192-195). As a result, realist theory led the new institutional arrangement that would govern international politics from the end of World War II onwards, including the United Nations (UN) system. Indeed, the separation between high and low politics, as well as the recognition that there is a distinction between hard and soft power, is fundamental to the edifying arrangement of the UN.

One of realism's fundamental characteristics is the existence of immutable components of the human condition, broadly summarized as the principle of self-help. Once the State is absent to govern and protect individuals, their "natural" condition, motivated by fear, is to maximize their relative power. This worldview guides theorists to defend theses relating to the survival and sovereignty of a State in the international system and its ability to coerce other actors (NOGUEIRA & MESSARI, 2005).

Realism in the history of Brazilian foreign policy is attributed to the inaugural role played by José Maria da Silva Paranhos Júnior, known as the Baron of Rio Branco (CERVO & BUENO, 2015, p. 191-213). Pragmatism defined much of his diplomatic work, which focused on the importance of rearming the navy and managing the imperialist powers. Studying the Baron of Rio Branco allows for a

Brazilian perspective on the meaning of pragmatism within realist though.

In *History of International Relations in Brazil*, Brazilian foreign policy in World War II is described as a point of reference for how the principles of Rio Branco's diplomacy are efficient in being able to maximize national interests in the international system (CERVO & BUENO, 2015). Furthermore, the "quality of diplomacy" is relevant in the distribution of power, taken with other considerations such as war and industrial capacity, as argued by Morgenthau's classic realist framework (MORGENTHAU, 2003, p. 273-280).

Among the various components of contemporary Brazilian foreign policy, the professional qualification of the Brazilian diplomatic body is a fundamental characteristic. Although there is a recognizable disparity of hard power between Brazil and the modern great powers, the conditions laid down in the international system have been skilfully used to safeguard Brazil's interests considering certain fundamental principles. Pragmatism promotes a refined understanding of the relationship between historical moments and national objectives, allowing for a more sophisticated maximization of existing opportunities, in the process acquiring relative power in the competitive international system.

Still, the end of the Cold War brought several challenges to the realist paradigm. The advocacy of system-level analysis of international policy, as detailed by Kenneth Waltz in *Theory of International Politics* (1979), was no longer sufficient to explain a new international political reality. Similarly, Waltz's methodological advocacy at the structural level – and on war as an analytical object – began to demonstrate its inadequacy.

Realist theory has largely failed to foresee such a radical redistribution of capabilities in the system. The dissolution of the Soviet Union – and consequently of the bipolar world order – without

the occurrence of a military conflict between both hegemonic powers challenged the realist argument. Bipolarity as an element of systemic stability is inversely proportional to the instability that multipolarity would bring, and the former became the focus of criticism of new theoretical postulates.

As neoliberalism and post-positivist perspectives began to gain greater prominence, realists were challenged to promote responses to a new international agenda. The emergence of neoclassical realism occurred precisely at this moment of transition from the Cold War to the so-called New World Order.

The primary differential of neoclassical realism is the attempt to deal with both systemic and domestic level variables. Thus, its main virtue is the ability to deal with a broader range of stimuli and causes to justify the actions of statesmen, including the possibility of changes in the system. Ali Omar's argument is particularly key: "The intention of neoclassical realists is not to create a general theory with regard to international politics. Rather, their interest is to explain the foreign policy behaviour of a specific state." In brief, focus of neoclassicals does not aim at formulating a new IR macro-theory, but rather to create a model that explains the complex influences that exist between the domestic and the systemic level.

In this lens, there exist similarities between neoclassical realism – or neorealism – and foreign policy analysis. However, it should be noted that there is an important difference in perceptions about the objectives of both intellectual currents. For instance, the former starts from the methodological premise that it was not formulating a theory of international relations, but rather a method of analysing the foreign policy of the countries.

The perspectives of classical and neoclassical realism converge in respect to Gideon Rose's work, which argues that the objectives and ambitions that make up the strategic calculations of countries'

foreign policies are primarily guided by their relative power, which refers to how strong they are in relation to other countries. Hans Morgenthau (2003) further claimed that the search for relative gains in power remains the main driving stimulus of international politics.

Nevertheless, one of neoclassicalism's theoretical postulates is that the search for relative power itself has indirect effects on the foreign policies of states, when considering the different level of units (Waltz's first image) that cause systemic pressures. To this end, the way in which individuals understand and interpret the distribution of capacities in the international system is a relevant factor for decision making, giving rise to the existence of different responses to identical stimuli.

In this sense, relative power can be characterized in neoclassical analysis as an independent variable throughout the foreign policy decision-making process, one that establishes the basic parameters of countries' international action. In opposition, decision-makers are understood as an intervening variable, given their perceptions of the distribution of capacities in the international system. The main issue is therefore related to how much power their country has and what effects an international action may have on this power relationship with other agents, hence directly affecting the way they manage the foreign policy of their countries.

2.3. The Gentler Order: Liberal Theory

> *This follows a longstanding tradition of Brazilian foreign policy, namely an attachment to international law in disciplining the relations among states.*
> (Henrique Moraes, 2020)

Liberalism encompasses a wide range of ideas and arguments on how institutions, behaviours, and economic ties limit and reduce violent power of states. This thesis reflects upon the role of Brazil in

the reform process of the World Trade Organization, in comparison to other major member countries, and how liberal institutionalism informs this process of transformation of the multilateral trade system. This section will particularly observe how, with regards to this theory, states such as Brazil will propel their modern economic interests – including more complex matters such as investment facilitation – through international institutions such as the WTO, rather than force.

Compared to realism, liberalism brings additional elements to attention, particularly citizens and international organizations, as well as emphasizes individual well-being as a vital component of a just political system. Optimism regarding the human condition and society is another distinct feature shared by several liberal thinkers, who tend to believe that knowledge can achieve meaningful changes in society. Inspired by the classical works of John Locke and Jean-Jacques Rousseau, liberal thinkers emphasize the strength of ideas and law as a motor of change in the relationship between individuals, who do not necessarily need the use of force to fulfil them (NOGUEIRA & MESSARI 2005).

Liberalism influenced the development of a post-WWII world trade system aimed at achieving lasting peace and founded upon commercial ambitions to foster economic integration among nations. Through this liberal lens, commercial integration is a concrete means through which to achieve peace. Agreements such as the Bretton Woods Agreements and the General Agreement for Tariffs and Trade (GATT) are examples of that effort. Following that belief, Wolff (2020) notes that the CIA assumed that greater commercial interdependence between West and East Germany would lead to the reunion of the countries. Another example is the "Sunshine Policy" between North Korea and South Korea, adopted by the late 1990s, as commercial links between each country increased, promoting cordial relationships.

Considering the critical historical links between commerce and peace in terms of war disrupting free trade and liberalism seeking to promote open/free markets, a final subchapter will analyse those existing between investment and trade. Indeed, it is regularly assumed that these are two faces of the same coin. That assumption has dominated reasoning behind the investment facilitation talks at the WTO, as well as its similarities with previous talks on trade facilitation. For that, the potential contribution of investment to peace will be explored as a positive externality of its relationship with trade flows.

The possibility of pacification among states through investment in low politics was again sought to be realized with the complexification of international cooperation and its feasibility in the experiences of the European Community. Later, a neo-functionalist criticism proposed less ambitious goals than the "obsolescence of the State" in the face of the evolution of international organizations. Scholars thus observed that cooperation in less sensitive spheres tends to be progressively expanded towards the sphere of high politics (NOGUEIRA & MESSARI, 2005, p. 75-88).

In the second half of the 20th century, certain developments such as the oil crisis of the 1970s and the fading of the rivalry between capitalism and socialism challenged the intellectual thinking of the field. Other issues have progressively gained more centrality in research agendas. In short, Waltzinian perspectives began to demonstrate themselves insufficient as explanatory bases for new challenges that faced the international community. Bipolarity as an element of systemic stability became the focus of criticism of newer theoretical postulates, considering that the power vacuum left by the end of the Soviet Union, as well as the lack of systemic conflict that occurred, took away these scholar's preferred object of analysis.

2.4. Single-State Dominance: A Review of Hegemony

I don't think you will achieve anything if you continue like this. Until you face the United States and rebel by saying: we are not hostages.
(Vera Thorstensen 2020)

The concept of hegemony is related to the unbalance of power in which one actor becomes dominant and exercises leadership in the international system. The rise of the WTO as a regulator of global trade can be seen through the lens of hegemony theory, as states give up part of their sovereignty in world trade in favour of agreements regulated by the organization. Today, the hegemonic situation is evolving, as the historical US dominance of the WTO shifts partially to accommodate the rise of China (and to a lesser degree, other developing countries as well), and this is essential to understanding how IF negotiations and WTO reform must be evaluated.

The hegemony theory literature attempts to explain the global geopolitical configurations of the modern era based on how theories of hegemony have interpreted phenomena such as the rise of American international hegemony (LAITIN, 1982; BEESON & HIGGOTT, 2005; MANEY, 2005; JOHNSON, 2007; KREBS & LOBASZ, 2007; DESAI, 2013). Similarly, the processes of globalization and neoliberalism are commonly analysed from the lens of hegemony theory (BIELER & MORTON, 2004; DESAI, 2013).

Accordingly, the rise of a hegemonic agent on the world order may have certain desired effects. For example, countries subjected to the hegemonic leadership force might gain in coordination and cooperation, and the absence of a hegemon could lead to disorder in the world order and undesirable results for individual countries. As Snidal (1985) points out, the politics of international economics (especially free trade) has initially been inspired by the theory of

hegemonic stability. In this sense, the maintenance of free trade requires a "benevolent despot" who provides an institutional structure that allows the regulation of international trade. In particular, Snidal argues that the existence and maintenance of free-trade regimes since the 19th century can be directly attributed to the leadership provided by hegemonic members of the international system (namely, the British Empire and later the United States). As a result, this theory claims that economic growth gains are in the best interest of both the hegemon and other participating states, and liberal ordering implies collective gains for all. Nonetheless, from a political point of view, it can be argued that hegemonic theory does not necessarily mean equitable gains between countries, so non-hegemonic states may have an incentive to challenge the existing world order (GILPIN, 1981).

Morgenthau (1965) explains the factors that allow the rise of hegemonic powers: geography and natural resources; economic and military capacity; population aspects; and quality of the government and its diplomacy. He's complemented in his assessment by Ikenberry and Kupchan (1990), who argue that controlling central parts of the economy is key to hegemonic power. In this sense, control of factors such as raw materials, markets, capital, and valuable goods is essential to the rise and the maintenance of a hegemonic power. In general, Krasner (1976), Gilpin (1981), and Kennedy (1987) are responsible for having built and structured the conventional approach to the theory of hegemony.

An influential voice for conceptualizing hegemony, Gramsci argued that the world order could be traced to socioeconomic, structural, and historical factors of countries alone. His theory is based on the premise that "man is not ruled by force alone, but also by ideas" (GRAMSCI, 1975), a definition which implies that the prevailing ideas in certain periods are correlated with the ideas of the dominant classes. Bates (2015) meanwhile summarized the concept of hegemony in a relatively simple notion, by claiming it

is due to the leadership allowed by those who are led, who might absorb the worldview of a prominent group. Cox (1983) points out that Gramsci's idea links the hegemony in international relations with the social structure of the countries.

Later, Schmidt (2018) argued that two main ideas could be identified from the various definitions of hegemony: overwhelming or preponderant material power, and some form of leadership, including domination, over others. The author further explains that material power is related to superior material capabilities, including military, economic, and occasionally diplomatic – or soft – power.

Other schools of thought – such as constructivism, neo-Gramscianism, and the English School – accentuate the leadership exercised by the hegemon instead of material power alone. These schools have a more liberal stance and are more interested in the mechanisms and processes through which hegemony is exercised. For example, in the neo-Gramscianism approach, the primary paradigm is that hegemony and force also incorporate consent. According to Cox (1982; 1983; 1987), the main conditions to establish a hegemonic order include a globally dominant mode of production, a dominant state that facilitates the expansion of production, and a normative and institutional component that extrapolates the conditions and idea of the hegemon across borders. In Cox's argument, the existence of international institutions mitigates conflicts between countries and reduces the likelihood that disputes will be resolved by force.

Meanwhile, the English school approach highlights that hegemonic status is directly related to social recognition. Clark (2009) points out that other states recognize the hegemon, and so leadership is institutionalized through social recognition. Hence, in Clark (2011), hegemony is theoretically defined as "a putative institution of international society".

On the other hand, the constructivist point of view emphasizes an ideational prominence above the material question. In this sense, the question of how common sense is constructed and imposed on others is the main explanation of any given hegemon. As Hopf (2013) highlights, Gramsci's conception of hegemony is helpful to comprehend why less powerful states may go along with and accept an established hegemonic order.

2.5. The Rules of the Game: International Regime Theory

I think one of the overarching, continuing elements of Brazil's participation in the WTO is the safeguard of multilaterally-agreed rules of the game.
(Henrique Moraes, 2020)

International regime analysis is particularly useful to understand the politics of international trade and investment (GWYNN, 2019), and is therefore a significant component of both investment facilitation and WTO reform, owing to the institutionalized nature of the WTO, and the nuances that shape its political structure. Regime analysis considers aspects related to rules and institutional framework that international states use in their political interactions with each other (KEOHANE, 1983, 1984; KOREMENOS, 2001; ZÜRN 2018).

Among competing theories, one concept asserts that the definition of a regime is given by the existence of regular existing norms, principles, and behaviours (PUCHALA & HOPKINS, 1982). Therefore, a given regime does not need to be necessarily explicit, and its existence and coverage depend on the agents' expectations (KRASNER, 1982). In general, within an international regime, there will likely exist cooperation or facilitation of cooperation between

states, an approach that implies that regimes would refer to some sort of multilateral agreement between states.

According to Haggard and Simmons (1987), regimes can be classified or vary across cases in terms of strength, organizational form, scope, and allocation mode. Strength is related to the way in which a regime is weakening or decaying. Organization form is tied to the administrative apparatus for the functioning of the regime, while scope refers to the extent of the issues covered by the regime. Finally, allocation of resources may vary across regimes, and could be market-oriented or centralized and authoritarian.

Haggard and Simmons (1987) further classify the literature of explanatory regimes and regimes changes in four main groups: structural, game-theoretic, functional, and cognitive. From a structural point of view, a relationship with hegemonic stability theory stands out, aiming at interpreting how international regimes allow cooperation. Meanwhile, game-theoretic approaches rely on exogenously determined preference orderings that consider all domestic factors that may imply a state's overall preferences, centring on the structure of a game between international states. In turn, functional approaches add to the study of market imperfections, transactions, and information costs and uncertainty. The authors further argue that these three classifications of literature (structural, game-theoretic and functional) agree that foreign policy is integrally related to domestic structures and processes, while cognitivism focuses more on ideological aspects of regime establishment.

In addition, Gwynn (2019) highlights that institutional context affects states' preferences and provides incentives due to benefits in being a part of a regime. There is a reputational reason that arises from being a part of and cooperating with other agents. For example, the WTO performance was central to enhancing international cooperation. According to Alvarez (2002), world trade became a form

of repeated play rather than a single-play prisoners' dilemma after the institutionalization of the WTO. This means that international states started to interact in the present, considering that their actions affect their pay-off in the future. Also, Alvarez (2002) highlights gains in terms of information, increasing transparency, reducing uncertainty, and boosting confidence among state members.

2.6. Player Agency on the World Stage: Game Theory

If a country facilitates the kind of investment that it wants to attract, it is serving its own interests.
(Juan Carlos González 2020)

The focus of game theories is on analysis of the players' perspectives and the conflicting nature of their interests; in this light, it is clear that while matters such as investment facilitation (owing to their ostensibly mutual benefits) serve as win-win scenarios for all WTO members, reform of the Organization itself can appear differently. Within game theory, cooperation can be theoretically achieved, and scenarios with no understanding can be avoided because a certain strategy can benefit all parties. Such prepositions are found in John von Neumann and Oskar Morgenstern's *Theory of Games and Economic Behaviour* (1944), which defined game theory as the "rigorous analysis of situations of strategic interdependence" (DIMAND & DIMAND, 1996). The authors describe situations where actors must act accordingly to others' potential moves, a position of so-called "psychological uncertainty".

In IR, game theory has allowed for the shift from the traditional conflictual vision that was common among scholars of the field to envisioning scenarios that could lead to greater cooperation. However, critics of game theory reproach it for its assumption that agents think in sequential terms, when in reality they take decisions simultaneously in the international arena (STONE, 2001). This is

important because typical game theory models generally involve determining "who moves first" – a choice that has implications for the whole sequence of subsequent moves.

Modern game theory models have attempted to overcome some criticisms through the use of advanced computing technology and econometrics. This has allowed scholars to simulate a "game" over a near-infinite number of periods. For example, the World Trade Organization has used this technique to design "pro-cooperation" tariff agreements in which actors have minimal incentives to cheat (WTO, 2007, p. 94).

Recent scholarship has attempted to model the trade conflict between the USA and China through the lens of game theory modelling (YIN & HAMILTON, 2018). However, as they discovered, the potential losses stemming from a trade war where both agents reject cooperation are asymmetrical. This is not the case in typical game theory models. Thus, one needs to better understand the asymmetrical impacts of protectionist measures in the specific context of a trade war to pursue mathematical modelling of the latter's outcomes.

Undoubtedly, the computing requirements for simulating a complex environment closer to our own, with simultaneous, adaptive, and reflexive decision-making, are enormous. Indeed, game theory often seems to demand more information than can feasibly be obtained (SNIDAL, 1985).

Crucial, then, is Tema's (2014) game theory and *game-theoretical* contributions to international relations. While the first concentrates on the modelling and formulation of mathematical language, the latter attempts to contribute theoretically to the literature and understanding of IR scholars. In this sense, the principal contribution of game theory to our interests is its substantial expansion of "the realm of the rational actor beyond the confines of the Realist

approaches to a more complex and interdependent world" (TEMA, 2014), which demonstrates the promise game theory holds for International Relations, but only in specific – often information-based – circumstances.

2.7. Building from the Ground Up: Constructivism in International Relations

Investment facilitation translates into a win-win situation for both host and home countries of FDI.
(Carlo Pettinato, 2020)

Constructivism is the theoretical framework that primarily builds the premises of this thesis and informs the analytical tools that explain Brazil's leading position in IF discussions. This position adheres to the constructivist postulate that human agents exist in interdependence and share common interests (a so-called *standard system of meanings*) that can produce win-win agreements and cooperation, thereby tying together the national interests and institutional construction that shapes the relationship between IF negotiations and reform of the WTO.

The emergence of constructivism may be understood from the lens of what Ulrich Beck called "reflexive modernity" (BECK, 1986). As outlined by Guzzini (2000), "reflexive modernity" refers to an "increasing awareness of the inherent limits and ambiguities of technical and social progress" that promotes a critical stance *vis-à-vis* modernity.

On another note, it can be argued that "the arrival of the 'Third World' on the international scene made it impossible to overlook the fact that the international system was ruled in a way which had little to do with liberal principles" (GUZZINI, 2000). Thereby, the constructivist developments within the IR discipline followed a common trend seen in the social sciences during the 1980-1990s.

One instance of this trend would be economic development theory, which established grounds to suspect that financial wealth in rich and developed countries was systematically linked to the exploitation and dependence of poorer nations (ESCOBAR, 1995).

Even though neoliberalism acquired a lot of prestige when describing the importance of instruments such as integration and international trade, it still lacked the concepts and tools necessary to explain a series of processes in the international system. The search for connections that would explain the world in its "new" configuration led directly to constructivism emerging as a relevant school of thought within the discipline of international relations.

The end of the Cold War brought several challenges to the realist paradigm. The 1991 dissolution of the Soviet Union – and consequently of the bipolar order – without a military conflict between the hegemonic powers put the neorealist argument in check. As Nizar Messari and João Nogueira (2005, p. 162) have described, IR constructivism arose in the 1990s as an emergent challenger to the canonical debate between neorealists and neoliberal institutionalists.

Essentially, constructivist scholars proposed a new understanding of classic themes relevant to the discipline, such as the notions of anarchy, power, state interest, and, more broadly, global change (HOPF, 1998). The shared premise of many of these scholars was that constructivism is epistemologically about the social construction of knowledge and ontologically about the social construction of reality (GUZZINI, 2000).

The focus of the constructivist approach is on the social construction of IR politics. Wendt (1992) argues that the anarchic condition of the international system is part of a socially constructed framework based on the interaction of states in the environment in which they are inserted.

By bringing with it the concept of identity, which guides constructivism in the social sciences, the school of thought explores the existence of "cultures of anarchy" in international relations. The ideas of Wendt, later further developed in *Social Theory of International Politics* (WENDT, 1999), start from the premise that sovereign states form a society governed by practices and ideas. From this line of reasoning, he defends the idea that international anarchy can be understood as a cultural expression of the units within the system, thus liable to transformation.

According to this latter contribution, there are

> two basic tenets of constructivism: (1) the structures of human association are determined primarily by shared ideas rather than material forces, and (2) the identities and interests of purposive actors are constructed by these shared ideas rather than given by nature.

Since the focus of analysis in the constructivist perspective is on the building of relationships as a result of human interactions between agents or institutions, it can be argued that the position of IF initiatives depends on these interactions, as well as adjustments between the main agents involved in initiatives. In particular, the general idea of IF is related to helping states enhance their investment level. In this sense, social construction forms part of investment facilitation, and the process requires the engagement of different actors and spheres through collective involvement.

Relying upon this is Checkel's (1997) distinction between liberalism and constructivism regarding the rules-based international order. According to the scholar, traditional liberal thinkers will affirm that international rules, such as those negotiated within the WTO, constrain the behaviour of – and affect the incentives guiding – economic actors. Meanwhile, constructivist thinkers will instead "suggest that the effects of norms reach deeper – they are shared understandings that constitute identities and interests" (CHECKEL,

1997). While it is apparent that the two lines of thinking are not mutually exclusive, one can handily see the degree to which current IF talks draw greater relevance from a constructivist standpoint. As Francesco Duina points out, WTO rules and its collection of trade agreements constitute "cognitive guidebooks" for policymakers to determine which deviations from free trade are deemed legitimate (DUINA, 2006; ABDELAL, 2009, p. 70). Therefore, the promotion of investment facilitation is dependent on socially constructed cooperation between and among sovereign states. International collaboration and direct assistance are essential to enhance investments.

In most cases, the bargaining processes of bilateral treaties show an undeniable presence of self-interest and coercion, similarly to how the bilateral framework of investments is based on a private or national company's goal of applying resources through FDI in another state. On the other hand, IF initiatives differ from the Hobbesian philosophical perspective of pure self-interest, departing from the realist perspective of the existence of states in an anarchic international system.

Meanwhile, bilateral investment treaties allow more space for moral or ethical dissociation from the decision-making process. By advancing on IF initiatives, states shape and create a positive, sustainable economic environment, one that shapes policy relations of states and enhances cooperation. Thus, an IF process serves to construct new meaning and new goals in international investment.

It is important, then, to consider Maja Zehfuss' (2004) remark that although nations may be self-interested, from a constructivist perspective, "they continuously (re)define what that means" and "influence international practice in a significant way" (ZEHFUSS, 2004, p. 4). Meanwhile, in terms of investment facilitation, Adler (1997) has described that "in the manner in which the material world

shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world" that surround us. Considering that the "material world" provides foundational grounds for all realist diagnoses of self-interest, the degree to which social constructionism aims to influence our ontological interpretations of such a material world is crucial (ADLER, 1997).

Therefore, the constructivist perspective emphasises current political processes that contain a high potential for change, as it departs from realist interpretations of the inevitability of global processes (RISSE, 2005). Per constructivists, soft powers, identity, and immaterial forces and non-state actors all present promising pathways to engaging with social construction of reality in international relations.

It is true that some thinkers, hailing from other strands of thinking, commit to a structuralist reading of globalization, according to which greater forces at play in the international economy create the environment with which diplomats and politicians must conform to and adjust (BEISHEIM & WALTER, 1997). This may lead to a pessimistic diagnosis of the potential outcomes of political processes, as the latter is seen through the lens of a race to the bottom. As some critics of the WTO's Single Undertaking principle pose, the principle creates a scenario that appeals to the least common denominator.

However, this thesis takes a different view, as, from a constructionist perspective, the international order is not inevitable and is itself a construction that is "reinforced and reproduced through social and political practices" (RISSE, 2005). If one accepts the truism that the global economy – or the international arena – is not neutral, one may also assume that a constructivist perspective attempts to understand why that is and what actions may be taken to change it.

Through this, the constructivist avoids unknowingly maintaining a present configuration of networks and interdependence.

This idea of constructivism as a pragmatist and consensus-seeking logic of action that contributes to our understanding of current WTO negotiations approximate what March and Olsen define as the "logic of appropriateness", in which

> Human actors are imagined to follow rules that associate particular identities to particular situations, approaching individual opportunities for action by assessing similarities between current identities and choice dilemmas and more general concepts of self and situations (MARCH & OLSEN, 1998, p. 951).

As an "everyone wins" political project, IF draws upon this particular force of constructivism: behaviour may be driven by the maximization of self-interest, but is also driven by the joint perception of "what is right" for all partners combined.

On the other hand, other constructivists are "*durosellians*" (named after historian Jean-Baptiste Duroselle). In comparison, these scholars instead adopt a focus on decision-makers, strategists and diplomats, and other actors that are of direct relevance to the object of analysis (FRANK, 2003). To the degree that its analysis employs literature from the constructivist branch of IR, and because its data collection design – further developed in a later subchapter – draws on qualitative insights from experts, diplomats, and more, this thesis will arguably fall into the durosellian tradition.

There are several other reasons to affirm that investment facilitation profoundly concerns the constructivist branch of international relations. For example, the measures of cutting red tape and speeding up administrative procedures and requirements aim at creating global facilitation on investment flows in many economies. The promotion of the Sustainable Development Goals (SDGs) can also effectively enhance the sustainable development

agenda of developing states, while the IF paradigm more generally aligns domestic laws and regulations with internationally accepted standards of sustainable development.

More generally, one can see the WTO as a simple platform at the crossroads of diverse and diverging national interests, each with its team of representatives that relays orders and information without distortion. However, a constructivist would perhaps instead describe this organization as a *process* of rules and norms which are constructed over time, within which each actor is not neutral. The constructivist approach is better equipped to evaluate and create categories within this "discourse arena" for the problem-solving capacities of each government and stakeholder. Furthermore, the constructivist foundations of works by Michel Foucault lead to the natural development of questions such as "Who is allowed to speak in a discursive arena, what counts as a sensible proposition, and which meaning constructions become so dominant that they are being taken for granted?" (RISSE, 2005). An example of the final of these can be found as early as 1944, when Karl Polanyi claimed that "there is nothing natural about *laissez-faire*" (POLANYI, 1944). Thus, investment facilitation, as well as this thesis, defend the notion that the modern global economy has become what it is today because of current, and, crucially, *ongoing*, political and diplomatic processes which overcome ideological and national differences to integrate the countries of the world.

Considering the aforementioned elements, it could be tempting to believe that constructivism is an inherently superior theory, as if it promised to solve all issues present in other perspectives such as liberalism and realism. However, this is far from the truth. As described by Rawi Abdelal regarding the emergence of constructivism within international political economy, "one thing constructivists have learned from the weaknesses of other approaches is that a single theory, constructivist or otherwise, is neither possible nor

desirable... for constructivism is neither a theoretical apparatus nor a research program" (ABDELAL, 2009).

The approach of this thesis may instead be viewed as a different analytical language than rationalism, which emphasizes intersubjectivity and views actors such as the state distinctly from both liberal and realist perspectives. The state is considered here as a purposive agent, whose political clout derives not from assessments of hard power but rather from a combination of factors constitutive of more sophisticated notions such as legitimacy and diplomatic authority. In addition, self-interest is considered an endogenous variable, resulting from the cooperation of various parties that define domestic and international negotiations (such as in the IF case). Institutions, norms and values, culture, and national identity are all constitutive factors of self-interest worthy of analysis, to the same degree as military might, financial clout, or industrial output.

2.8. Jeans, Music, and Free Trade: The Importance of Soft Power

Brazil has the largest market in South and Latin America...
(Paulo Elias, 2020)

The concept of soft power, first developed by Nye (1990), refers to a persuasive approach to international relations, one related to either economic matters or cultural influence in a way that encourages adaptation rather than coerces. Brazil's position within the WTO, and in fostering IF talks, ties into this concept, as the country's sheer size and diplomatic position bolsters its reputation and leads to an easier cooperation for like-minded member countries to join its causes.

In considering soft power, a country could achieve a desired outcome by influencing, lobbying, or positioning strategically in

foreign relations, all without ordering other states directly. As Nye (1990) emphasizes, factors such as technology, education, and economic growth have become more significant in international power. Consequently, factors such as military power and the conquest of new markets are no longer the main determinants of international prominence.

In this context, international institutions such as the WTO and the International Monetary Fund (IMF) play an important role in the interactions of member states, with ideological and cultural influences subsequently transmitted between countries. For instance, free trade has been advocated within the WTO since the GATT era. However, following the Cold War, many rising powers gained economic and political relevance, in the process challenging the existing world order. Chatin (2016) and others (GARDINI, 2015; MARSILI, 2015; SATANA, 2016) emphasize that Brazil is a good example of diplomatic soft power. Indeed, the author would make the case that, by projecting itself as a soft power broker, Brazil's diplomatic stance, when paired with its actions in recent decades, shows potential to influence international issues.

Regarding China's growing influence in the last decade, the existing literature recognizes Beijing's soft power strategy, especially through influencing other (smaller) partners to accommodate its economic growth (GILL & HUANG, 2006; CHO & JEONG 2008; VLASSIS, 2016; GIL, 2017). In general, factors such as industrial growth and the penetration of Chinese products in global markets, as well as cultural issues such as the increase in people in the world studying Chinese languages, are pointed out as factors that indicate Chinese soft power accomplishments in international relations.

According to McClory (2011), Nye's definition of soft power can be expanded to five main categories: government, culture, diplomacy, education, and economic model. The first pillar is the government,

which is related to the political values of a country. The second pillar is cultural in nature, containing a set of practices that give a country's society an identity. Next, McClory (2011) highlights the pillar of diplomacy, which is a direct instrument to influence other states through a specific foreign policy. Then, McClory (2011) argues that a high level of education affects countries' influencing power. Finally, the fifth pillar is related to the economic model, due to the ability of successful business and economic innovation to influence other markets. In practical terms, each of the soft power initiatives are implemented by different types of agents; while national states are the traditional actors of soft power policies, the NGOs, the civil society, or the private sector can also contribute to influence other agents.

According to Nye, both hard and soft power are used in diplomatically successful states. While hard power initiatives indicate direct coercion, related to economic or military capabilities (or dominance in specific resources), soft power initiatives are intangible forms of power, such as culture, ideology, and institutions that have a long-term effect on shaping others' preferences. In this sense, Baldwin (2012) argues that the importance of hard power has been overvalued, while the importance of soft power influences might have been underestimated.

Nevertheless, soft power initiatives could not be a remedy recipe for all cases. The literature points out to a third way known as smart power. McCoy (2011) highlights that since some objectives are better suited by hard power policies and others by soft power measures, countries should maintain a flexible or discretionary strategy in each specific issue. Hence, Pallaver (2011) emphasizes that the decision-making process of choosing a type of initiative may take in consideration the effectiveness of the chosen alternative to reach a desired outcome. In this sense, as Nye (2004) points out, both

types of power strategy are related, given they both represent the ability to achieve a desired goal by affecting the behaviour of others.

2.9. Mediterranean History as Modern IR: Thucydides Trap

> *So, since its [WTO] accession in 2001 until today, China occupies increasing space to the point that the United States-China tension is one of the things that defines the attention of the international economy.*
> (Ambassador Alexandre Parola, 2020)

Thucydides' Trap refers to the Greek historian's metaphor related to the potential dangers when a rising power threatens an established power. As Allison (2017) highlights, in modern times the commercial tension between the United States and China has raised the issue again, and while Allison concludes that war is likelier than not, other sources of disputes are arising, most notably commercial tensions, which have increased in the last decade. These disputes and tensions feed into the focus of this thesis on IF negotiations, owing to the two countries' positions on the matter, and even more into the focus on WTO reform, as much of the current WTO deadlock boils down to the gap in national interests between the two superpowers.

In the original analogy, Allison (2017) explains that Athenian development frightened Sparta, at the time the leading power in the Peloponnesian peninsula. On one hand, Thucydides argued that Athens' interests were to revise the existing balance of power to reflect the new reality of their advances in areas such as philosophy, architecture, democracy, and naval prowess. On the other hand, Allison (2017) describes Thucydides' explanation of Sparta considering the Athenian requests as unreasonable and threatening to the established system.

As Allison (2017) highlights, China has displaced the United States as the world's largest economy, in terms of the amount of goods and services a citizen can buy in his own country. By this metric, the Chinese economy has overcome the American position of established hegemony. This poses a challenge to the balance of the international regime in Thucydidean terms, and in this sense the literature has been driven to seek paths in which a Thucydides Trap could be avoided (BRZEZINSKI, 2014; ALLISON, 2015; ER, 2016; MOORE, 2017; YANG, 2018; LEE, J. 2019).

Brzezinski (2014) highlights that strong international institutions could accommodate the global power shift without leading to war or a major power dispute. Conversely, Er (2016) argues that there is a risk on both sides of identifying the Chinese rise as a threat, paired with the relative decline of American dominance in the world order.

2.10. Norms vs. Threats – The Contrast Between Hard and Soft Rules

> *I think the biggest obstacles stem from the fact that you are negotiating hard law in a context where countries are looking for national and individual solutions.*
> (Felipe Hees, 2020)

The functioning of the international system and community is based on norms. The IR literature on norms starts from this idea, classifying the norms in question as a set of rules. In the context of the WTO, negotiations between members follow different paradigms, specifically either hard rules related to direct negotiations on goods and services or soft rules, which in general are linked to the negotiation of procedures, conduct, and trade or investment facilitation. In particular, the morphing of the GATT system into the formal WTO was a transition from soft to hard law which codified

existing norms (ABBOTT, 1995). Today, as this thesis argues, many of the inextricable ties between IF negotiations and WTO reform stem from an identity crisis surrounding this very morph.

In particular, Abbott (1995) emphasizes that in the transition from GATT soft approach to the WTO hard law aspect, the dispute settlement system changed from a consensus-based arrangement to a judicially-determined dispute settlement mechanism. He's argued that while the GATT framework may have been largely successful in resolving disputes, it lacked the legal character of a judicial procedure. Conversely, Footer (2008) has emphasized that the WTO member states have turned once again to soft law in the WTO due to complexity and difficulties to advance in the agenda of trade enhancement.

It is important to mention the variable normativity and facilitative and coordinating role endemic to soft rules. Thus, Footer (2008) points out that there are advantages to using soft rules, such as: the possibility they will be elaborated upon by hard rules in order to give meaning to the rule's soft content; their ability to act as a precursor to the development of other legal norms; their impact on the further development of treaty rules; and their ability to constrain otherwise-hard legal norms; and their raising of responsibility in operative legal norms.

As highlighted by Abbott (1995), the idea of soft rule has been used by international lawyers for several years to characterize legal norms that do not effectively compel compliance; conversely, the idea of hard rules is related to a set of norms to which a relatively high expectation of compliance exists.

Cohen (1980) in particular proposes a classification system to characterize the main aspects of rules. Firstly, there are legally binding agreements that consist mainly of written international treaties. Treaties attempt in part to specify the paradigms of a

given relationship, though there is a limit to what can be considered within the scope of an agreement signature. Secondly, Cohen (1980) mentions the nonbinding written understandings which propose a degree of explicitness that are an outcome of direct negotiation. In particular, the legal value of those understandings is not the main feature, though it provides a framework of rules of the game to those involved. Third, there is the gentlemen's agreement that results from direct communication between two parties, but that is not put on paper in terms of a direct agreement or understanding. In this case, both parties may prefer to not put on the agreement directly on paper in order to avoid involving third parties not related to them.

More generally, Cohen (1980) argues that agreements and understanding have other dimensions distinct from the legal perspective. In this sense, the spirit of an agreement is the tacit dimension of an accord, meaning what is "written between the lines" or the interpretation of the agreement that is done by all parties. Those features may be hidden to avoid explanation to third parties or simply because they seem evident at the time of the accord. Cohen (1980) emphasizes that tacit understandings are possible as well, understandings contained neither in a written document nor in a verbal agreement. Generally, the author argues that the rules of the game, in this case, are tacit simply because no direct diplomatic relations exist, or those rules are not defendable publicly even in a verbal understanding. Finally, on the total opposite spectrum of written agreements are the mutual self-limitation understandings. In this case, there is an understanding of prohibited behaviour that is generated in the total absence of any form of communication, and reciprocity exists due to fear of possible consequences of adopting the limited behaviour.

As Abbott (1995) assesses, the general idea that a well-developed set of hard rules is necessary for the proper functioning of world trade relations is a fallacious one due to the existence of other variables

that may have effects on the commercial relationships of countries. These variables are not considered in the economic rationale of the liberal theory, which believes that free trade through cutting tariffs generates the greatest gain in economic well-being for the countries involved. This idea is based on the Ricardian approach of comparative advantages and gains in production specialization that can be materialized through trade. In this sense, the author highlights a few outcomes that may not be desirable in hard law framework, such as disputes between states that may arise at least in the short run, a reduced likelihood that governments will accept new commitments, or an increased likelihood that disputes will lead to a breakdown in intergovernmental relations, in the end not resulting in compliance. Hence, based on the argument of negative outcomes, the author argues that hard rules are not necessarily "good" rules. The use of soft law can bring advantages to the functioning of the WTO and to the development of new solutions for the challenges that the organization encounters. Soft law can help resolve disputes between members, as well as facilitate the creation of new paradigms that benefit WTO member countries while avoiding the imposing character that hard law can create.

2.11. A Trick to Fly: Review of Variable Geometry Theory

It is important to be clear that plurilateral negotiations are the history of the multilateral trading system. Until the Uruguay Round, all negotiations were always plurilateral negotiations.
Felipe Hees (2020)

Variable geometry theory emphasizes the possibilities of creating adjustable agreements as they are being negotiated or applied. In the WTO context, IF negotiations can be analysed through

the variable geometry perspective, given the largely plurilateral and ever-evolving nature of the agreement being proposed. In fact, the scope of the IF negotiations has different stages of implementation, according to the different countries involved in the process. The main idea is that IF is implemented according to the capacities and aims of the states involved, in time gradually expanding its applicability within WTO members. In practice, variable geometry is a strategy that allows agreements to not be restrictive to all parties involved. In this sense, a fluid disposition allows negotiations between states, rather than just an inert construction of agreements with applicability determined in the same way or at the same time for all parties. In a complex many-country many-issue negotiation, the variable geometry method is an alternative approach that does not strictly require that all parties be bound by the terms agreed (GOLDSMITH, 2003).

As emphasized by Mills (2012), the term has been borrowed from aeronautical engineering and refers to an aircraft with wings that can alter its aerodynamics characteristics. The analogy is made on the governance level, where some agreements and issues can be discussed with greater flexibility, and the gains of doing so may compensate for the losses of not applying strictly equal terms to everyone involved in the settlement process. The idea of variable geometry has been applied to two particular contexts of global governance. In the first one, the metaphor has been applied in literature related to the context of governance within the European Union formation process. In the second case, the variable geometry point of view has been applied to the international trade regulations of the WTO. However, given international trade regulations and trade law, one could argue that variable geometry has been used since GATT, even though the main idea of the term was not popularized in the literature at that time.

As the Doha Round of trade negotiations has experienced a stalled deadlock, variable geometry alternative strategies have emerged as a feasible path to advance negotiations. For instance, distinguishing between "developed" and "developing" states partly increased the degree of difference in obligations among member states. Furthermore, discussions of enhancing flexibility in agreement negation have gained ground in the WTO, and other paths, such as the plurilateral approach, have emerged as a possibly better way to advance in several topics negotiated in the WTO.

2.12. Ensuring Sync Among Players: Cooperative and Bargaining Models

So the objective is the same: that the system remains the way to cooperate internationally within commerce.
(Thaís Mesquita, 2020)

The negotiations of WTO member countries on IF initiatives may be analysed from the perspective of strategic interaction between these member countries, with cooperation and bargaining models highlighting the strategic aspects of actors involved in the negotiation process. IF involves adjustment agreements in the investment process between WTO member countries, and the outcome may benefit all members involved in the initiatives. In the process of bargaining, wins and losses are considered by actors involved, while cooperation models analyse the possibility of mutual gains due to cooperative behaviour.

Cooperation models mainly mirror coordinated behaviour in the absence of a government, or even altruistic behaviour from the actors involved in a negotiation. In fact, the literature on international cooperation highlights that cooperation is a possibility if there are welfare gains for all parties. Even though cooperating and bargaining

have been used beforehand, the terms were popularized by Taylor (1976) and Axelrod (1981, 1984).

According to Schelling (1980), international cooperation theory is a refinement of the "theory of bargaining" or "theory of the conflict" aspect of international political economy. Keohane (1984) also discusses the relationship between conflict and cooperation, with one of the main arguments being that institutions are essential to enhance cooperation levels even in the absence of hegemonic power. International organizations such as the UN, WTO, or World Bank actively promote cooperation initiatives internationally.

The point of view in international cooperation theory differs from realist literature because it postulates that even in the worst-case scenario, or with strong assumptions about self-interest, rationality, or anarchy, cooperation is possible. The main argument is related to game-theoretic models in which the bargaining process may have a long-term stable equilibrium if all actors involved are acting to maximize their gains. In other words, if cooperation is the best strategy for all parties involved, this will likely be the outcome. Thus, based on the repeated prisoner's dilemma strategic game, cooperation is a possibility in a repeated scenario in which the bargain in the present has future consequences.

International cooperation theory takes into consideration the ideas of reciprocity and reputations. If other parties cooperate, the reciprocal act is cooperation as well. In terms of reputation, actors may avoid not cooperating at some point due to a potential loss of reputation that could affect long-term equilibrium (KEOHANE, 1986). In particular, the literature, as Sartori (2005), Tomz (2007), Rathbun (2011), Milo (2012) and Kertzer and Brutger (2016) emphasize, focuses upon the importance of cooperation in international relations, and also includes other variables, from

communication and trustworthiness to analyses of reputation and reciprocity.

Besides the analysis of the operation of individual states, the literature has also focused on the international institutions' role in institutional models. Here, the study of cooperation is more concerned with how the institutions may affect the bargaining and cooperation game, therefore shedding a focus on evaluating how international institutions may create and maintain cooperation equilibrium. In particular, Keohane and Martin (1995), Abbott and Snidal (1998) and Keohane and Victor (2011) analyse how international institutions act in IR, providing a point of view that highlights the idea of international institutions as agents in the cooperation and bargaining strategic interactions.

2.13. Getting to the Answer: Research Methodology

Considering the theoretical background, it is now time to reflect upon the manner in which it shall be put to use within an empirical framework. The following section shall define as well as evaluate the methodological approach that will be exercised across this thesis, in order to articulate how the author seeks to broach analysis of IF negotiations within the WTO landscape over the past decade. In short, it shall review common methods existing in the social sciences to guide the approach of this thesis to interviews, analysis of confidential documents, and other sorts of primary sources. It shall also evaluate those methods' common usage in the constructivist school of IR, with the primary aim of establishing how this work relates to pre-existing literature, and thus how it seeks to contribute new insights towards the greater body of knowledge.

However, first and foremost it will remind us of the research objectives, as well as the significance of this thesis' purpose. According to Tashakkori and Creswell (2007), research questions

are constituted by the objective of a research project, and in turn "form the methods and the design of the investigation" at hand. Thus, after outlining the objective of this research project, the aim is to design a methodological procedure that will enable answering the research questions. A rigorous methodological design is important for research, as it contributes to strengthening academic rigour, systematicity, objectivity, and credibility within the social sciences (ARADAU & HUYSMANS, 2014).

On the one hand, the research design shall be composed of an IR conceptual procedure, thereby making coherent use of the relevant essential literature. Meanwhile, the methodology will be based on expert interviews, through previously established questions.

2.13.1. The Guiding Question: Research Objectives and Paradigm

The thesis proposal at hand aims to understand the proactive and dynamic role of Brazilian diplomacy in shaping and modernizing the principal multilateral trade system through, in essence, reform of the World Trade Organization. In 2020, at the dawn of a new decade, on the threshold of a major international system shift due to the US-China struggle for hegemony, WTO member countries seek to redefine the organisation, in a revealingly complex process, which plays into the overall research objectives of this thesis.

Besides describing the main aspects present in the speeches that currently defend WTO reform and modernization, certain precedents for reform ideas that emerged before the Tokyo and Uruguay Rounds will be briefly explored. In both cases, the US stance was decisive for both the launch and the outcome of those rounds. In the context of the Uruguay Round, in particular, the United States relied on tactics that were considered "aggressive unilateralism" by certain critics at the time, tactics which bear similarities to the stance of the current US administration. In light of these precedents, it is reasonable to

expect that WTO reform in the present context is indeed inescapable, either in the form of modernization or refoundation.

The current WTO crisis fits into the broader picture of worsening US-China competition, of which the so-called "trade war" and technological tensions are the most evident symptoms. Besides US-China competition, there are long-term structural factors that also endanger the multilateral trading system. Firstly, there is the Doha Round impasse, along with the frustrations and distrust stemming from its failure over the past decade. Secondly, there are the negative reactions to the Obama administration's trade multilateralism, as seen in the negotiations of mega-regional agreements such as the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), with WTO-plus and WTO-extra features. Thirdly, there are several criticisms against what has been perceived as the more legislative character of the Appellate Body of the Dispute Settlement Body, which moves away from its original mandate. Finally, there are the US steel and aluminium tariffs – justified through a national security lens – imposed in 2018, with retaliations from the impacted countries.

Furthermore, members of the WTO often discuss reform based on the three pillars of the organization. Reform of the jurisdictional pillar essentially deals with the status of the Dispute Settlement Body, and in particular the functioning of the Appellate Body in light of its paralysis in recent years. Calls for transformation of the negotiating pillar have generally emerged from dissatisfaction with global multilateral impasse since the failure of the Doha Round, which has led to the undermining of the single-undertaking principle, the emergence of plurilateral processes, and the revisiting of special and differential treatment. The modernization of the regular monitoring and transparency pillar seeks to preserve a framework of multilateral rules, combined with improvements in specific areas, such as deadlines and financial penalties with notifications.

Crucially, the WTO is one of the central axes of multilateral action for Brazilian diplomacy, for the simple reason that a universal system of rules and dispute settlement creates favourable conditions in which Brazilian companies and exporters can operate. Contesting agricultural subsidies contributes to the competitiveness of agribusiness, just as legally restraining the use of industrial subsidies was fundamental for Embraer, a Brazilian aircraft company, and negotiating an e-commerce agreement will have implications for the country's service sector. Brazil's economic prosperity and international trade liberalization, therefore, depend on the success of WTO reform.

Overall, recounting the successful tenure of the first Brazilian Director-General of the WTO, as well as the key Brazilian experience on issues such as IF, trade facilitation, and fisheries subsidies, all helps to shed a light on explaining the active position of Brazilian foreign policy in reforming the World Trade Organization.

The significance of the proposed research, on the Brazilian role in WTO reform, relies on it being based on original research that produces new knowledge, instead of summarising what is already known in a new form. In this spirit, the originality of this research derives from my own perspective as an active agent of the object of study. The thesis also draws arguments from other research work to corroborate its core arguments. Overall, uniqueness is one of the most important criteria for a successful doctoral thesis; my thesis is intended to significantly add to the accumulated knowledge within the IR discipline, in the process offering something new for contemporary studies of the WTO's rules and processes.

New elements can emerge from this thesis, such as new interpretations of existing WTO data, providing additional support for current theories, models, or interpretations of international trade,

providing new solutions to WTO crises, and analysing phenomena in the international system in new ways.

Within the scientific study of international relations, the relationship between political practice and theory is systematically put to the test. Human interest in the scholarly study of these topics, amplified with the development of globalisation, seeks to accompany the complex rhythms of transformation inherent to the objects of study. For example, macro scale theories have distinguished themselves by delineating the general boundaries of the playing field; however, they have not been proven sufficiently sophisticated for the depth of knowledge demanded by modernity (SNYDER, 1992).

As proposed by Kenneth Waltz (1979), the "first level of analysis" is an approach that takes scientific interest on a specific actor, unveiling a myriad of phenomena which are specific to that object of study. Hence, the analytical trajectory guiding the study of Brazilian foreign policy enables a series of variables that extrapolate both the systemic context ("third level"), as well as that of the states ("second level"). Beyond the objective components structuring reality, one must also consider the influence that ideas and concepts themselves impose on political practice, be it the exercise of foreign policy or in the structuring process of contemporary institutions. Once one accepts that politics are not bound by hard scientific law, one can then understand the reasons and consequences of strategies of international insertion.

The descriptive method, as a fundamental part of the scientific effort developed in this thesis, demands the verification of the qualitative components embodied in the object of our analysis. Thereby, the historical exercise makes reflection possible, most notably in relation to the narrative foundation embedded in the identities of the various actors under observation, as well as their processes of constant transformation. Furthermore, the

understanding of concepts and ideas enables one to move beyond the historical process that informs the present, considering that knowledge and information serve as parameters in foreign policy decision-making. Indeed, the analysis may go deeper, and thus reflect distinct interests guiding actors to maximise their gains on the international chessboard, as strategies put into practice by decision-making individuals.

Consequently, qualitative interviews are crucial to gathering data from sources within the IR context. More often than not, the method of qualitative interviews has almost always revolved around non-expert individuals, who may cause expected reduction in the quality of the data. Interviewing experts provides much-needed credibility (LITTIG, 2009), since they understand the functional importance of accuracy without portraying subjectivity. Obtaining data through qualitative interviews with IR experts serves as the primary gateway to deconstructing and analysing potentially polarizing and inconsistent data. Data collected through qualitative interviews with experts harmoniously expands a given field of knowledge regardless of the sample size (BOGNER, 2018).

As part of a global community and researchers within international relations, we are bound by the inevitable rules of the epistemic communities (BAKER & EDWARDS, 2012). Conducting research leading to internally unbiased conclusions and discussions in IR may come with an understanding of the role we play – and the attachment we have – to several epistemic communities. Understanding this role ensures that the research and subsequent interviews focus on issues relevant to the questions that need answering (MORAVCSIK, 2014). In following this criterion, it becomes easier to create a rubric through which one determines what evidence is deemed satisfactory and necessary to convey and lend new information to the discipline. The understanding of the epistemic inclusion also aids in moderating the number and type

of interviews, the diversity of interviewees and the sample size, all of which are necessary for accurate data extraction. Therefore, the ability to conduct qualitative interviews with experts stems from a desire to understand the structural and social nuances of the conditions at play.

The paradigm of this research is pragmatism, as it is addressed in a practical IR question. Pragmatism is the "focus on the outcomes of action" (MORGAN, 2013, p. 28). Morgan expands on his research by saying that "whatever theories are useful in a particular context are thereby valid". Johnson et al (2007) outline that pragmatism contains an epistemological – as well as a logical – justification for mixing approaches and methods.

Firstly, the epistemology, essentially one's beliefs about how one might discover knowledge about the world, will be based on data and knowledge gathered from experts in the area. In accordance with Kivunja (2017), an epistemology grounded on authoritative knowledge will be applied. When selecting the experts, the backgrounds of these experts was considered, as was their relationship with the subject matter, in order to ensure a maximum of objectivity. A more detailed consideration of the interviewees will occur in a following section of this overview. Secondly, the ontology, which covers assumptions about the world, is also characterized by pragmatism. Overall, we generally chose the lens that best enables us to answer the research question, according to Sharlene Hesse-Biber (2010, p. 39).

2.13.2. Painting the Picture: Research Methods Design

The research question and hypothesis contain both historical analysis and qualitative elements gathered in interviews, leading next to the question of data collection design on the IF topic. This research project will start with the qualitative data gathered during the empirical research, namely the results of the interviews

with experts and academics. Experts in the field will be chosen in accordance with their relevance to answer the research questions, as well as their knowledge on the specific case of Brazil within the IF negotiations at the WTO. Interviews will offer a rich and in-depth perspective that numerical data could not offer.

For example, the categories of how Brazil might contribute to WTO reform may include positive engagement, negative engagement, or a lack of engagement. The interviews and other qualitative data form "a qualitative core component that directs the theoretical drive" (JOHNSON, 2007), and, combined with the pragmatic stance adopted here, this research aims to generalize the specific case study to judge its potential in applying to most WTO members. The interviews also enhance the analysis to be more comprehensive and inclusive of the broader sociopolitical realities, resources, and needs that define the current context of the WTO.

In the qualitative area, limitations can concern the interviewee selection: different experts may have different opinions, and thus may guide subsequent research significantly. Proper selection and neutrality shall be confirmed. Furthermore, the interview style is important, as depending on how the interviews are conducted, the outcome may differ. Adhering to ethical principles and establishing a standard protocol will be required, while a good psychometric instrument may be helpful. Most of all, concerns must focus on the quality of the data; results must meet quality prerequisites that shall be established early on.

To avoid these aforementioned limitations, we shall make a few assumptions about the research. The qualitative data is not predetermined, and open questions are being asked in interviews and case studies. This means that any outcome is possible during the interview, potentially opening the research to unconsidered aspects. As questions are open-ended, the interviewee can guide

the discussion, for example, by using illustrative case studies. Therefore, there might be a wide potential of possible outcomes. Finally, following the qualitative data analysis, the findings shall be tested by a specific case-study. This testing will help ensure validity, verifiability, and reliability of the research. For example, given a conclusion from qualitative interviews, has Brazilian diplomacy contributed to WTO reform and the updating of the multilateral trade system?

Another perspective in the discussed qualitative data design that the research will briefly touch on is the inductive and deductive approach, as well as the gap between empirical research and the theorizing process. Wallace (1971) and Blaikie (2000) illustrate a cycle of inductive and deductive methods and empirical research versus theorizing. In this context, the researcher can start with either theories, hypotheses, observations, or empirical generalizations. Then, depending on the research, deductions, samples, generalisations, or concepts are formed that will feed into the research cycle for subsequent testing or test validation.

In the case of diplomacy, such a reflexive relationship between scholarly work and professional activity is relatively less common, although increasingly important. Therefore, we shall define our approach to grounded theory as "one that is inductively derived from the study of the phenomenon it represents", in accordance with Strauss and Corbin's definition (1990, p. 23). However, this endeavour will certainly not escape from the traditional debate within grounded theory between those faithful to the works of Strauss and Corbin, and those who follow the works of Glaser. For instance, our approach to induction will fall on Glaser's side of the discussion, as a key process, whereby the scholar-practitioner progresses from gathered data to theory and generalization (GLASER, 1992).

One instance of inductive insight that is inherent to my professional position as a diplomat within the WTO is a privileged access to confidential data. Without a doubt, diplomatic access can be the purveyor of new insights, thanks to a depth of access. As one of our areas of interest is the IF negotiations within the WTO, and considering that Brazil is a major player in this process, my personal experience as the Mission of Brazil's diplomat in these negotiations brings several advantages to my other position as the author of this research paper.

Thus, certain sources utilized in this research will consist of confidential telegrams between the Mission of Brazil to the WTO, the country's Ministry of Foreign Affairs, and various Brazilian embassies throughout the world. This research project will also make use of internal and private documents relating to the activities of the WTO, as well as its ongoing formal and informal negotiations. For this reason, a significant part of our inductive insights will be the analytical outcome of primary sources.

Importantly, this joins our approach with that of prominent historians that will serve as influences for this work. For instance, Frank characterises J.B. Duroselle's approach to the history of international relations as one that privileges the study of diplomats' and politicians' viewpoints, in order to understand the behaviour of countries and the composition of their national interests (FRANK, 2003). Thus, the temporal process analysis adopted within our interview and data collection design, elaborated upon in a later section, shall attempt to reconstruct those agents' point of view on the "diplomatic history" of the object of study.

Primary sources are defined as everything that relates directly to an event that constitutes evidence of said event. They are opposed to secondary sources, which designate material such as pieces of writing about an event, created after it happened. Access to

internal documents – which serve as primary sources – is a crucial aspect of this research and contributes significantly to its originality and overall novelty within the correspondent literature. Toposlki (1999) considers that the main purpose of primary sources for qualitative researchers within the IR discipline is to access what is called "basic information," or "consensual statements" that are free of interpretation. Thus, as analysed by Thies (2002), one's approach approximates that of qualitative historical analysis. The purpose of qualitative historical analysis as defined by the latter scholar is to employ primary documents in the objective of theory testing.

The principal advantage of this method, according to Thies (2002), is to obtain data that is "theory laden" as opposite to "theory determinant". Theory deterministic facts are found because the scholar has sought to find them. In contrast, theory laden facts are facts that have not been affected by "*a priori* mental frameworks" inherent to the subjectivity of the researcher. In this important sense, therefore, access to primary documents reinforce research objectivity by avoiding selection bias in the corroboratory data (THIES, 2002).

Nevertheless, this research will take into consideration Elman's warning (2001) that one cannot know for certain whether our primary sources exhaust the entire evidentiary potential of the issue at hand. Indeed, it is difficult for any one researcher within the field of international relations to acquire all of the existing necessary evidence to fully corroborate his theories (LEVY, 2001).

Another example – that will be further discussed later – of privileged access is that some interviewees contributing to this research have asked to be anonymised. Protecting the identity of a researcher's interlocutors is common practice within the social sciences (BERA, 2004; WILES, 2008). Indeed, a researcher must always strike a balance between allowing the scientific information

to be visible and avoiding all kinds of potential harms to the research contributors (BECKER, 1964). Thus, we postulate here that this practice does no harm to the quality of the insights purveyed by the anonymous interviewees. Still, this author takes note that it will be of prime importance during this research that identification of anonymous contributors be made as difficult as possible.

One obvious cause of such a decision is that interviewees may be representatives of their country, and thus wish to clearly distinguish their personal positions from their countries' positions on certain topics of interest, through the use of anonymity. Some others are members of an organization, such as the International Trade Centre (ITC), and would rather pronounce the position of their organization than their own personal position.

Among these, several other factors may explain the choice of anonymity. For example, one might not have been granted authorization by the relevant hierarchical superior. This may or may not be due to the interviewee's ability to speak the position of their, his/her employing organization or representing country. Analogous to that is the possible personal choice of pronouncing one's personal experience and convictions rather than to give voice to one's respective organization.

Fear could be another explaining factor, although the term could be adjusted to encompass a desire to prevent controversial damage to one's career or future prospects, as well as the ability to protect one's national or organizational interests. This interpretation of fear of retaliation can also extend to the academic area, or to the workplace. Finally, we may consider the subject's confidence to explain their viewpoints freely, given that some of our interviewees may share an equivalent job for different countries (such as our interviewed ambassador) while making opposite choices when it comes to anonymity. Overall, anonymity could be interpreted as

an advantageous perspective as it increases freedom of expression without compromising the quality of the interviewee's input to the topic at hand.

2.13.3. Circumstantial Self: Analysis of Scholarly Reflexivity and Epistemology

As outlined by Mauthner & Doucet (2003), the main purpose of reflexivity from a methodological outlook is to determine how links and insights are "made rather than found" when dealing with data interpretation. Considering that the interpretative phase is of particular importance in this research project, as it is the crossing point of qualitative perspectives according to our method design, reflexivity must be examined here. It is therefore of vital interest to discuss the implications of this dual perspective on the outcome of research from a methodological standpoint – in essence, the perspective of the scholarly diplomat, and the perspective of the grounded scholar.

The Spanish philosopher José Ortega y Gasset is known for asserting in 1914 that "I am myself and my circumstance". Similarly, this thesis must accept and consider the intricate relationship at work between its author as a scholar and as a professional. On the one hand, the world of ideas, as well as the academic posture, tends to lead away from human relations and towards objectivity, within the solitude of the office or the computer that demands retraction from the usual passions. On the other hand, diplomatic work leads naturally to social contact, interpersonal relations – fear, beauty, emotions, and passions – that serve the purpose of subjectivity, and therefore potential bias.

Opponents of subjectivity follow a longstanding tradition within the social sciences. For example, one can mention Max Weber's influential work on the scholarly vocation (*wertfreiheit*), which relates to the thinker's ability to abstract himself from value

judgements. More ancient are the works of Auguste Comte, as well as their reinterpretation by Emile Durkheim, on philosophical positivism and the detached practice of scientific inquiry.

However, this perspective rejects positivism, and even considers it a logical fallacy. Of course, the foundational thinker relevant to this perspective is Michel Foucault, who contributed to modern understandings of power and its relation to knowledge production. Indeed, according to Foucault (1996), in order to fulfil the exigencies of logical positivism, or Weber's *axiological neutrality* (RAPHAEL, 1990), one would need to "twist one's body inwards and look into a mirror, in order to discover therein the unconsciousness of one's thoughts" (FOUCAULT, 1966). It seems indeed like an impossible task, especially considering that the scholar is a social being that acts and reacts to a social context. Thus, our goal is to practice Wurgaft's "thinking in public" by correlating observation with theorisation, the subjective with the objective (WURGAFT, 2015).

Therefore, founded on Foucault's assertion that knowledge is power, and that it acts on reality just as reality acts upon it, this research will accept subjectivity as a given. It will not attempt to tend towards and manufacture a false objectivity, as can happen within, for example, traditional journalism. This scholarly style contributes to the author's choice in relying on the constructivist approach to IR and the social sciences. Indeed, one principal aspect of constructivism, as elaborated upon in the relevant subchapter of this thesis, is that it challenges "the positivist conception of the social world" and the knowledge that we produce about it (ZEHFUSS, 2004).

As outlined in the adoption of qualitative historical analysis methods, we shall work in contemporary as well as historical distance to the object of study. Similarly, the choice to use a mixed methods approach signifies that the theoretical foundation will be interdisciplinary. As described in the theoretical subchapter,

such basis includes – and shall not be limited to – the disciplines of international relations, political science (albeit some claim it is comprised within international relations, or vice versa), economics (principally, international political economy), law (where it overlaps, such as economic or international law), history (as an outcome of the historical-descriptive method), etc. As a result, potential synergies between our methods and diverse theoretical bases constitute a non-negligible pillar of this project's scientific approach.

After all, as previously established, this research is pragmatic. On the one hand, there is a starting point that is the observation of a phenomenon, namely, WTO members involved in reform discussions. On the other hand, there is a hypothesis that is being put to the test through a case study. The research collects qualitative data and analyses trends, such as the delivery performance, before deriving a framework, or theory, to explain the observed phenomenon. Considering the discussed elements of reflexivity and epistemology, the thesis shall now briefly turn to the impacts of the extraordinary situation of COVID-19, before elaborating on the design of data collection.

2.13.4. Interviewing the Experts: Qualitative Data Collection Design

The research will draw from first-hand interviews and both past and present case studies. These interviews and case studies will then allow a generalization through proposed new conceptual models such as a model for increasing WTO relevance.

The twenty-five interviewees are relevant experts that can be separated in two groups related to origin. Interviewees were selected in relation to possible access, as established earlier, but also in harmony with George's (1973) proposal that each source be picked in accordance with their "intentions, interactions and situation". Thus, the first group consists of Brazilian interviewees. The second

group is comprised of international voices. In this section, we will briefly overview the general characteristics when it comes to the questionnaire handed to experts, as well as the scientific profile of the experts themselves, in order to evaluate the relevance of their contribution to the analysed issues.

A set of seventeen questions were asked in relation to the objectives of this research. They seek to unveil the role of Brazil in the reform of the WTO, as well as the country's importance in the discussions on investment facilitation. They also aim to analyse the role of the IF plurilateral process in the functioning of the organisation. Questions 1 to 8 were elaborated specifically towards Brazilian interviewees, to explore in depth their national perspective. Questions 9 to 17 were posed towards all interviewees, regardless of their nationality. Table 1, outlined below, lays out the questionnaire that was used for this research.

Table 1: Questionnaire for expert interviewees (interviews conducted on various days throughout 2020)

	Nº.	Question
Questions for Brazilian interviewees (1-8)	1	In what ways have Brazil's role and objectives in the WTO evolved over the past 20 years? In what ways have they remained the same?
	2	To what extent – if any – do these changes reflect evolving domestic structural changes, pressures, and interests?
	3	To what extent does Brazil's evolving role in the WTO reflect changes in the broader world trading system?
	4	What spurred Brazil's decision to begin actively negotiating bilateral "investment facilitation" agreements in recent years?
	5	How would you explain Brazil's lead role in conceiving, launching, and actively engaging in investment facilitation negotiations in the WTO after 2016?
	6	Why do you think Brazil has embraced the idea of multilateralizing its investment facilitation model?
	7	How do you think the IF negotiations could change the future of the WTO?
	8	How might Brazil's role in investment facilitation negotiations help to reshape the WTO?

	Nº.	Question
Questions for all interviewees (9-17)	9	How does investment facilitation differ conceptually from more traditional approaches to investment rulemaking?
	10	To what extent did the investment facilitation discussion model in the WTO – i.e., an open plurilateral approach – encourage progress and momentum?
	11	How has the investment facilitation model (including the informal dialogue process, the Abuja High-Level Forum, the MC11 Joint Ministerial Statement, and the structured discussion approach) impacted and shaped other so-called Joint Initiatives, such as e-commerce, domestic service regulation, and MSMEs?
	12	Why does investment facilitation seem to have more appeal and traction in the WTO than previous efforts to start multilateral investment discussions such as, for example, the failed efforts to launch investment negotiations as part of the Doha Round?
	13	Why were developing countries – rather than developed countries – the initial proponents and drivers of investment facilitation negotiations in the WTO?
	14	What appears to be China's interest in seeking an IF agreement in the WTO?
	15	To what extent has (or will) the investment facilitation initiative helped to reshape or reform the WTO?
	16	What are some of the main obstacles to reaching an investment facilitation agreement in the WTO?
	17	What are the prospects for WTO reform – and the main challenges it faces?

The essence of our approach with the interviewing process (which serves as the qualitative data collection process) can be defined here as a "temporal process analysis." As outlined by Castro (2010), a temporal process analysis is an interview protocol composed of a "temporally ordered series of open-ended focus questions that examine the natural sequence of unfolding of events". This is especially relevant for the first category of interviewees, whereby the researcher attempts to reconstruct through questioning their impression of a historical process.

The interviews will be transcribed and stored, before being used throughout the analysis as a source for qualitative insights, with findings classified in several categories. In this interpretative

process of the collected qualitative data, there will be two main forces driving the analysis: contextualization and recontextualization.

Contextualization, as defined by Gelo (2008), serves to "give a meaning to the obtained results with reference to the specific and particular context of the study", our context here being the investment facilitation negotiations at the WTO, as well as the organization's ongoing reformation process. In our case, the qualitative insights enable contextualization.

Recontextualization, on the other hand, consists of a consideration of the interviewee's profile in relation to the factual outcome of the data integration (that is, after the quantifying process of the qualitative insights, or contextualization). The objective of recontextualization, as defined by Castro (2010) to discuss field experts, is "to select indicated quotes to generate stories that give voice to the very people who stated them". Thus, our objective analysis, which is factual and theoretical by design, will be supported by the subjective insights of our interviewees.

Beyond their nationalities, many interviewees distinguish themselves by their area of expertise, as well as by their membership of an organisation. As outlined in Table 2, out of the 25 experts that were interviewed, nearly half of them – 14, to be precise – directly operate in WTO diplomacy, and five among them are the top WTO representatives of their respective country of origin. As for the rest, they constitute a mix between high-level technical personnel from the WTO or other specialised organisations such as the OECD, and other noted scholars and academics.

Table 2: Profile of each expert interviewee

Name	Nationality	Gender	Occupation or organisation
Alexandre Parola	Brazilian	Man	Permanent Representative of Brazil to the WTO
Bertha Gadelha	Brazilian	Woman	Investment Partnerships Program
Celso Pereira	Brazilian	Man	Brazil's Ministry of Foreign Affairs
Felipe Hess	Brazilian	Man	Brazil's Ministry of Foreign Affairs
Hanna T. Welgacz	Brazilian	Woman	Investments Analyst at APEX-Brazil
Henrique C. Moraes	Brazilian	Man	Brazil's Ministry of Foreign Affairs
José Alfredo G. Lima	Brazilian	Man	Brazil's Ministry of Foreign Affairs
Paulo Elias	Brazilian	Man	Brazil's Ministry of Foreign Affairs
Pedro Mendonça Cavalcante	Brazilian	Man	Brazil's Ministry of Foreign Affairs
Renato Rezende	Brazilian	Man	Brazil's Ministry of the Economy
Samo Gonçalves	Brazilian	Man	Brazil's Ministry of Foreign Affairs
Tatiana L. Prazeres	Brazilian	Woman	Senior Advisor to the WTO Director-General
Thaís Mesquita	Brazilian	Woman	Brazil's Ministry of Foreign Affairs
Vera Thorstensen	Brazilian	Woman	FGV University
Ana Novik	Chilean	Woman	Head of Investment Division at the OECD
Juan Carlos Gonzalez	Colombian	Man	Permanent Representative of Colombia to the WTO
Manuel Teehankee	Filipino	Man	Permanent Representative of the Philippines to the WTO
Karl P. Sauvant	German	Man	Columbia University
Dacio Castillo	Honduran	Man	Permanent Representative of Honduras to the WTO
Carlo Pettinato	Italian	Man	Mission of the European Union
Ambassador from a developing country			Permanent Representative of N/A to the WTO
Experts from ITC			Experts at the International Trade Center
WTO staff member	Peruvian	Woman	Legal Affairs Officer, Division of Trade in Services and Investment, at the WTO
Willy Alfaro	Peruvian	Man	Economist, Director of Trade Policies Review Division at the WTO.
Gabrielle Marceau	Swiss	Woman	University of Geneva, and WTO

Human ethics clearance will be mandatory within the interview design, in accordance with traditional requirements within social

sciences. Interviews with experts will be conducted in various geographic locations, especially in Geneva and Brasília. Furthermore, specialized conferences at the WTO – or teleconferences on relevant matters – offer similar possibilities of qualitative data gathering.

The core value of the interview-based qualitative data will derive from the text itself, as well as the information it conveys, rather than the style or the enunciation of the interviewees. In other words, the qualitative data that interests us should contain content that is relevant to the research question. Guérin-Pace (1997) outlines the basic underlying principles found in strong interview analysis. We will analyse the content instead of the form, which is a more common and accepted process of interview analysis according to Lebart (1995), with the added advantage of the researcher avoiding introducing biases – or other subjective consequences of formal analysis – into the interpretation.

Importantly, one may note the specific impact of the outbreak of the COVID-19 pandemic, which occurred during the data-gathering process of this research. For this reason, some interviews were conducted remotely, to guarantee the health of both the interviewee and the interviewer. It is difficult to determine whether these procedures have degraded the quality of the gathered data, as it is common in qualitative research to take note of body language or other physical reactions on the part of the interviewees, as part of the data gathering process. These aspects are lost in remote interviews, and less visible during video conferences. However, it is defended here that the COVID-19 pandemic did not have a negative impact on the quality of the gathered data.

Interestingly, in this experience, the pandemic context has actually contributed to the efficiency of the research. Strict lockdown measures implemented across the globe allowed for more flexible access to the expert themselves, all the while giving them more

time and availability to answer the questions. In any case, the underlying impacts of lockdown measures on the production of scientific knowledge within the social sciences certainly appears as a promising field for future scholarly inquiry.

2.14. Methodological Preparation: Concluding Remarks

> *So this ability to build something new, in terms of the process, is also something that is worth highlighting. I think that Brazil contributed to opening this path, a path that was neither evident nor pre-defined.*
> (Tatiana Prazeres, 2020)

This chapter reviewed and critically assessed a wide diversity of theoretical strands within the IR discipline, as well as their relationship with other social sciences. In parallel, the pragmatic approach to these theories is addressed in detail, both epistemologically, through the adoption of the constructivist approach, and ontologically, through the establishment of an interpretative research design and a study of reflexivity. Overall, these tools shall prove essential to demonstrate the leading role of Brazil within the current IF negotiations at the WTO.

Based on the constructivist paradigm of international relations, the theoretical review argued that it is better suited than other theories to describe and analyse the ongoing IF negotiations within the WTO. Indeed, constructivism calls into question the very structure of modernity, from the immutability of global power relationships to its definition of national self-interest, as inexorable will-to-power. Constructivism also re-examines these same structures under a procedural lens. Through this lens, power relationships are the outcomes of actual practices and processes, and self-interest is constantly redefined by decision-makers, politicians, diplomats,

civil society, etc., as well as what Pierre Renouvin called the "deep forces" that embody the engine of the "great movements of society" – culture, identity, norms and rules.

Crucially, due to adoption of the constructivist point of view, as well as the diverse theoretical background, this chapter adopted the necessary tools to delve into such intersubjectivity, in order to better understand it from the perspective of the individuals – diplomats, academics, politicians – that compose and shape daily the negotiating process of IF, as well as the WTO as an organisation. Moreover, to the degree that these very professionals think and act in accordance with their own various theories and interests, constructivism allows us to take those into consideration as a constitutive factor in the social and scientific construction of reality. Thus, one of the objectives is to profoundly understand, and therefore incorporate into the analysis, the subjective reality of actors – diplomats, strategists, decision-makers – which constitute the makers of historical change according to Jean-Baptiste Duroselle.

For example, important insights of variable geometry theories for a successful agreement on investment facilitation at the WTO have been presented in the chapter. Indeed, as the thesis shall explore in detail later, the position of India or other highly complex federative member countries has demanded special provisions for the implementation of the single focal point across all levels of governance, a Brazilian proposition raised at the FIFD workshop. Similarly, the valuable contribution of cooperative models of negotiation has been highlighted, as opposed to bargaining models. Thanks to its agreed-upon exclusive focus on *facilitation*, and not protection, current investment negotiations at the WTO cooperative draw significantly on such theoretical perspectives. Thus, to understand those ideas, thereby taking them into consideration, constitutes a fundamental component of our constructivist approach to the analysis.

Similarly, the historical developments that led to the emergence of the two principal schools of thought within IR throughout the 20th century – realism and liberalism – are presented in detail. Such historical developments are well known – the world wars, the Cold War – and thus can attest to the prominence of these schools in our discipline. Moreover, the literature indicates reasons to believe that new, more recent historical developments – such as the end of the Soviet Union and the rise of China – have exposed shortcomings in the realist and liberal schools of thought. Constructivism, then, aims to occupy this promising space for research. Nevertheless, we have also adopted the notion that the constructivist perspective does not seek to exclude realist or liberal thought completely. On the contrary, the goal is to incorporate both into the constructivist perspective as an inexorable component of diplomats' and other decision-makers' subjectivity and approach to the IF negotiations at the WTO.

Ultimately, investment facilitation, as we have noted, also works in such a manner: it aims to establish win-win relationships through regulatory synchronization in such a way that the welfare gain for its participants reward their cooperation. Thus, qualitative research seems well placed to observe such complex phenomena, and to capture for analysis this holistic residual stemming from plurilateral cooperation within the WTO.

When she wrote about Plato's force of persuasion, Hannah Arendt remarked that the thinker's influence stemmed partly from his ability to meld practice with truth, thereby joining the "common character of the world" with the "subjectivity" that interprets it and defines it (ARENDT & COLLIN, 1986). Thus, in an exercise in reflexivity, this chapter has explored the overlapping ontological boundaries of my postures as both scholar and diplomat. Furthermore, without dismissing it as an obstacle to positive science, the theoretical analysis has emphasised its potential as a contributor

to greater understanding of an environment – diplomacy, as well as the WTO – that is characterised by intersubjectivity and interpersonal exchange.

In addition, this section has outlined the project's data collection design. Specifically, it seeks to obtain qualitative insights from experts in the field, both Brazilian and else, through the means of 24 interviews. Furthermore, privileged access to confidential documents from the WTO and the Mission of Brazil will provide us with a novel understanding, as well as a primary means to interpret the information that we shall obtain through other means.

Ultimately, the interpretative phase shall enable the emergence of new insights that are inherent to the complex arrangement of interests that constitute the WTO at the start of this new decade. In the following chapters, one of the main objectives is to follow this theoretical arrangement, with the final objective of demonstrating Brazil's predominant position across the WTO chessboard with regards to investment facilitation talks, and how this position feeds into its agency within the greater conversation of WTO reform.

3. THE NEED FOR MODERNIZATION: HISTORY AND LANDSCAPE OF THE WTO

3.1. Introduction

The debates and negotiation of the investment agreement need to be seen within the larger context of the organization's reform movement.
(Thaís Mesquita, 2020)

The goal of this chapter is to understand the history and reform needs of investment facilitation discussions. Every debate of the IF Agreement, in effect, represents shifts in the worldview that has driven the international trade system in the past. Part of the thesis's major argument is that the adoption of a plurilateral negotiating model, which does not need an agreement among all WTO members, indicates an evolution or rupture of the multilateral paradigm. To this effect, this chapter takes a historical approach to trade and investment between countries and analyses how the WTO has been framed in this context.

This chapter places its analysis on IF negotiations in the context of global value chains. It argues that contemporary great value chains indicate a co-dependent relationship between investments, world trade, and economic expansion. Insertion into said chains allows local production according to the level of international efficiency, as well as infrastructure investments that facilitate the flow of products in the world market. Thus, the discussion of investment facilitation at the WTO could enhance investments between member countries, overcoming the idea of bilateral agreements.

The research then examines the present WTO reformation process in full, taking this historical context into account. While placing the process into political and economic context, it then delves into how the crisis impacts each of the organization's three primary pillars: the Dispute Settlement Pillar, the Monitoring and Transparency Pillar, and the Negotiation Pillar, the latter of which is regarded the most important. In this sense, the chapter presents a historical perspective on the evolution of the WTO, as well as comments on the main issues in which changes are necessary to reduce the difficulties that the organization has encountered in recent times.

The chapter is structured in a logical and flowing manner. Section 3.2 analyses emerging global value chains and their trade-investment nexus. Section 3.3 comments on the relationship between investments and trade in business practice. Section 3.4 analyses the concept of WTO reform and is divided into five subsections, which cover historical perspectives and WTO reform, the Dispute Settlement Pillar, the Monitoring and Transparency Pillar, the Negotiation Pillar, and Joint Statement Initiatives and the way in which they reinvigorate the Negotiation Pillar. Section 3.5 focuses on challenges, opportunities, and prospects for the WTO. Section 3.6 summarizes key concluding remarks.

3.2. Worldwide Production: The Emergence of GVCs

There is a growing awareness among WTO members of trade and investment being intrinsically linked to each other, especially in the context of highly diversified global value chains.
(Carlo Pettinato, 2020)

In order to kickstart the landscape view of international trade presented by this chapter, this section will provide an overview of the global value chains which integrate trade and investment and make the IF negotiations led by Brazil a relevant WTO matter. According to Porter (1985), a value chain consists of a series of economic activities that bring products from their conception to their end-use stage, including all relevant phases such as production and distribution. In turn, a global value chain (GVC) is a value chain whose activities are conducted by different firms in various geographical locations (FREDERICK, 2016). In this sense, Buckley and Strange (2015) pointed out that market liberalization, financial deregulation, and proliferation of trading arrangements, along with several technological advancements related to information technology (IT) and transportation, has, since 1985, shifted the global distribution of economic activity from advanced to emerging economies.

Such changes had a huge impact on GVCs, whose hodiern activities occur worldwide and with the participation of various actors, such as multinational enterprises (MNE), which are considered central due to their extensive and various activities in several countries (CADESTIN, 2018). Current GVCs are also much more dynamic than historical ones, since modern companies tend to reallocate their resources from less promising to more auspicious activities very efficiently, despite some structural rigidities (HAMEL,

2006), a pattern which leads to significant, constant changes in the architecture of those arrangements.

The emergence of GVCs allows policymakers to design new developing strategies for countries. In comparison to import substitution policies, whose intent is to foster domestic production in more stages of a given value chain, GVC positioning strategies tend to justify the use of trade and investments to induce development in the areas the country has comparative advantages. Implementing such a plan requires a profound, economic analysis, focused on relevant fields of activity in a country and considering factors such as capital availability, capacity building, inter-firm relationships, energy sources, regulatory environment, ease of doing businesses, sectorial particularities, taxation, energy sources, physical distance to providers, and the existence of infrastructures. By doing so, countries may assess bottlenecks and leverage points to assist targeted industries.

According to Frederick (2016), GVC research suggests two steps for those studies. The first is GVC mapping, intended to identify the locations and activities of stakeholders involved. The second is the value chain analysis, which endeavours to distinguish dynamic variables influencing the geography and competitiveness of related products, such as inter-firm relations, governance, and institutions. Frederick (2016) emphasizes that following both steps is crucial to identifying opportunities for development and considering possible interventions.

Notwithstanding, there are some constraints that countries need to consider. For instance, if the GVC analysis focuses too much on smaller-scale subtleties, it may lose the essential, broader strategic view capable of capturing the interrelationship between operations in each GVC stage (BEERS, 2020). Possible social outcomes can also be noteworthy, such as those related to job creation or loss

in different sectors and the impacts on income disparities within different population groups and geographical regions.

Despite this, the potential gains of the GVC approach serve as a compelling stimulus for countries to design adequate policies and regulations to facilitate trade and investments in critical areas. In this regard, the Trade Facilitation Agreement (TFA), signed in 2013 by WTO members to simplify and modernize their foreign trade procedures, is to be celebrated, in particular as it aims to simplify documentation requirements, expedite clearance procedures at customs, and raise transparency (WTO, 2013).

More recently, fast-changing methods have incorporated innovations such as big data and analytics (BDA), additive manufacturing, autonomous robots, horizontal and vertical system integration, the internet of things (IoT), simulation, cybersecurity, the cloud, and augmented reality (RÜBMANN, 2015). From an investment policymaking perspective, it is essential to consider all these innovations, their possible impacts on GVCs, and potential opportunities that may emerge from such changes. In the modern global economy and its swift data flows, the measurement of all risks and development possibilities is imperative in designing strategies accordingly. As some of these innovations affect the spread of GVCs, countries are becoming more aware of the importance of creating better conditions for inward investment flows, to counteract any tendency for GVCs to move outside their borders.

3.3. Capital and Production: The Relationship Between Trade and Investment

Trade and investment are increasingly
two sides of the same currency…
(Samo Gonçalves, 2020)

Drawing upon the GVC analysis presented in the previous section, this section will specifically look at the commercial components of investment that make Brazil's WTO actions on investment facilitation worth examining. As indicated previously, trade and investment are areas that cannot appear separately in high-quality business and governmental evaluations, as if they were part of different systems. The consequences emanating from investment analysis will impact trade and vice versa. Hence decision-making processes in competitive enterprises should consider all pertinent aspects before contemplating any potential measure, and the same applies to countries seeking to improve their regulations for a more favourable trade and investment climate. As Carlos (2020) emphasizes in his interview:

> IF is focused on practical measures to facilitate investment. It does not deal with market access or investment protection, which have been more contentious issues in the past. If a country facilitates the kind of investment that it wants to attract, it is serving its own interests. Therefore, multilateral cooperation and agreements to facilitate investment should be a positive agenda in the rulemaking context.

In this regard, the recent signature of the TFA at the WTO was extremely beneficial to promote increased trade within the organization's membership, and more foreign direct investment intended, among others, to spur the establishment and expansion of GVCs.

However, it is generally not enough to implement new regulations concerning only trade facilitation, because a country that intends to be truly competitive at foreign trade will also need to make the most of its competitiveness in some desirable economic activity areas. The expected signature of the WTO Agreement on Investment Facilitation for Development may thus contribute enormously by promoting a more transparent, predictable, and adequate regulatory environment for international investments, helping FDI flow to countries that need it.

One cannot forget that infrastructure investments are essential in providing cross-country transportation cost reductions, faster deliveries, and increased efficiency within GVCs. Azevêdo (2017) emphasized that the consideration of both trade and investments may be valuable for developing countries to boost productive diversification and value in exported products, decreasing dependency on raw material exports.

Substantial profits in the global game of trade and investments may also benefit from sectorial and GVC analysis. Such an analysis would likely conclude that there is a need for adopting practical measures, which might vary immensely. A possible approach would be to expand production capacity in each sector by fostering economies of scale.

Another possibility might focus on adopting new methodological innovations, such as BDA, IoT, robotics, and additive manufacturing, which may impact the geographic shape of GVCs. While some of these technologies tend to increase the geographical span of GVCs, helping to attract more industries to developing nations, others tend to do quite the opposite. For instance, the BDA might help companies recognize new opportunities abroad, pointing to optimal production and dissemination of activities worldwide (STRANGE & ZUCCHELLA, 2017). In the same way, the IoT could

diminish transaction costs and further instigate the international specialization of production (STRANGE & ZUCCHELLA, 2017). Robotics, on the other hand, might lead to labour cost savings and competitiveness for the nations that decide to embrace the technology (ZINSER, ROSE & SIRKIN, 2015). Finally, additive manufacturing may incite the development of smaller GVCs closer to end-users in some sectors, such as machinery, while other areas such as primary metals production may remain unchanged.

Therefore, it becomes increasingly essential for countries, especially developing ones, to address the regulation of both investments and trade in a coherent way that takes advantage of all available opportunities for their development plans. Such a scenario makes the discussions on developmental IF at the WTO increasingly relevant in the effort to establish a better, more predictable, and transparent international investment regulatory framework. The signature of such an agreement at the WTO will undoubtedly assure companies that there will be some international investment rules and disciplines applicable worldwide, avoiding inconsistency and unpredictability, and helping investment and trade to flow across the borders more coherently with countries' comparative advantages. In line with this argument, Pettinato (2020) says:

> The model of a plurilateral approach allowed the initiative to be launched at MC11 and to subsequently establish a successful work process in the WTO without the need for a consensus among members. The fact that the work on IF has seen significant progress since MC11 is also due to the inclusive nature of this initiative, allowing all members to keep track, join and contribute at their will without being rushed or side-lined in the process.

3.4. A Crumbling Organization: Context and Reform of the WTO

> *What will reshape and relaunch, or reform, the WTO is the moment when the United States and China reach an understanding between the two about who can do what and how.*
> (Felipe Hees, 2020)

Despite the maturity of the WTO, there is an increased number of discussions related to the necessity to modify parts of its structure to improve its functioning. This subchapter addresses the main points that demonstrate the need for WTO reforms and connects them to how IF talks have gained relevance in this context.

Since 2017, "reform" has become a standing term not only in high-level WTO officials' lexicon, but also in the rhetoric of member country representatives (ARAÚJO, 2019; AZEVÊDO, 2017, 2020c; G20, 2018, 2019; LIGHTHIZER, 2017; WTO, 2019b, 2020g). The international scenario presents a range of issues that are added to challenges within the structure of the WTO, such as the geopolitical and geoeconomic balance of power within the WTO, Chinese economic model, development, and the single-undertaking negotiating principle and consensus decision-making procedure (ADLUNG & MAMDOUH, 2018; BARU, 2014; CAPORAL, 2019; HOEKMAN, 2020; LAMY, 2012; LIGHTHIZER, 2017; MELÉNDEZ-ORTIZ, 2011; SHEA, 2019; WALLERSTEIN, 2016; WORLD TRADE ORGANIZATION, 2013).

Since the establishment of the WTO, the poles of power have shifted, in reflection of a status transition among states. In that matter, Chinese ascension has propelled developing states to acquire more prominence within the international system (JOSEPH NYE, 2011). In turn, Mearsheimer (2019) argues that the Chinese emergence also promoted the deconstruction of the liberal international order

from unipolar to multipolar, with the "embedded liberalism" seen since the 1940s being replaced by a new order.

Within the WTO, the power transition process has been characterized by a centrality acquired by developing countries in negotiations, rendering consensus more difficult to reach due to the manifold set of interests. This posed quite a challenge for the single-undertaking negotiating principle and the consensual decision-making required by Article IX:1 of the Marrakesh Agreement. Hufbauer (2018) sustains that the WTO's rulemaking pillar is almost completely dead, which can be partially attributed to the involvement of more countries and the consensus model present in negotiations (SCHOTT & WATAL, 2000).

The modern geopolitical and geoeconomic order is marked by Chinese economic ascension and a parallel US foreign policy in reaction to China's new power. The "America First" doctrine promoted by the Donald Trump administration saw the USA become more prone to protectionism, which entailed not only a pressure-oriented, unilateral trade policy, but also a disengagement or withdrawal from the multilateral trading system (ELLIOTT, 2020; HELMORE, 2018; HOEKMAN, 2020; JACOBSON, 2019; PACKARD, 2020).

In the context of the WTO, Mearsheimer (2019) argues that China was rather engaged until Trump's presidency, implying that somehow the multilateral trading system would induce changes in the Chinese economic model – in the direction of a more open, market-oriented economy – despite the organization's crisis. China's status is a key issue to be analysed because, rather than changing its economic model and embracing capitalism, it has instead maintained the traditional state interventionism that has marked its export-oriented economy. The country does not "play by the book" and only complies with WTO norms when it is convenient to do so, ignoring them when they hinder the promotion of its interests. Certainly,

this behaviour represents a structural shock for the WTO, which has not managed to accommodate it. Lastly, several cases in the dispute settlement pillar have China as a respondent concern precisely due to these non-market economy practices and the impossibility to ensure their compliance with WTO rules (SHEA, 2019). This situation is aggravated by the gridlock currently seen at the Appellate Body (AB).

The US reaction to the change in power poles and Chinese particularities has been observed both inside and outside the WTO, namely in a trade war that is, at the same time, cause and consequence of the crisis within the organization. On one hand, the trade war is waged against China itself; on the other, war is the unilateral way the USA has been adopting to pressure China into more fair and free trade, and the WTO into reform. This moment could be seen as a distinctive opportunity to erect the new foundations of a reformed WTO, given that crisis can result in political support for institutional reform and revitalization (BREWSTER, 2019).

The US-China trade war has developed mostly at the margins of the WTO, even if it has also fuelled unilateral US pressure within the three pillars of the organization. The USA's unilateral pressure through tariffs has been brought to the attention of the Dispute Settlement Body (DSB) either by impacted parties such as China, Turkey, South Korea, and the EU, or by the USA, who counterattacked all opponents to the new trade policy under the Trump Doctrine.

Though the so-called "Phase 1" agreement to rein in the US-China trade war was seen as a positive harbinger early in 2020, the difficulties in implementation and advancing to "Phase 2" negotiations cannot be ignored (LIGHTHIZER, 2020). The COVID-19 pandemic has sparked new tensions between the two main economic powers, which risks spilling over to the trade relationship. Without a doubt, there are no shortage of dubious omens regarding the future of the trade war.

In addition, a concern raised by several analysts contends that perhaps the USA and China are locked in a dispute that will inevitably lead them to confrontation, as in a case of Thucydides' Trap. Some also argue that they could be locked in a Kindleberger Trap (ALLISON, 2017; NYE, 2017; NYE & GOLDSMITH, 2011), so it is clear that prospects are mixed, and there is no definite conclusion as of yet, although unfolding events seem to have intensified the losses in US leadership capacity without China necessarily being able to assume them.

Pundits have been excessively focused on the bilateral causes of the trade war, warning that the probable outcome would be the demise of the rules-based international trade system. Nevertheless, such analysis neglects the surreptitious causes of the conflict related to the shortcomings of the WTO and are, consequently, incapable of seeing it as an opportunity to push for the reform of the organization and the overhauling of capitalism.

Another aspect that cannot be ignored when examining the trade war, the WTO, and the future of international trade is that the US-China trade balance in goods plummeted from 2018 to 2019, with trade in both directions falling (UNITED STATES CENSUS BUREAU, 2020), which means that both countries faced a loss in welfare. Even before the arrival of the pandemic, analysts have already seen harbingers of a 0.5% plunge in global growth in 2020 (AZEVÊDO & GRAÇA LIMA, 2020; KAPUSTINA, 2020), mostly due to the complications in the US-China relationship.

With sole regard to the national reality of the US, pundits and analysts have been pointing out since 2018 that the American economy would suffer with this trade policy, given that it would have negative impacts on the country's foreign exchange (BOWN & IRWIN, 2018) and importers, either producers or simple shoppers, who would face an increase in their expenses due to the rise on import duties.

There has also been a concern about possible international retaliation against American exporters – ranchers and producers – who have already been harmed by the trade policy (KEYNES & BOWN, 2018). Their worry has materialized, and though the negative effects have been mitigated recently, it is noteworthy that a nationwide campaign against tariffs was created to call for the end of the trade policy that has been "hurting American families and communities" according to websites such as *Tariffs Hurt the Heartland*, in which a real-time calculator was set up to show how much money the trade war has cost so far (TARIFFS HURT THE HEARTLAND, 2020). The amount calculated considers not only agriculture but also manufacturing, consumers, and technology domains.

These consequences notwithstanding, pundits like Carvalho (2019) identify certain emerging countries that could benefit from the trade war, given they may have more opportunities to supply American and Chinese demand for their products. This would be the case at least in the short term and until the Phase 1 deal is implemented, as the US has committed itself to postpone new tariffs should China agree to buy more goods (CHINA BRIEFING, 2020; FINANCIAL TIMES, 2020; REUTERS, 2020; UNITED STATES TRADE REPRESENTATIVE, 2020a).

Nevertheless, the fact is that the trade war could be seen as partially due to the lack of meaningful results in multilateral negotiations within the WTO, given that most of President Trump's accusations resulted from the fact that China was not part of the Organization when the rules were made; in fact, it was not even an economic power at the time, which means that the rules were not designed or suited to curb China's allegedly unfair trade practices.

Moreover, creating updated rules on these issues has been difficult due to the single-undertaking principle. The transparency deficit further thwarts negotiations, because information is

imperative to any of the themes on the agenda like fishery subsidies or e-commerce. Furthermore, Hufbauer (2018) argues that the absence of new multilateral agreements has driven members to seek to obtain through the DSB, particularly the decisions of the Appellate Body, what they have not achieved through negotiation. In short, the US-China trade war is not a simple competition over trade balance, jobs, or geoeconomic and geopolitical interests; it stems from not only from the WTO's inherent flaws, as well as the processes in play in the international system. This has hindered the WTO's ability to properly fulfil its obligations to negotiate more modern agreements, monitor compliance to trade rules, and settle disputes.

In parallel to China's rise in vitality, developing countries have become power poles – either standing alone or in groupings like the G20 – exclusively dedicated to agriculture negotiations within the WTO (G20A). However, power and negotiation balances established in the multilateral trading system were based on the hard divide between developing and developed nations, and consequently the negotiation of Doha Round agreements became difficult, as exemplified by the failure of the Round in the late 2000s.

Where the multilateral trading system has failed to deliver results, regional economic integration has thrived, with multilateralism itself being challenged by the consequences. The WTO has therefore faced three new realities as of late, including the reestablishment of its erstwhile position within the trading system, the need to accept that variable geometry would predominate, and the calls for opening its dispute settlement body for bilateral and regional trade agreements (HUFBAUER & CIMINO-ISAACS, 2015).

The third issue relates to the question of development and the future application of the Special and Differential Treatment (S&DT) provisions (HOEKMAN, 2020). Development and S&DT are not

synonyms; the latter is one aspect of the status of a developing nation or least developed country (LDC), generally based on the former. Most of the developing countries, particularly China and India, reject discussing any changes in the already-agreed flexibilities, while the USA is the main proponent of redebating the topic to restrict the treatment to only include least developed countries, pressuring for the end of self-declaration of the developing status and a criteria-based entitlement, similar to the G20. Countries seeking to access the OECD would not be entitled to S&DT status (POLITI, 2019; SHEA, 2020B, 2020A; TRUMP, 2019), for example.

The principles that guided the WTO's establishment were open trade, market-oriented economic policies, and free trade as a driving force for economic growth (the latter of which implies generating revenue and employment, as well as fostering development). The underlying understanding of the present reform effort is that these principles may be recovered. Moreover, several developed and developing countries sustain that with the end of the Doha Round, the historically strict cleavage between developed and developing nations is no longer realistic.

A compelling argument has emerged in recent years, one that recognizes the WTO's multifaceted crisis as a by-product of the anomie in the legislation-negotiating pillar. Since the Doha Round, negotiations have reached an impasse, remaining practically stalled with only marginal advancements like those reached in the Ministerial Conferences in Bali (2013) – about trade facilitation – and in Nairobi (2015) – about ending agricultural export subsidies – or the 2017 Amendment Protocol to the Declaration on the TRIPS Agreement and Public Health (2001).

The USA has argued for national security exceptions to import tariffs, which has led not only to countermeasures from other members like the EU and China, but also requests for panels to

challenge Washington's decision. These calls have argued that, under Article XIX of the GATT and Articles 11(b) and 12 of the Agreement on Safeguards, the USA cannot impose such tariffs. In turn, the USA has requested panels concerning the imposition by some members (like Canada, China, and Mexico) of increased duties concerning certain products originating from the USA (WTO, 2018).

Given the single-undertaking negotiating principle, each item being discussed cannot be agreed upon separately, but rather is part of a whole and indivisible package under negotiation (WTO, 2020f). Therefore, if one theme being discussed cannot be approved, nothing comprised in the package will be – "nothing is agreed until everything is agreed" (HOEKMAN, 2016). The consensus decision-making procedure provided by Article IX:1 of the Marrakesh Agreement, when coupled with this negotiating principle, notably resulted in the failure of the Doha Round (HOEKMAN, 2020). This sense of consensus is also an issue within the appointment of new AB members, because elections cannot be held nor be successful in appointing a member, even if they were held, given that there is no possible consensus, as the unilateral American blocking of the elections showcase. Indeed, while both are structuring elements of the WTO and stem from an effort to perfect the GATT negotiation procedures and guarantee developing nations' interests, their effective outcome is to hamper the proper functioning of the legislative pillar (HOEKMAN, 2020).

The single-undertaking principle has benefits because it enhances the legitimacy of any negotiated outcome, though this is clearly a factor that can slow down the process of getting to yes. One proposed solution is the plurilateral agreements that bind only those countries willing to sign on (WOLFF, 2022). The main reason to consider plurilateral processes is to avoid free-riding (an issue that arises if some large countries do not want to join); however, this is not the source of the current deadlock, which is tied to large countries wanting more than other large countries are willing to offer.

Despite the progress made in trade facilitation and agricultural export subsidies, since the WTO was founded, no new comprehensive agreement has been concluded, as the Doha Round failure and its *de facto* abandonment illustrate. In this sense, plurilateral negotiation and agreements on themes like investment facilitation such as those set forth by the Joint Statement Initiatives may emerge as a necessary focus to allow advancement within the multilateral system, reinvigorating it through the possible spill-overs which could come from successful negotiations (WOLFF, 2022). To adapt existing norms and deal with some controversial aspects of the DSB's procedures, member states could rely on the authorized interpretations of Article IX:2 of the Marrakesh Agreement.

In order to address the matter of WTO reform, the next chapter seeks to explore the main issues that hinder the better functioning of the WTO, primarily through outlining the main pillars on which the WTO functions are supported and pointing out the deadlocks and difficulties faced by the organization.

4. DIAGNOSING THE PROBLEM: THE UGLY TRUTHS OF WTO REFORM

4.1. Meta-Conflict: The Dispute Settlement Pillar

Brazil has decided to draw upon the WTO framework of rules and instruments, such as the Dispute Settlement Body, to drive its view of free trade and achieve its goals of having less distortion – such as subsidies and protected sectors – in global trade.
(Bertha Gadelha, 2020)

Keeping in mind the overview of international trade presented in the previous chapter, this chapter will now take a look to the specific institutional crises plaguing each of the WTO pillars – and prospects for reform to manage these crises – that mark the organization today. The first of these is the Dispute Settlement Pillar, which blocks evolution and represents a waning of the WTO. From the GATT to the WTO, there has been a development of the rules and institutional structure dedicated to settling disputes, intertwined with US engagement in multilateral trade negotiations

and the organization. The Dispute Settlement Pillar, or Dispute Settlement Body (DSB), works as the WTO's jurisdictional pillar and is the cornerstone of the WTO's dispute settlement system (DSS), responsible for administrating the Dispute Settlement Understanding (DSU) since the conclusion of the Uruguay Round.

As early as 2000, the US was already concerned with the risks an adjudicatory DSS would entail for its interests, though this was largely a minority concern at the time (DA COSTA RAMALHO, 2020). Reforming the DSS has been on the agenda of the WTO since 2001, largely because a ministerial decision adopted at the same time as the Marrakesh Agreement "invited" the Ministerial Conference of the WTO to conduct a full review within four years after the entry into force of the Agreement. The effort has been undergoing without resulting in any effective change, despite the numerous sets of existing proposals to perfect and modify the DSS (DA COSTA RAMALHO, 2020).

Within the framework of these negotiations, the United States proposed in 2002, along with Chile, to revise the DSS to improve flexibility and member control in the system (WTO, 2002). The changes suggested were remade by the USA in 2017 and comprised its criticisms of the DSS.

Understanding the current crisis within the dispute settlement pillar requires considering the impacts of the USA's unilateralist pressures, not only on the procedures undertaken by the DSB or WTO panels, but also on the works of the AB. The unfolding crisis within the DSS has much to do with US unilateralism, heralding back to the way the system was established during the Uruguay Round. The country has pushed for change since 2016, but since 2017 its calls for reform have intensified in pressure, putting forth a series of criticisms and preventing the AB from functioning properly.

Prospects are not quite positive, given that the US insists that appointing new members to the AB must be preceded by an analysis of why AB members have been lacking impartiality in their works and disregarding the DSU. Regarding this non-compliance of the DSU by AB members, and sometimes by panellists as well, the USA has formulated seven criticisms that mutually reinforce one another (GRAHAM, 2020).

Distinctly from what the EU proposes, the United States considers that there is no need for modifying the DSU's text, as it should remain as it is currently. Nonetheless, members should focus on understanding why the AB has deviated from its mandate and how to rein in this practice. Facing these criticisms, a set of proposals has suggested negotiations to break the deadlocks regarding the nomination of new AB members, as well as an agreement on reform of the dispute settlement pillar. The outgoing Director-General of the WTO, Roberto Azevêdo, worked to coordinate a process of informal consultations aimed at finding a permanent, long-term solution to the issues raised by the United States (WTO, 2019a).

In turn, Burgos (2011) argues that the DSS is a system that is not accessible to all developing countries, due fundamentally to the various costs associated with the procedure, as well as to aspects related to the economic capacities of countries, particularly with regard to their share in trade and their possibilities of retaliation or suspension of concessions. Ramanzini Junior (2012) has also argued that, particularly in the Doha Round, cooperation between developing countries could be seen by the quantitative and qualitative increase in coalitions involving countries in the Global South. An important implication of the coalition-building strategy and increased participation of developing countries is that the international trade regime will have to reflect their interests more effectively.

According to Ambassador Dacio Castillo, there have been seven different sets of proposals for modernizing the WTO's dispute settlement body: the EU initiative; the Canada-led initiative, known as the Ottawa Group; the Honduran proposal; the Australian-Singaporean-Costa Rican-Canadian-Swiss proposal; a proposal from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore, Mexico, Costa Rica, and Montenegro; a proposal backed by the European Union, China, India, and Montenegro; and a final proposal supported by Taiwan, Penghu, Kinmen, and Matsu (CASTILLO, 2020).

The EU initiative focuses on improving the function of the Appellate Body, which is deemed "urgent" because in theory the rule of law no longer applied once the AB ceased to function by December 2019. This would entail a de facto rollback to the GATT-era dispute settlement; however, if the US was to unblock the appointment process, concerns could be addressed. The proposal establishes red lines that cannot be crossed by reform processes, such as a requirement for two stages (the first led by a panel and the second conducted by the AB) and the maintenance of negative consensus as the adoption procedure, as well an ensuring of the independence of the AB. Mindful of the American concerns, the overreach problem must also be addressed, in order to consider the examination of specific decisions, authoritative interpretation, and changes in rules.

The Ottawa Group, a Canada-led initiative, emphasizes streamlined procedures without focus on the AB. In turn, the Honduran proposal is dedicated to the issues of the 90-day rule, Rule 15 of the AB Working Procedures for Appellate Review, AB judicial activism, and precedent. Moreover, the Australian-Canadian-Costa Rican-Singaporean-Swiss proposition focuses on the Adjudicative Bodies, adding to or diminishing rights or obligations under the Marrakesh Agreement.

The proposal from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore, Mexico, Costa Rica, and Montenegro is about a set of themes. Firstly, it focuses on the transitional rules for outgoing AB members (Rule 15). Secondly, it discusses the issue of 90 days. Thirdly, it analyses the issue of judicial activism, particularly the meaning of municipal law as an issue of fact, which makes findings unnecessary for the resolution of the dispute. Lastly, there is the issue of precedent.

Furthermore, the proposal presented by the European Union, China, India, and Montenegro is aimed at strengthening the independence and impartiality of the Appellate Body. These amendments would concern the independence of AB members, whose terms would be from six to eight years. In addition, this proposal seeks to bolster the efficiency and capacity to deliver by increasing the number of members from seven to nine, adjusting the transitional rules for outgoing AB members, and launching a new AB selection process.

Finally, the proposal from the Territory of Taiwan, Penghu, Kinmen, and Matsu focuses on developing guidelines for the future functioning of the Appellate Body.

New Zealand's permanent representative to the WTO, Ambassador David Walker, has served as the facilitator for negotiations, conducting informal consultations under the auspices of the so-called "Walker process". This has led him to produce a report to the General Council of the WTO in October 2019, with an annexed Draft General Council Decision on Functioning of the Appellate Body, in which he sought to present the topics he had identified as "points of convergence" during these discussions.

The Draft provides a few insights. Regarding the 90-day rule issue, the timeframe for issuing the Appellate Body report beyond the

90-day limit may be agreed on by the parties, with the DSB notified. The meaning of municipal law is to be treated as a matter of fact and therefore not subject to appeal, with the AB not allowed to analyse or review facts; to avoid *obiter dicta* the parties in the appealing procedures should refrain from "advancing extensive and unnecessary arguments". Advisory opinions will not take place, because issues not raised by the parties cannot be addressed by the AB. Precedent is not created through the DSS, though consistency and predictability are important within the system, which means that panels and the AB should take previous reports into account to the extent they find them relevant in the dispute they have before them. Regarding the question of overreach, the DSU (articles 3.2 and 19.2) prevents the rights and obligations provided in the covered agreements to be expanded or diminished by DSS proceedings. Finally, the AB and the DSB will establish a regular, informal dialogue, taking steps to always ensure the independence and impartiality of the AB.

Until now, Walker's proposal has, just as the others outlined by Ambassador Castillo, not thrived. Mindful of all these aspects, the DSS crisis concerns the "legalistic" approach to the DSB, which has been privileged not only to enhance the credibility and the enforceability of its decisions, but also as a way to mitigate the legislative vacuum.

Given the proportions of the crisis, mainly due to US unilateralism, the calls for reform have become more numerous. The US and other member states' reform proposals surreptitiously consist of opposition between two approaches regarding how a solution to controversies might be reached: the "diplomatic-negotiating" approach, or the "legalistic" approach through rule-based, impartial adjudication.

It is essential to reiterate that the reform of the DSB pillar holds significance in the effort to reinvigorate the WTO as a whole;

however, though the reestablishment of steady works in this pillar could contribute to the implementation of existing and future rules, only by forging a less asymmetrical and more reliable negotiating pillar will the DSB be able to function properly.

This is seen, for example, by Gadelha's (2020) point of view on this issue:

> [...] WTO has been severely affected by the US pressure on the DSB that brought the organization to a stalemate. Since an Investment Facilitation agreement might be an interesting tool to boost investments in the post-pandemic scenario, thus reigniting economies and the natural flow of financial resources between countries, they could indeed play a major role in the restructuring of the WTO itself that so desperately needs a clear new mandate, new tasks to pursue [...].

4.2. Overwatch of the System: The Monitoring and Transparency Pillar

> *I think that investment facilitation in the way that it is today in the WTO will publicise a transparency process.*
> (Ana Novik, 2020)

The problems outlined in the previous subsection apply to a certain degree as well to the other pillars; however, this subsection will look specifically to the Monitoring and Transparency Pillar and its position among WTO reform discussions. The Monitoring and Transparency Pillar is based on the works of the Trade Policy Review Mechanism (TPRM) and the ordinary works of several WTO instances (AZEVÊDO, 2015). According to the devices provided by Annex 3 (Trade Policy Review Mechanism), monitoring refers to the "collective appreciation and evaluation" of members' trade

policies and their impact on the functioning of the multilateral trading system.

The purpose of the TPRM is to ensure the adherence of members to multilateral rules through the assurance that voluntary transparency on the part of members fosters an understanding of the trade policies and practices of members, which would, in turn, result in "the smoother functioning of the multilateral trading system", as Annex 3A (i) provides.

Transparency is a sensitive issue, particularly for developing countries which claim to possess neither the human capital nor the technical resources required to fulfil existing obligations. Furthermore, as the number of members has grown in the WTO, the deadlines and timeframes for carrying out trade policy reviews have increased from the traditional two, four, and six years, depending on the size of the stakeholder, to three, six, and nine years.

Reform discussions encompass the establishment of new transparency disciplines, such as the introduction of sanctions for non-compliance on existing obligations, the incentives of counter-notifications and the harmonization of practices like the circulation of the annotated agendas of meetings by the Secretariat, or the possibility to report specific trade concerns to several committees (CAPORAL, 2019).

Implementation of multilateral rules and transparency initiatives are of paramount importance, especially as of the time of writing this analysis during the COVID-19 pandemic. It has become even more necessary to know and monitor the measures undertaken by members regarding trade, particularly of essential, basic goods, such as personal protective equipment and food (CAPORAL, 2019). In any case, these measures ought to be allowed to constitute veiled protectionism under the argument of the need to protect human

health, which is similar to the general exceptions to free trade provided by Article XX (b) of the GATT.

In short, members' confidence in the WTO requires that notification obligations are complied with (CAPORAL, 2019). This means that reform is needed to enhance the quality and quantity of information, which would encourage some sort of learning from experience through monitoring, evaluation, and peer review (HOEKMAN, 2020).

4.3. The Vital Reform: Review of the Negotiation Pillar

> *Undoubtedly, in the negotiating pillar, the reform that we see happening is precisely this flexibility in the ways of advancing the negotiating agenda within the WTO – you have different themes being addressed in each pillar.*
> (Thaís Mesquita, 2020)

As perhaps the most essential pillar to the WTO, the problems plaguing the negotiation pillar today are understandably the most pressing – with this in mind, this section will outline how overcoming the anachronisms of the negotiation pillar is essential to reform the organization, in the process drawing a connection to the IF negotiations likely to spur this reform. Without a doubt, the negotiation pillar of the WTO needs to be reformed to strengthen the multilateral trade system and the Organization. Mindful of the fact that the WTO's negotiation pillar was designed to overcome the shortcomings of the GATT system, the legislative negotiation innovations approved in Marrakesh have become the most pressing issues of the present.

As previously discussed, with the enlargement of the WTO – currently accounting for 164 members – and the growing importance of developing nations, particularly emerging ones, negotiations have

become more complex. The need for consensus and the principle of single undertaking became more difficult to fulfil as the offensive and defensive interests of members evolved and gained more momentum and support.

Through both the divide between developed and developing nations and agricultural versus non-agricultural negotiations, it became gradually clear that the single-undertaking principle and consensual decision-making would require balancing the opposed poles. Over time, the Doha Development Round stalled due to disagreement between the sides and an impossibility to reach a consensus (CAPORAL, 2019; HOEKMAN, 2020).

The Early Harvest of 2013 – During the 9th Ministerial Conference in Bali – produced a package in which the greatest advancement was the TFA, the first multilateral agreement to be reached since the Uruguay Round. Almost twenty years after WTO's establishment, TFA was possible due to the effort of identifying the least contentious subject, in which member interests converged. Developing and developed nations agreed on the need for facilitating trade, which allowed the negotiation-legislative deadlock to be partially surmounted. This partiality accounted for the agreement among members that by setting the single-undertaking principle aside, consensus could be reached in a topic of the Doha Round agenda (HOEKMAN, 2016).

The second example of this successful effort of relativizing the single-undertaking principle was achieved in 2015, during the 10th Ministerial Conference in Nairobi. At the time, members agreed to abolish export subsidies to agriculture, with a different timeframe for developing nations and least developed states, under the S&DT notion. The primary aim of the conference was to solve a stalemate that stemmed from the focus on the continued viability of the DDA, and the WTO's negotiating function (WILKINSON, 2016). Martin

& Mercurio (2017) argued that the Doha Round had been put to an end, highlighting that policymaking would significantly change at the multilateral level, given that WTO members were not capable of reaching a comprehensive agreement. Similarly, Wilkinson (2016) assessed that there has been a decline in the future capacity of WTO to serve the interests of least developed countries, due to the established pattern of asymmetrical trade presented in the conference, and that the fundamental consequences of developing countries' gains in trade were altered by the WTO (GOEL, 2015; WILKINSON, 2016). Therefore, the possibility that trade could work in favour of the least developed countries has significantly narrowed, given that the WTO grew weaker in recent years, and some countries backed down from the Organization's initiatives (ODELL, 2014).

The third and last example of the partial relativizing of the single-undertaking principle was the approval (2005) and entry into force (2017) of the Amend to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS – ANNEX 1C of the Marrakesh Agreement). In 2003, members agreed on a "waiver" of the provisions of Article 31 (f) of the TRIPS Agreement. In 2005, members agreed to make the 2003 decision permanent by amending the TRIPS Agreement, which led to a Protocol of amendment that required that two-thirds of members accepted it (Article X of the Marrakesh Agreement) (WTO, 2005). The Protocol took effect in 2017, and "Members who have yet to accept it have until 31 December 2021 to do so" (WTO, 2020o). The quorum needed to amend the TRIPS Agreement showcases that consensus might hinder rulemaking, and, if relativized, these procedures for legislating within the WTO might allow advancements (GOEL, 2015).

Observing the small number of advancements – only three in the 25-year existence of the organization – by the WTO, many members concluded that not only should the Doha Round be abandoned, but also that, as multilateral negotiations continue to fail, the way

forward could be privileging plurilateral, sectoral initiatives (WOLFF, 2022). These were launched in the 11th Ministerial Conference in Buenos Aires (MC11 – 2017), under the title of a "Joint Statement Initiative" (JSI). These JSIs have become a key track of the rulemaking pillar reform.

As Ambassador Castillo points out, the reform of the rulemaking pillar might be analysed according to three issues: development; Doha Round abandonment; and new issues like e-commerce, MSMEs, investment facilitation, and gender (CASTILLO, 2020).

On the topic of development, Castillo's argument is appealing because he advocates that it ought to be a separate topic, given how it is a completely transversal issue. Development plays a role in the discussions of all three WTO pillars; however, most of all in the rulemaking one, where everything related to modernization is tied to it.

In short, the WTO may discuss new trade-related topics. Given the deadlocks in obtaining the required consensus in new subjects like IF or MSMEs, during the MC11 in Buenos Aires, members decided to launch the JSIs, which are plurilateral initiatives.

Naturally, in addition to the plurilateral initiatives of the four JSIs, agriculture and fishing subsidies are key themes on the agenda. Should they be treated well, the WTO's credibility could be enhanced at a critical juncture where the world is facing the imminent challenges posed by COVID-19, the rise of China and US-China trade war, the issue of development and S&DT, and the single-undertaking principle and consensus decision-making rule.

4.3.1. Joint Statement Initiatives: Reinvigorating the Negotiating Pillar

Given the "legislative anomy" seen in the negotiating pillar, showcased by the failure to advance in multilateral negotiations

during MC11, WTO members decided to seek solutions by relativizing the single-undertaking principle and the consensus decision-making rule. This led to the aforementioned JSI (WTO, 2017a).

Currently, there are four JSIs, including one on digital commerce, one on domestic regulatory services, one on MSMEs, and a final one concerning investment facilitation. The four are open to all WTO members, and concrete outcomes in each one of them are expected at MC12. As Teehankee (2020) emphasizes:

> In all these JSIs or joint statement initiatives, since they have adopted a kind of common approach, they actually help create synergies and help provide impetus to each other as each working group or JSI learns from each other rather than having a one-way learning process [...]

However, some WTO members – among them India and South Africa – have outright repelled the JSIs, arguing that these would be fully incompatible with the principles of the multilateral system. The USA, in turn, does not follow their suit; however, the country has not shown any interest in taking part in the initiatives because it sustains that it is of paramount importance to firstly address the aforementioned structural issues within the multilateral trading system (WILKINSON, 2016).

One JSI focuses on IF as a tool for development, in an innovative effort aimed at developing a multilateral framework on Investment Facilitation for Development (AZEVÊDO, 2018; WTO, 2017e). It was launched as an informal dialogue by 70 members, and it has grown to include 28 more members since MC11 (MARTIN, 2020).

The initiative aims to improve the transparency, efficiency, and predictability of investment measures. It goes beyond what the WTO has already established on investment by dealing with non-trade-related investment and, consequently, transcending the TRIMS (Agreement on Trade-Related Investment Measures Discussions).

Discussions are not supposed to address market access, investment protection, or investor-state dispute settlement. It is noteworthy that these debates "could widen the scope of investment governance issues brought into the realm of international trade governance" (MARTIN, 2020, p. 1). In addition, the working document prepared by the group coordinator (24 July, 2019) is intended to help members advance discussions; though it remains a restricted document for WTO members only, the authors have seen a version of it (MARTIN, 2020).

As Martin (2020) reports, it "contains the possible text for preambular language and a total of 29 articles on potential elements of the multilateral framework identified so far, grouped in seven sections". The preamble supposedly presents potential goals of the proposed framework, such as increasing investment in and by MSMEs, promoting sustainable development, and encouraging good corporate governance and corporate responsibility. The sections cover everything from general principles (Section I) to options for S&DT (Section V) to institutional arrangements and final provisions (Section VII).

On November 5th, 2019, several WTO members recognized that trade and investment play a key role in fostering the global economy and that there is a need for closer international cooperation for facilitating cross-border investment. They also point out that "facilitating greater developing and least-developed Members' participation in global investment flows should constitute a core objective of the framework" (WTO, 2019*c*).

It is important to note that, on the topic of gender, the initiative announced in MC11 (S. B. MARTIN, 2020) has been developed as a separate effort. It aims to "examine gender issues more closely in the WTO context and progress on this work will be presented at the Kazakhstan ministerial". They point out that references to

gender are not included within the JSI on IF, as it "has long WTO agreements and negotiating documents".

4.4. A Look Towards the Future: Prospects for Reform

Well, I think it's a mess. If it doesn't reform, it will explode.
(Gabrielle Marceau, 2020)

The structuring argument of this chapter is that reforming and reinvigorating the negotiating pillar is of paramount importance for the future of the WTO, with negotiations on matters such as investment facilitation playing a potential role in shaping this reform and reinvigoration. This is not to say that WTO reform does not encompass the improvement of all three pillars, but rather that the negotiating pillar must take precedence. For instance, the DSB pillar cannot foster the dynamism the WTO needs to meet members' expectations and needs, nor can the monitor pillar function properly without an effective and credible system at play. This might be impossible to achieve without addressing the criticisms of the United States.

As Lima (2020) argues in the interview:

> The WTO, as an organization, and without being able to count on its Appellate Body to judge panel reporting resources, appears to be in recession. The COVID-19 pandemic causes significant declines in both supply and demand and naturally affects international flows of goods, services, and investments. In addition, national governments, in addition to the usual violations, yield to protectionist pressures to obtain and/or regain competitiveness in sectors affected by new conditions of competition. Finally, disputes dictated by the technological race, by the confrontation between different economic models and by concerns, legitimate or not, of national

> security – compose an unpleasant scenario, considered by many to be characteristic of the final chapter of the liberal international order established after World War II. In any case, the reform of a multilateralism that served not only the purpose but the very need to cooperate on a global scale to maintain international peace and security, and to ensure, through trade, the sustainable growth of economies is imperative. In this regard, leadership and political courage are required, first in order to reaffirm the relevance and full operability of the bodies emanating from Marrakesh and then to make the multilateral trading system more open and equitable. The challenges are, as always, more of a political nature and have to do with promises to increase jobs in industries threatened by competition. It will, therefore, largely be up to the private economic agents themselves to demand from their governments, as has happened in the past, to defend the strengthening of the forum responsible for the progress achieved in the last eight decades, in order to facilitate, with the support of public investments in education, health, safety and infrastructure, the valuing of work in all productive sectors.

To sum up, the importance of the negotiating pillar is manifold. First, experience has proven that the consensus decision-making as outlined in Article IX:1 of the Marrakesh Agreement should be complemented by a plurilateral effort in negotiating specific themes (ADLUNG & MAMDOUH, 2018; HOEKMAN, 2020).

The Joint Statement Initiatives are a possible solution to address the shortcomings of the negotiation pillar. This is particularly evident in the case of Brazil, which can lead a renewal process within the WTO through the promotion of investment facilitation.

It is also reasonable to ask if there is momentum for reform, or if it is possible to foster liberalization. Indeed, crises create opportunities; however, the question is whether reform would be

feasible in the short term. Even though MC12 has been postponed and the negotiating pillar has been negatively affected by the circumstantial processes unfolding in the international system, reforming the WTO is not undesirable, let alone impossible. Rather, trade will be an important driving force for economic recovery in the aftermath of the COVID-19 crisis, and the debacle expected in global GDP and commerce (AZEVÊDO & GRAÇA LIMA, 2020).

The WTO and the international system face an existential challenge, as nationalism and protectionism emerge as appealing reactions to the ongoing sanitary and economic crisis stemming from COVID-19. This crisis has intensified processes that were already in play in the system of states and within the WTO since the global financial crisis of 2008, although now trade is increasingly impacted (MEARSHEIMER, 2019; NYE & GOLDSMITH, 2011; WALLERSTEIN, 2016). Recent megaregional trade agreements in years past have served to challenge the role played by the WTO and the multilateral trading system as the epicentre of international trade.

Nationalism has re-emerged as a reaction to the transition of power within the international system, prompting the USA to some degree of self-absorption, and while the WTO seemed to at least push sideways the criticism stemming regional agreements, the second wave of major contestation surfaced (MEARSHEIMER, 2019; NYE & GOLDSMITH, 2011). This wave is currently affecting the international system and international trade, particularly through national-oriented policies and protectionism. COVID-19 has demonstrated that many countries are highly dependent on critical medical supplies, personal protective gear, and pharmaceuticals from abroad, and Lighthizer (2020) points out that it has also demonstrated that strained supply chains increase the risk of economic contagion if one of the links within the chain does not work properly.

Any potential revamp of capitalism would likely require that all institutional issues related to WTO reform be addressed. This would favour that the organization remain as the core of a rules-based international trade system, and it could even help to promote the "stakeholder capitalism" proposed by the World Economic Forum (2020). It would be a new kind of capitalism in which businesses' main objective would not be maximizing their profits and serving their shareholders, but rather serving the interests of all society. In this sense, companies would be more than mere economic units generating wealth for a few investors; instead, they would fulfil human and societal aspirations like zero tolerance for corruption and respect for human rights (SCHWAB, 2019; WORLD ECONOMIC FORUM, 2020).

Among the issues being discussed, electronic commerce (e-commerce) showcases how the WTO must deal with emerging tendencies, particularly given the Fourth Industrial Revolution that is unfolding. E-commerce is the creation, dissemination, showcasing, dealing, or conveyance of goods and services by electronic methods (WTO, 2019). Advancements in technology have seen multinational manufacturing and service delivery companies do business with customers and suppliers – households or public and private institutions – through the use of digital connections (TURBAN, 2018). The e-commerce landscape is marked by an ever-evolving dynamic: there are always new stakeholders, ways of doing business, and policies emerging (OECD, 2019). Technology advancements are much faster than WTO rulings, something particularly showcased by the fact that no WTO rules about e-commerce exist yet.

In fact, trade risks are one of the e-commerce issues not ruled by any WTO agreements (ISMAIL, 2020). Among those risks is that of hackers intruding into an e-commerce website and tampering with its content (MALIK, 2020). In addition, online payments can be blocked and redirected to hackers' accounts, and social engineering attacks

might take place. Surely, should transactions between businesses and customers be unsuccessfully executed through e-commerce, issues of credibility will arise (AGAG, 2019).

Furthermore, inadequate logistical systems are another e-commerce issue that is not through the WTO for now (NOBLE, 2017). For instance, some organizations lack the logistical infrastructure for e-commerce (KAPLAN, 2018), which diminishes their market access. The non-existence of a universal set of international e-commerce rules is another issue, though some of the existing national and plurilateral laws cover a few developed countries. However, this trend does not favour businesses from developing countries that engage in e-commerce (CHANG, 2016). In fact, they face even more risks when taking part in e-commerce, given that there is no mechanism for settling online disputes with far-reaching jurisdiction.

It is important to understand the prospects for WTO reform and the main challenges it faces from the standpoint of people who are directly engaged within the WTO daily. Those points of view will be investigated in specialist interviews and the primary questions are considered below. Hence, present conditions and the possibility of reform are the chief considerations.

In particular, experts from the ITC (2020) reflected on whether the deciding factor for reform will be how the WTO members see the Organization, especially whether they still see it as the best basis of the global trade system. In this sense, Renato Rezende (2020) attributes the difficulties of reform to how Indians and Africans are going to let discussions and negotiations advance due to the fundamental plurilateral nature of any possible WTO reform, especially after the COVID crisis. However, Vera Thorstensen (2020) believes that the WTO may be able to address more controversial issues, such as the environment and investment.

The interviews with Ana Novik (2020) and Carlo Pettinato (2020) highlight issues related to power disputes between the main agents in the current geopolitical scenario. On the one hand, Novik (2020) believes that the main challenge for reform is political, due to the changes of power between the USA and China. She also recalls that there is a lack of current leaders that truly support international organizations and cooperation. She expects that although China is better positioned to concede to advance reform, this concession is very unlikely due to the perception it causes. On the other hand, Pettinato (2020) believes that the EU and other countries still want to ensure the continuity of the WTO system, including all of its functions of rulemaking, peer review/monitoring, and adjudication. He notes that reforms may need to affect all three of these elements, especially the institutional decision-making process, which needs to be updated for an organization of 164 members.

Moreover, some conceptions are more critical, less optimistic, and focus on internal and external variables that affect stakeholders' ability to act in favour of reform. As Ambassador Manuel A. J. Teehankee (2020) argues, the prospect for WTO reform is very dynamic and very dependent on the current political forces and factors at play. He suggests that the ability of proactive initiatives at the WTO to address anti-globalization sentiments and domestic pressures will be crucial to determine whether any reform will be successful. Currently, he believes that there is a 50% chance for reform. In particular, Henrique Moraes (2020) takes the stance that the prospects of reform depend on several geopolitical elements that extend beyond the reach of the WTO. He recalls that, before COVID-19, the main issues were whether the WTO could accommodate different models of capitalism, while now the very nature of international trade underpinning WTO rules seems open for debate.

Regarding the agreement of WTO members to the need for reform, Ambassador Dacio Castillo (2020) criticizes the lack of consciousness of some members on how to modernize the WTO, despite the numerous talks taking place urging for so-called modernization. He remarks that the only proper references on this issue are the papers of the EU and Ottawa groups on areas such as monitoring, transparency, rulemaking, and settlements. Castillo also stresses the importance of having these topics discussed naturally in the WTO without having some members forcing discussions on other countries.

Furthermore, some believe reform is not only possible, but probable. On the one hand, Ambassador Juan Carlos (2020) observes that the challenges the WTO faces cannot be separated from those faced by multilateralism. For him, the WTO lacks a common sense of purpose and objectives, which could be changed by the current pandemic. COVID-19 could very well bring new challenges to the institution, prompting countries to unite once again. In this same vein, Gabrielle Marceau (2020) believes that the urgency of the current pandemic will stimulate collaboration and coordination in favour of WTO reform. In turn, Willy Alfaro (2020) reiterates that transparency and regular activity is not enough to preserve the importance of the WTO system. He believes that the WTO must and will be reformed, but he is very unsure of how this would be carried out, considering the circumstances.

Notwithstanding, some are significantly less optimistic about the prospects for reform. Felipe Hees (2020) does not see any prospect of WTO reform, especially if there is no understanding between the USA and China. He believes that this dissonance between the great economic powers is endangering even the plurilateral initiatives. Therefore, he attributes WTO reform to a possible future common understanding between China and the USA. Moreover, WTO staff member (2020) enumerate political tensions among key players

in the system and the blockage of the Appellate Body as reasons for a reform of the WTO. In addition, Samo Gonçalves (2020) also believes that there will not be any WTO reform in the near future, since it would have to accommodate the tensions between China and the USA. He thinks that after the pandemic, China will be much more aggressive in the WTO, which will completely paralyze the organization. In turn, a former ambassador from a developing country (2020) remarks that there is no possibility for WTO reform without American support, which is impossible to obtain at the moment.

In short, the World Trade Organization is at a critical juncture. According to Caporal (2019), "it is clear that major members of the WTO recognize that the status quo is unsustainable, and reform is needed, both in terms of the WTO's operations and its ability to grapple with the present and future economy". This means addressing more than just the transversal, structural issues, such as the transition of power, the rise of China and its non-market economy, development and S&DT, and the single-undertaking principle and consensus decision-making rule. Reform must also focus on the specific concerns surrounding each of the WTO's three pillars (with the DSB facing strong American criticism and AB's paralysis, monitoring and transparency deficiencies, and legislative pillar anomy and JSIs and plurilateral decision-making as a way forward).

As Director-General Azevêdo pointed out, the process of reform might be better understood as a dark tunnel, in which one can only see darkness and at best a distant light at what is supposed to be the end. Though one cannot see how far away the end is, if resilient, one will get out of the tunnel at some point, even if there are obstacles and "earthquakes" – such as the pandemic – that make the path harder (AZEVÊDO & GRAÇA LIMA, 2020). The metaphor seems to be an interesting way of stating that WTO reform is needed to ensure the

organization keeps its relevance in the multilateral trading system and the international system.

Furthermore, considering the impact of COVID-19 on the WTO, this new reality will likely continue to represent a pressing challenge. Mindful of the expected amount of effort needed to surmount the economic crisis entailed by the unforeseen, trade flows will retract; however, they will need to be fostered as a way to promote economic growth worldwide (AZEVÊDO, 2020b, 2020d; AZEVÊDO & GRAÇA LIMA, 2020; AZEVÊDO & KRISTALINA GEORGIEVA, 2020; WTO, 2020n; WTO & IMF, 2020).

As a suggestion for further studies regarding the WTO's role in the multilateral system and the emerging international system, it can be argued that the pandemic may bring new themes to the centre of the WTO agenda. One could be the trade of medical products, such as personal protective equipment (PPE), hospital and laboratory supplies, medicine, and medical technology. This theme was already analysed in a report released by the WTO Secretariat on 3 April 2020 (WTO, 2020s, 2020n). Moreover, there is much to analyse in discussions about deadlines and obligations to neither stockpile essential goods like medical or food products nor hinder exportations, as, according to the Organization for Economic Cooperation and Development (OECD), more than 60 countries – such as the USA, Argentina, China, and India – restricted exports of essential goods and agricultural and food products until 28 June 2020 (BALIÉ & VALERA, 2020; CONGRESSIONAL RESEARCH SERVICE, 2020; FEDERATION OF GERMAN INDUSTRIES, 2020; GLAUBER, 2020; ITC, 2020; LABORDE, 2020; OECD, 2020; SULSER & DUNSTON, 2020). Lastly, as WTO Director-General Azevêdo argued (AZEVÊDO & GRAÇA LIMA, 2020), food safety and food security will be a theme of paramount importance for import and export countries, particularly the least developed nations who currently endure severe famine and poverty.

In addition, the WTO's negotiations are partially suspended due to the security, interpersonal, and logistical difficulties of negotiating virtually through "zoomplomacy" (BOEHM, 2020; SHAPIRO, 2020; HEATH, 2020; WTO, 2020l). In fact, as United States Trade Representative Lighthizer (2020, p. 1) affirms, the "new coronavirus has challenged many long-held assumptions" of pre-COVID times.

WTO members remained focused on fighting the sanitary and socioeconomic national effects of the virus. The 12th Ministerial Conference in Nur-Sultan, though postponed due to the pandemic to 2021 and eventually 2022, is expected to achieve new commitments from member countries. Chief among those is the elimination of subsidies to illegal, unreported, and unregulated (IUU) fishing, and for prohibiting certain forms of fishery subsidies that contribute to overcapacity and overfishing, with special and differential treatment for developing and least-developed countries (WTO, 2020a).

Furthermore, Director-General Roberto Azevêdo's decision to step down earlier than expected will add a challenge to WTO's already partially-suspended activities, potentially hindering certain activities, particularly those related to JSI negotiations. Azevêdo decided to end his term a year earlier than expected, given how his term's original end-date of 2021 would get in the way of the preparations for MC12 (AZEVÊDO, 2020a). He remained Director-General until 31 August 2020, and members will indeed need to take some time off these negotiations to select a new DG. Candidates were to be presented until 8 June 2020, and by 8 July there would be some clarity about who is vying for the position (WTO, 2020r).

Understanding the power balance present within the WTO, reform proposals and discussions on current opportunities and challenges require that people directly involved with the WTO

produce shared knowledge by reporting and writing about their experiences.

4.5. Challenges to Reform: Concluding Remarks

> *In summary, the obstacles are on substance, if it's more ambitious or less ambitious, and the politics that perhaps won't allow [member countries] to agree to a plurilateral agreement.*
> (Thaís Mesquita, 2020)

Building upon the intricate relationship existing between commerce, investment, and the WTO in Chapter 3, this chapter analysed in detail the process of reforming the WTO, as well as the challenges posed to this necessity. Ultimately, the chapter has sought to provide a clearer picture of the position of the IF negotiations within these historical developments that affect the organization, as well as global trade generally.

Indeed, in light of the close relationship that trade has with investment, the historical development of GVCs call for a dual perspective when analysing such phenomena. This is not the case currently, as trade facilitation talks are significantly farther along than IF negotiations. Overall, the intensification of global flows that could be provided by investment facilitation would certainly serve the needs of technological progress by enabling the latter to arbitrate freely between a wide range of geographical areas, in great harmony with the fast changes observed across GVCs.

Therefore, the chapter has examined in depth the current process of reform within the WTO. Indeed, the necessity to accommodate a new geopolitical and geoeconomic balance of power within the organization, the Chinese non-market economic model, the imperative of development, as well as the revision of the single-undertaking negotiating principle and the consensus decision-making

procedure, have all propelled the notion that the WTO needs to be reformed or it risks obsolescence.

Furthermore, as outlined in this chapter, some controversial aspects of IF talks can find precedents, most notably, in the Tokyo Round (1973-1979). Indeed, practices such as the privileging of a plurilateral approach, before multilateralizing, were commonplace during that period of the GATT, resulting in successful achievements such as constitutional adjustments, all the while accommodating the increasingly conflictual interests of the USA and the European Economic Community (EEC) at the time. In fact, the positive outcomes of the Tokyo Round could serve as a model on which to base and adjust current dissatisfactions with the international trade regime, as well as to gain significant ground on the achievement of a formal IF agreement.

As described, the current trade conflict between the USA and China seems inexorable to current geopolitical and economic changes in the world system. Nevertheless, despite the exogenous character of the conflict regarding the WTO, the so-called "trade war" has been at the centre of discussions concerning the reform of the organization. Relevant issues that were discussed in depth throughout this chapter range from a renewed definition of developing – to the degree that it affects eligibility to special and differential treatment – countries, to the removal of market-distorting subsidies and illicit technology transfer. Crucially, this section has observed that it is the very system that the liberal order founded in the 20th century that has enabled the rise of non-market economies – most notably China – to the fore of global trade diplomacy. The end result is that countries have split interests between maintaining the status quo, reforming it, and changing it radically.

At the core of the discussions concerning development and the reform of the organization stand the new heterogeneous

order of "developing" nations. Indeed, the rapid emergence of key economies on the world stage has been analysed, as well as the fact that relatively higher economic growth experienced by LDCs over the past decades has diversified and created new conflicts of interest among the developing nations themselves. For this reason, issues such as the abandonment of controversial Doha themes within the WTO, as well as of the single-undertaking principle, have pit developing countries against each other, putting a definitive end to the traditional developed-developing split that could be observed in the past.

Another elaborated issue at hand concerning the reform of the WTO is the dysfunctional Appellate Body. Indeed, as analysed, unilateral actions pursued by the USA have escalated the crisis to grave proportions, and the country's refusal to appoint new members to the AB have left it paralysed since December 2019. Thus, member countries have set forward a variety of trajectories to resolve the situation. This chapter has distinguished the "diplomatic-negotiating" approach with the "legalistic" approach by rules-based, impartial adjudication. In short, it is argued that reforming the DSB would contribute to reinvigorating the Organization, as it has been one of its principal bodies since the designing of the ITO and then the GATT. However, accomplishing this would require the elimination of asymmetrical power balances between developed and developing nations within the Body, a process which has been unfruitful so far.

With regards to the transparency pillar of the WTO, the analysis has outlined several proposals by members to reform and improve upon what already exists. Indeed, observing that the volume of notifications by several members – such as China or India – is insufficient, members such as the EU, the USA, or Canada's Ottawa Group have endeavoured to understand why these notifications are not submitted and what can be done about it in the context of WTO reform. Overall, the analysis has proposed that the pillar's function

of information asymmetry reduction, and enhanced cooperation within a rule-based multilateral system, is currently flawed, but it appears to be the least critical operation with regards to WTO reform.

In fact, the negotiating pillar is the most significant aspect to be considered when it comes to the reform of the organization. It has been argued that the principle of single-undertaking that governs decision-making can no longer be satisfied, ever since the emergence of the DDA in 2001. One cited example of such recurrent failure to achieve concrete results is India's blocking of the agriculture-related agenda at the Bali Ministerial Conference of 2013. Overall, this chapter has observed a schism between countries – regardless of development status – that choose to remain exclusively faithful to themes of the DDA, and those wishing to move on to different agendas such as investment facilitation. On the subject of reform, the former group also endorses the preservation of the single-undertaking principle, while the latter appears to be more open for plurilateral processes.

The anomy noted within the negotiating pillar of the WTO has led to the dispersed establishment of plurilateral initiatives among like-minded members of the organization (WOLFF, 2022). As of 2020, time of writing, these initiatives cover the areas of digital commerce, domestic service regulation, MSMEs, and investment facilitation, the final of which is the object of this work. Furthermore, the analysis observed that these are all "new themes" – that is to say, they go beyond areas enshrined in the Doha Round. This chapter has then highlighted the relevance and contribution of Joint Statement Initiatives to the process of reforming the organization.

Nevertheless, insights from interviews with a variety of experts have painted a nuanced picture regarding the prospects of reforms. On the one hand, there are proponents of the idea that reform is inevitable due to the unsustainable nature of the status quo. On the

other hand, there are those who doubt that reform is even possible at the current stage due to more pressing matters and irreconcilable interests between the two key members of the WTO, the USA and China. Indeed, just as the organizational issues stemming from those two countries' confrontation are considered exogenous to the organization, some experts believe that it is not within the WTO that these issues will find their solution. Still, this very statement can be read as a reiteration of the need to reform multilateralism, and this chapter has sought to argue that IF initiatives, and more generally plurilateral approaches to "new themes", serve to accomplish precisely that.

5. FROM UNDERDOG TO POWER PLAYER: BRAZIL AND THE WTO

5.1. An Emergent Brazil: Introduction

I think that in the last 20 years we have undoubtedly seen a consolidation of Brazil's leadership at the WTO.
(Thaís Mesquita, 2020)

Brazil has been active in the World Trade Organization (WTO) in recent decades, rendering it necessary in this chapter to examine the country's engagement in the WTO from a historical perspective. In practice, it is undeniable that Brazilian diplomacy has taken a more pragmatic approach in recent years, particularly in light of the country's engagement in investment facilitation discussions. This marks a paradigm change in global trade policy towards a more viable plurilateral alternative to advance the WTO agenda. The diplomatic stance of Brazil at the WTO is emphasized by Cima's interview: "Brazil was always a major player in WTO, and it continued during my service there. It was very active on agriculture, then on

service, investment facilitation and other matters it was always a major player."

Given this context, this chapter analyses how Brazilian diplomacy has increased its activity during the last two decades, as the WTO has become a central pillar of global trade. In particular, the chapter address Brazilian diplomatic actions in the evolution of the negotiation framework at the WTO, as the country's diplomatic positions have changed over time, evolving from a more defensive posture of its own domestic interests to a more active and leading position among WTO members. Moreover, cyclical circumstances, especially the global financial crisis of 2008, have necessitated a change in attitude towards an active and pragmatic position. As Moraes (2020) highlights: "Brazil has recently become more active in some areas in recent years where there was not so much multilateral activity – a case in point are the discussions on investment facilitation, an area that gained prominence only recently."

The chapter begins by addressing the main aspects of the Brazilian diplomatic position in the context of the WTO. Brazilian participation in the GATT, as well as its active participation in the WTO, are emphasized. In the last few years, the WTO has found it difficult to move forward with negotiations in their traditional format, which is a crucial reason for the stalling of the Doha Round in which Brazil was one of the key countries. In particular, the global financial crisis (GFC) has further aggravated the scenario, making negotiations more complicated due to the economic retraction of some countries. The election of Brazilian Roberto Azevêdo, and his performance as Director-General of the WTO, are also discussed in the chapter. In general, his participation as a DG reinforces the centrality that the country has in negotiations within the WTO.

Another important issue that is addressed in this chapter is Brazilian participation in the reform of the WTO. In particular,

the chapter addresses the idea that Brazil has recently adapted its diplomatic position to achieve results in a feasible way. This change in posture includes a reconciliation with the idea of plurilateralism. In this context, the crisis in the dispute settlement mechanism is also commented upon, as, like the negotiating pillar, it faces difficulties in its proper functioning. As Moraes (2020) highlights:

> I see a change in emphasis, rather than a change in direction, in our positions at the WTO. In particular, Brazil has recently become more active in some areas in recent years where there was not so much multilateral activity – a case in point are the discussions on investment facilitation, an area that gained prominence only recently.

Based on the references of Brazilian performance in the WTO, and especially in ministerial meetings, then, the chapter analyses Brazilian participation in the main debates of the last years. Firstly, it addresses the active Brazilian participation in agricultural negotiations in the WTO, as agriculture is one of the central activities of the Brazilian economy and a topic of historical importance for the country. General data related to agriculture are presented in order to contextualize the discussion. Then, the discussion regarding phytosanitary measures is presented. In this case, it is an analysis of a controversial issue, because there is the objective of protecting the lives of humans, animals and plants, but just as Brazilian diplomats have reiterated, there is the use of SPS mechanisms with the objective of making trade difficult through arbitrary decisions and unjustified measures. In addition, the diplomatic participation of Brazil in the themes of fishery, the Trade Facilitation Agreement, and electronic commerce are commented upon the chapter.

Thus, in order to shed light on the main issues of Brazilian diplomacy and WTO interactions, the chapter is organized as follows: Section 4.2 addresses the main aspects of Brazilian diplomacy at the WTO and broadly comments on the relevant historical events.

Section 4.3 covers the topic of a Brazilian DG at the WTO. Section 4.4 introduces the main issues regarding Brazil in the WTO reform. Section 4.5 details Brazil's role in the Dispute Settlement Crisis, while Section 4.6 addresses the monitoring and transparency pillar. From Sections 4.7 to 4.11, there is a review of Brazilian diplomatic engagement in agriculture, SPS, fisheries, the TFA, and electronic commerce. Finally, section 4.12 brings about the main concluding remarks of the chapter.

5.2. Shifting the Goalposts: Diplomacy at the WTO

I was posted there for two years not twenty, but Brazil during my period was always very Brazilian in its way of approaching the system, meaning cautious.
(Marcelo Cima, 2020)

This section will look specifically at the evolution of Brazil's diplomatic position at the World Trade Organization, in the process outlining how over the decades the country came to play a leading role within negotiations such as those now seen on investment facilitation. Brazil played a key role in the General Agreement on Tariffs and Trade (GATT), and has continued to do so in its successor, the WTO. Brazilian diplomatic policy was geared towards actively leading the Doha Development Round (DDR) of trade negotiations, which was launched in November 2001 (DOCTOR, 2015). It is important to highlight that the time of the prior Uruguay Round, from 1986 to 1994, coincides with one of the moments of largest macroeconomic disorder in Brazil, which largely limited the country's ability in organizing a consistent foreign trade policy and reacting to an agenda designed – and vigorously pursued – by developed countries.

The Uruguay Round largely proved ineffective in solving difficulties for developing countries that would facilitate global trade

flows. As a result, the subsequent Doha Round was significant, but certain factors, such as the subprime mortgage crisis that impacted the US stance, ended up hindering the negotiations' conclusion. Only at the Ministerial Conferences of Bali (2013) and Nairobi (2015) were important negotiations partially advanced, bringing important results to Brazil such as the Trade Facilitation Agreement (TFA) and the end of export subsidies for agricultural products. However, the main issues, such as expanding the WTO's multilateral disciplines to adapt them to the new realities of trade, had little progress. This viewpoint is endorsed by Prazeres' (2020) observation that "there was a change in the Brazilian position around the time of the Bali round due to the conclusion that the round would not be concluded as planned and that acting entirely by the agriculture agenda alone would lead to a total failure that could even damage multilateralism itself".

Since there remains a need to continue negotiations at the WTO, there is a dichotomy in how trade negotiation should evolve. On one hand, some advocate in favour of exploring new plurilateral or hybrid multi/plurilateral architectures to advance in the negotiations (WOLFF, 2022). On the other hand, some are in favour to advance the negotiations through the original structure of the DDR, even though history has proven the difficulty of moving forward with this framework.

Regarding the Brazilian diplomatic stance, according to Doctor (2015), the Brazilian Ministry of Foreign Affairs, known as Itamaraty, has enjoyed considerable autonomy in handling Brazilian foreign policy. The author has highlighted the main characteristics of Brazilian foreign policy as supporting the achievement of national development, an emphatic defence of sovereignty and autonomy, and a priority given to multilateralism and universalism, the last of which is due to Brazil having a long history of participation in

international organizations, from the League of Nations to the UN and its many agencies and institutions.

Brazil's diplomatic efforts have helped generate greater democratization in the WTO's decision-making process, due to an expressive negotiating projection of developing countries that originated with the creation of the Agricultural G20 by Brazil, India, and Argentina in August 2003. The global economic and financial crisis of 2008, in turn, strongly slowed the pace of the liberalizing spirit of the key countries in the multilateral system. All the while, there remained a growing dynamism of emerging economies that created implicit pressure to contribute to the negotiating process. Even though the Doha Round was weakened, the negotiation of bilateral, regional, and plurilateral trade agreements emerged as an alternative way of opening markets or advancing trade rules between groups of countries. An interesting feature of these types of agreements is to allow for negotiation of the specific interests of the participants, responding to the logic of economic complementation and minimizing possible drawbacks on sensitive subjects.

The most important transformation that has taken place in recent years has been the increase in the relative weight of emerging countries in international trade. In 2010, Brazilian exports reached US$ 202 billion, evolving in comparison to the US$ 55 billion exported in 2000. Imports in 2010 were US$ 191 billion, a massive increase from the US$ 59 billion of a decade earlier. In ten years, Brazil has multiplied its exports by 3.7 and its imports by 3.2. In many ways, this reflects the growth of world trade in this time period.

Brazil is perceived as a country that has "soft power", a certain diplomatic "savoir-faire" combined with technical knowledge that translates into elements such as the ability to develop, present and defend concrete negotiation proposals, transit capacity – and even leadership – in different groups and categories of countries to build

consensus, and the ability to defend its interests effectively within the WTO's dispute settlement mechanism.

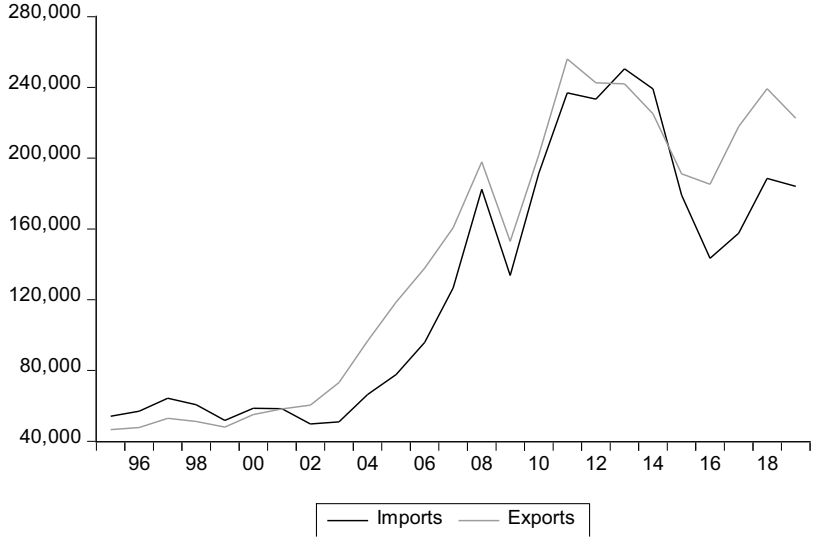
The old dynamic of the GATT era was broken, consistently favouring the objectives of the rich and developed world, personified in the "Quad" (USA, European Union, Japan, and Canada). Shaffer (2008) points out that Brazil entered the WTO with two key attributes that facilitated its successful use of WTO dispute settlement: a professional government bureaucracy for international trade, and a system of relatively well-funded trade associations and large private companies that help businesses overcome collective action problems. The authors say that Brazil's import substitution industrialization (ISI) policies from the 1960s and 1970s shaped the structure of trade policymaking within its state bureaucracy. These policies and the resulting governmental structure led to a relatively passive and fragmented role for its private sector and civil society regarding international trade negotiations and the enforcement of international trade law under the GATT, which existed from 1948 to 1994. The Brazilian Ministry of Foreign Affairs (MFA) represented Brazil internationally, including in trade negotiations, while the Brazilian Department of Foreign Trade (Carteira de Comércio Exterior do Brasil, CACEX), located within the Ministry of Development, Industry, and Trade, implemented Brazil's import substitution policies.

Since the 1990s, Brazil has shifted its trade approach towards a more liberalized policy. According to Abreu (1998), following March 1990 the new government adopted a comprehensive agenda of liberal reform, including tariff cuts. Non-tariff trade barriers related to the import substitution strategy were abolished, and the average trade tariffs were unilaterally lowered. It is important to highlight that these liberalizing movements were in line with existing efforts of deregulation, privatization, and price stabilization. The author highlights that with the introduction of the currency stabilization

plan in 1994, the commercial policy became vulnerable to pressures allegedly related to the level of the real exchange rate.

Before the creation of the WTO and the start of negotiations to establish a Free Trade Agreement of the Americas (FTAA), foreign trade was not an issue that mobilized Brazilian business or civil society. As Brazil's policies shifted to more open-market and export-oriented alternatives, accompanied by greater international legal commitments under a new WTO judicialized system, Brazilian industry and the government began to devote more attention to international trade law and practice. Graph 1 below shows how Brazil has been more open to trade since the founding of the WTO and the country's shift to liberalization. Both annual imports and exports maintain a positive trend.

Graph 1: **Brazilian exports and imports, annual value (million US$)**



In specific terms, the data from the Ministry of Industry, Foreign Trade and Services (Camex) of Brazil show that Brazilian exports and imports are considerably diversified by partners and

WTO members. Regarding exports, the main markets that receive Brazilian products are China (28% of goods), the United States (13%), the Netherlands (4.5%), Argentina (4.3%), Japan (2.4%), Chile (2.3%), Mexico (2.2%), and Germany (2.1%). On the other hand, in 2019 Brazil mainly imported goods from China (21%), the US (18%), Argentina (6.2%), Germany (6%), South Korea (2.8%), India (2.5%), Mexico (2.5%), Japan (2.4%), Italy (2.4%), Russia (2.2%), and France (2%).

Since the Doha Round commenced in November 2001, the WTO has sought to facilitate a trade agreement among its members to lower tariffs and non-tariff barriers. At the 2013 Bali Ministerial Meeting, in an attempt to salvage the Doha Round, the WTO adopted a new strategy to address the negotiating deadlock. Rather than continue to treat all parts of the Doha Round negotiating agenda as elements of a "single undertaking" agreement, the WTO decided to section off certain parts of the negotiations. The first step in this new approach was the conclusion of a new WTO Agreement on Trade Facilitation at the Bali Ministerial.

As Elias (2020) points out, the new strategy has been to abandon the old multilateral approach in favour of a plurilateral one. Rather than waiting for all WTO members to reach consensus, the plurilateral approach allows a subset of members to try to reach agreement on a subset of issues on the negotiating agenda first. The interviewee highlights: "Not only the Doha agenda but this multilateral negotiating format, of you having broad negotiating packages, of having methodologies and negotiating formats and these negotiating formats have been exhausted as such". Hence, the plurilateral approach to negotiating agreements may very well increase the efficiency and competitiveness of the participants in the negotiations for the products or sectors covered in them (WOLFF, 2022).

Once this "coalition of the willing" reaches a critical mass, the new agreement would then take effect. WTO members left on the side-lines are welcome to join later but are not obliged to do so. This new approach allows the WTO to make incremental negotiating progress on a case-by-case basis, so long as a subset of WTO members is ready. It ensures that smaller WTO members cannot hold up progress on a portion of the negotiations if a critical mass of larger trading countries is willing to move forward.

Therefore, there might be potentially negative impacts, especially for those left out of the negotiation. In addition to the diversion of trade, there is the risk of leaving out of the negotiation agenda topics that preferably are disciplined multilaterally, such as agricultural subsidies, and the loss of exchange currency for multilateral negotiations.

According to Vieira (2017), Brazil's diplomats generally defended the liberalization of agricultural markets to improve Brazil's commercial conditions. Hurrel (2006) highlights that the diplomatic advances of Brazil sought to counterbalance the dominant position of the US and the EU in global economic governance.

In addition, Vieira (2017) suggests that Brazil could have planned a more balanced approach to the DDA. According to the author, Brazil's diplomatic position invested its national interest in trade instead of seeking broader considerations related to international politics. In contrast to worldwide trends at the time, the Brazilian stance on the matter did not allow the achievement of alternative or second-best solutions to multilateral agreements, such as (potentially) preferential trade agreements (PTAs).

The failure of concluding the 2008 July Ministerial Meeting in Geneva represents the main deadlock that the negotiating parts of the DDA faced before the beginning of the global financial crisis (NARLIKAR & VAN HOUTEN, 2010; VIEIRA, 2017). After the

subprime mortgage crisis, as Vieira (2016) points out, the multilateral liberalization effort had been undermined, despite the establishment of the Trade Facilitation Agreement after the 2013 Bali Ministerial Meeting.

Based on interviews conducted by the author, this study investigates how the proactivity of Brazilian diplomacy can lead to structural changes in the WTO, especially concerning change in the multilateral paradigm. In general, most experts believe in the positive impact that IF negotiations can have on reforming the WTO. In addition, several experts emphasize Brazil's important position in this process, as well as its active diplomacy, as indicated mainly by Tatiana Prazeres (2020), Pedro Mendonça (2020), and Samo Gonçalves (2020) in their interviews. Brazil's leadership in IF negotiations is seen as important for bringing about change in the WTO.

Brazil has consolidated its diplomatic leadership over the past two decades. To best analyse this issue, this chapter is divided into multiple sections that analyse the rise of increasingly active Brazilian participation in WTO matters, relating its diplomacy to specific issues. First, Brazilian leadership, personified in the election of the Director-General of the WTO Roberto Azevêdo, is commented upon. The text then highlights the ongoing discussions related to the need to reform and adapt the WTO for its better functioning. With the idea of reform in mind, the paper comments on the question of the crisis in the functioning of the dispute settlement system, in which Brazil has positioned itself in several specific disputes. Finally, specific issues such as agriculture, fishing, the trade facilitation treaty, and, more recently, the need for regulation in e-commerce are analysed from the Brazilian diplomatic point of view. In general, it appears that Brazil has assumed a leadership position at various times, either to defend its interests or as a representative of developing countries.

5.3. Rise to the Top: Brazil's DG in the WTO

The open plurilateral approach has allowed the proponents (like-minded members) to advance discussions on a topic of current relevance for many members.
(Pamela Apaza, 2020)

An important milestone in Brazilian active diplomacy in the WTO was the election of Brazilian diplomat Roberto Azevêdo as Director-General of the WTO, and this section will elucidate how this 2013 development illustrated the symbolic "arrival" of a major developing country to the top of the WTO agenda. From then on, new perspectives arose regarding the possibility of renewing the debates related to the Doha Round. Ambassador Azevêdo joined Itamaraty in 1984, having served in Washington, D.C., Montevideo, and the Permanent Mission of Brazil in Geneva. In 2001, he headed the Dispute Settlement Division at Itamaraty, where he served as a principal litigant in many disputes at the WTO. From 2006 to 2008, he was Undersecretary-General for Economic Affairs, acting as Brazil's main commercial negotiator in the Doha Round. The WTO has a Secretariat composed of 630 employees and has been under the leadership of Roberto Azevêdo since 2013. Ambassador Azevêdo is the sixth WTO director-general, and his second term of office lasted until August 2020.

As Neves (2013) highlights, it was expected that the election of Roberto Azevêdo to the organization's leadership could bring advancement – at least on some issues – to negotiation matters which had been stuck in the past decades. The Azevêdo campaign was based on the objective of ending the inertia caused by the failure of the DDR and the effects of the financial crisis, and in this sense, the objective was to strengthen the WTO's role in promoting development through global trade and trying to resolve the challenges inherited from the past. In particular, the main expectations of

change concerned advances in international trade regulations and flexibility of the principle of single undertaking.

In an interview with Pontes (2009) during his tenure as Brazilian ambassador to the WTO, Azevêdo commented that to move forward, the WTO needs to resolve its distortions and rebalance its rules to allow for greater integration of developing countries in international trade.

As Director-General, he settled the Bali agreement package in 2013, early in his first term. The Bali agreement delivered important reforms, particularly for the WTO's poorest members, as well as diplomatic breakthroughs that were important for Brazilian international trade, such as the Trade Facilitation Agreement (TFA). Two years later, another pack of measures was approved in Nairobi (2015), including relevant agriculture reforms such as limiting export subsidies for agricultural products, and large technological tariff cuts. Coming into force in 2017, the TFA was the first new multilateral agreement since the creation of the WTO in the 1990s.

Acknowledging a need for further advancements following his appointment for a second four-year term, Roberto Azevêdo has also recognized that there is a lot to learn, for example, from innovative and flexible approaches to advancement within the WTO. He has also noted that these are challenging times for the multilateral trading system. Azevêdo (2014) highlights that the Trade Facilitation Agreement, which ensures aid for developing and least-developed member countries, was the first effort of the WTO in this approach. In its proposition, the agreement implies the provision of assistance and support in order to improve developing countries' capacity for implementation.

The Eleventh Ministerial Conference (MC11) that took place in December 2017 in Argentina did not bring about significant advances in multilateral negotiations. In this way, DG Azevêdo found himself

in a scenario of virtual paralysis in the WTO negotiating pillar. This paralysis of the negotiating agenda is due mainly to four primary trends. There were the effects of the 2008 GFC, as well as the rise of China as the world's largest exporter and a new source of commercial tension, especially with regards to the US. Then there is the anti-trade dissatisfaction of developed countries, as well as developing countries' criticisms of the trading system, and progressive dilution of the consensus on trade liberalization in recent years. Finally, there has been the growing perception that bilateral agreements could generate better results in a scenario of emerging economies and expansion of the WTO.

During this period, Brazilian diplomatic objectives became guided by pragmatism. The Brazilian agenda became focused on obtaining punctual results, given the difficulty of advancing in the multilateral system and the impossibilities of concluding the Doha agenda.

The two mandates of Roberto Azevêdo and his permanence in the WTO demonstrate Brazilian diplomatic leadership in international trade. The fact that the DG was Brazilian contributes to the representation of emerging economies within the multilateral trade system. It also highlights the Brazilian leadership found among emerging economies within the WTO, which is an important international organization and the only one dealing with trade rules between nations. Before Roberto Azevêdo, most of the WTO's formers DGs came from advanced economies; they consisted of Irishman Peter Sutherland (1993-1995), Italian Renato Ruggiero (1995-1999), New Zealander Mike Moore (1999-2002), Supachai Panitchpakdi (2002-2005), from Thailand, and Frenchman Pascal Lamy (2005-2013).

In a recent piece entitled "Economic transformations and post-pandemic trade", DG Azevêdo comments on the deadlock

in which the WTO has found itself in the last decades, and the issue of reshaping the WTO to adapt to world changing in recent years. The DG highlights the pandemic, which started as a public health crisis but naturally affects the economy, foreign trade, and international politics. The DG also suggests that Brazil sees the crisis as an opportunity to diversify into non-agricultural industries (i.e., manufacturing), through improved insertion in global value chains. Furthermore, the DG points out the need for WTO reform and mentions that there are issues that have already been improved upon, such as e-commerce regulations.

According to DG Azevêdo, since MC11, there have been gains in inclusivity, with more members joining initial proponents, new members from across the developmental spectrum engaging in the shaping of future rules, and developed, developing, and least-developed countries discussing core themes under Chilean coordination (AZEVÊDO, 2018). Per the working document circulated in July 2019, members "have managed to identify possible elements of an investment facilitation framework" (AZEVÊDO, 2019).

Brazil takes part in all JSI, but the country is particularly engaged in e-commerce and IF. IF is a theme in which Brazil can contribute much, given its new model of investment agreements, known as the Cooperation and Facilitation Investment Agreement, or CFIA (CNI, 2018; HEES, 2018). The model is considered a "pioneering approach" to investment agreements, and it can serve as a "basis for reform in multilateral settings, such as the WTO". Besides, it can not only co-exist with traditional Bilateral Investment Agreements (BITs), but it can also surmount the shortcomings intrinsic to these agreements, due to the "unique features that set it apart from the BITs" – chiefly among these is the "emphasis on investment facilitation rather than investment protection" (CHOER MORAES & HEES, 2018).

These initiatives present themselves as a way forward in ensuring WTO creditability by modernizing and adapting the organization to the 21st century, as Brazil seems to argue under President Bolsonaro. However, Vera Thorstensen (2020) claims rather that the topics under negotiation are minor, and they do not resolve the WTO deadlock, because it does not lead the organization to rethink. Per her argument, if the WTO continues the way it has been functioning, it will inevitably lose its relevance.

5.4. The Itamaraty Influence: Brazil Within WTO Reform

> *In Brazil, as in other continental countries, protectionist pressures and discriminatory incentives contribute to the permanence of the "status quo", occasionally changing the level of protectionism for macroeconomic or other non-commercial reasons.*
> (José Alfredo Graça Lima, 2020)

With an eye towards synthesizing the previous sections' observations of growing Brazilian influence in the WTO, this section will say how this influence has translated to a leading role for Brasília on matters of WTO reform. January 2020 marked a quarter-century of the World Trade Organization's existence. Despite the maturity of the institution, however, the issue of WTO reform has gained ground, and various WTO members have indicated their belief in a need for change. In part, this discussion is about updating rules and increasing the capacity to resolve international trade issues; it is also about the negotiating pillar of the WTO, which has faced problems especially in spheres concerning the United States and other developed countries. Moreover, there have been geopolitical changes in the world economy, such as the rise of China, which has reconfigured relations in global trade.

Initial motivation for WTO reform comes from developed countries and is related to specific issues. However, the multilateral negotiation paradigm has generated criticism from many WTO members, as developing countries have emphasized that the multilateral structure has impeded their development and industrialization. Moreover, among developed countries, there have been moves made to circumvent multilateralism and the standard WTO framework, in particular plurilateral efforts between the USA, Japan, and the EU, or between the EU and China. Although Brazil continues to support the main themes on the Doha agenda, particularly related to agriculture, the country's diplomacy has sought a pragmatic approach to reaching its objectives, namely by seeking incremental advances in topics of interest. At the Buenos Aires conference, for example, Brazilian diplomats defended plurilateral solutions, as in the case of fishery subsidies.

Regarding the multilateral and plurilateral debate, the interview with Mesquita (2020) demonstrates how the Brazilian diplomatic position has changed. On the one hand, she highlights the importance of the multilateral paradigm for countries that do not have immense political and economic power, such as China or the US. In this case, Brazil may benefit from the safeguard of WTO multilateralism to defend its interests. On the other hand, she points out that Brazil's diplomacy has shifted due to its recognition that plurilateral agreements could be a strategy to specific matters and a way to feasibly advance in negotiations.

In general, the developed countries' point of view on reform is based on updating the rulebook, definition of the scope of special and differential treatment, negotiation models and transparency, and dispute settlement mechanism. Brazil has been historically open to discussing these update efforts; however, there is a defensive concern regarding the change of rules and special treatment, so that these changes must be accompanied by compensation. The other issues

may not generate significant concerns, as they refer to improving the system as a whole, and not so much to specific interests.

Regarding the updating of rules, some initiatives have demonstrated the content of the proposed changes. For example, the US-Japan-EU initiative demonstrates developed countries' preoccupation with their own interests, and in this context, Brazil and other emerging countries have sought to ensure that any changes are not disproportionate or harm their own economies. In general, developed countries have outlined their positions on industrial subsidies, regulation of state-owned companies, and forced technology transfers. Likewise, the discussion about S&DT proves to be antagonistic, as on the one hand, some countries wish to seek revisions on past agreements. Meanwhile, countries such as Brazil are willing to discuss, but only with a focus on future agreements.

Several countries have proposed to make the WTO negotiation model more flexible, with the main change being the adoption of plurilateral trading models, which Brazilian diplomats have supported, especially in the fishing industry negotiation of 2016 and, after that, the country's position on IF agreements. The movement in favour of plurilateral negotiations arose due to disagreements between WTO countries, the veto power crippling the rule of consensus, and an understanding that agreements with fewer countries could serve as a basis for future multilateral agreements. Thus, plurilateral agreements could be seen as an option to deblock the WTO negotiating agenda. Interviews with Tatiana Prazeres (2020), Pedro Mendonça (2020), Samo Gonçalves (2020), Renato Rezende (2020), and Paulo Elias (2020) all emphasize the importance of facilitation agreements as a more feasible way forward in the world economy, as well as a modernizing path for the failed original WTO system.

In addition to the blockages in the WTO negotiating pillar, there is also the blocking of the Appellate Body (AB), which directly affects

the dispute settlement mechanism. However, this is a specific case in which the US is in opposition to the remaining WTO members. The US critique, which is largely unsupported by other WTO countries, is mainly related to anti-dumping legislation applied by the AB. From the Brazilian viewpoint, any change in the WTO judicial process could put at risk several diplomatic gains already consolidated.

When consulting interviews with Willy Alfaro (2020), Samo (2020), Gabrielle Marceau (2020), Juan Carlos (2020), Carlo Pettinato (2020), and WTO staff member (2020), most hold similar views on the ability to change the original WTO trade framework. These experts are optimistic about how IF negotiations could set precedents for plurilateral negotiations on other issues. Manuel A. J. Teehankee (2020) also highlights the possible effects that may arise from the integration of the investment agenda to the international trade agenda. Meanwhile, Ana Novik (2020) points out that IF negotiations could bring a more favourable environment for multilateral agreements in the future.

An important trend in recent years has been the intensification of trade tensions between China and the USA. Since Brazil is economically intertwined with both countries, Thorstensen (2020) comments that "the division of Brazil's interests between China and the United States and the tentative of conciliating both positions weaken Brazil". She remarks that the WTO has indeed lost its relevance due to the clash between the United States and China, and as a result Brazil stands to gain little from the organization. Despite the representation of the WTO as a global governance body and its impact on global trade flows, the question of WTO reform stems in some ways from the implementation difficulties tied to the Doha Round, cyclical factors that affected the global economy, and from the new centrality of a tense Sino-American relationship.

Gradually, new models of negotiation between members have gained ground, especially based on the premises that plurilateral agreements can advance issues between members, and that these incremental gains could be extrapolated to more countries later. In particular, Brazil has adopted a more pragmatic stance, positioned itself favourably on the idea of plurilateral agreements.

For Brazil, it can be argued that any reform may strengthen the rule-based multilateral trading system governed by the WTO, and therefore the country is engaged in this effort. As Foreign Minister Ernesto Araújo (2019) stated at the Davos informal WTO ministerial gathering, Brazil's stance is clear in that it seeks to "reform and stand ready to negotiate in good faith, thereby strengthening the multilateral trading system". The Minister also stated that Brazil would "fully engage its capabilities in the discussions regarding the WTO reform agenda" (ARAÚJO, 2019), promoting the founding values and principles of the WTO and the cherishment of open, free, and fair trade. The prevailing conclusion is that the international reality has changed over the past 25 years, which requires a different, more modern WTO. This means acknowledging that the Doha Development Agenda (DDA) is anachronistic and ought to be abandoned as a way forward. It also means that they are potentially reflecting on problematic structures in the WTO such as S&DT and the principle of single undertaking.

On the subjects of development and S&DT, the Brazilian stance seems to have changed during the current administration. The country decided to forego S&DT in present and future negotiations, meaning no rights already enjoyed by the country will be affected (MINISTÉRIO DAS RELAÇÕES EXTERIORES, 2019; THE WHITE HOUSE, 2019). Given that by mid-2020 Singapore, South Korea, and Costa Rica had followed suit, Brazil under President Bolsonaro has asserted that this decision does not constitute any change or reduction in existing flexibilities, and that this matter is distinct

from the country's developing status, which remains the same. The status of developing country is self-declaratory, and several S&DT measures showcase that the treatment is "dynamic and evolutionary" (MINISTÉRIO DAS RELAÇÕES EXTERIORES, 2019). Furthermore, S&DT is a prerogative that must be granted on a case-by-case basis, according to specific aspects of a given negotiation. No country should be granted *ipso facto* flexibilities, but rather be accorded special status according to its particular needs and hardships in a given theme (DELEGATION OF BRAZIL, 2019b, p. 57-58; 2019c, p. 30-31).[1]

Within the reform process, Brazil under President Bolsonaro seems to have no standard alignment when acting alone or through different coalitions, as it aims to promote its national interests, which means not only taking part in the Ottawa Group[2] in what concerns general aspects of reform, but also working in concert with the Cairns Group[3] on matters regarding agriculture or the JSI related to IF.

It can be argued that under President Bolsonaro, Brazil prioritizes WTO reform and the perfection of the multilateral trading system for two reasons. First, it represents the international dimension of a national effort to liberalise and modernise the country

1 In WT/GC/M/176 see particularly from paragraph 7.117 to 7.120 and in WT/GC/M/177 see particularly paragraphs 6.35 and 6.36.

2 Canada acted to bring together like-minded WTO members in a small, informal group committed to supporting and strengthening the multilateral trading system. The group is composed by Australia, Brazil, Chile, the EU, Japan, Kenya, Korea, Mexico, New Zealand, Norway, Singapore, and Switzerland. Available at: <https://www.international.gc.ca/world-monde/international_relations-relations_internationales/wto-omc/index.aspx?lang=eng#a10>.

3 As WTO Glossary defines it: "Group of agricultural exporting nations lobbying for agricultural trade liberalization. It was formed in 1986 in Cairns, Australia, just before the beginning of the Uruguay Round." Its main goal is to foster free and fair trade in agriculture, benefiting the developing countries in a real and sustainable way. The group is composed by Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Uruguay, and Vietnam (CAIRNS GROUP, 2020b; WTO, 2020d, 2020e).

with respect to international trade, as it is currently rather closed (BOLSONARO, 2019; CANUTO, 2015). Second, a rule-based, well-governed multilateral system is reassuring for the country because this system is responsible for providing the legal and institutional basis for the fair, free trade it needs, as it does not take part in many bilateral, regional, and plurilateral agreements, nor participates in a dispute settlement system dedicated exclusively to trade, except for Mercosur's Paraguay-based Permanent Review Tribunal (BENJAMIN, 2013; COZENDEY, 2013; DA COSTA RAMALHO, 2019; PEREIRA, 2012; PINTO, 2013).

5.5. Brazil Abroad: The Dispute Settlement Crisis

> *The legal arm is seriously compromised. Dispute settlement can proceed but without the appellate body functioning, there's a non-functionality of this arm.*
> (Willy Alfaro, 2020)

With attention paid to the summary of the DSB presented in the last chapter, this section will examine how Brazil has been a major player in the hunt for reform of the Dispute Settlement Pillar of the WTO. One of the current crises facing Brazilian diplomats in Geneva can be found in the dispute settlement mechanism, thus explaining why the country has been so active in the search for an alternative that allows the dispute mechanism to function.

Since its creation in 1995, the WTO dispute settlement mechanism (DSM) has resolved trade disputes and has been key to solving conflicts in the global trading system. However, the mechanism has faced difficulties in maintaining its effectiveness, as WTO members have failed to negotiate amongst themselves. One of the main factors causing the crisis has been US discontentment (PAYOSOVA, 2018), with recent years seeing American officials blocking appointments to the Appellate Body, to force WTO members

to negotiate rules according to US concerns. This blocking also limits the capacity of judicial overreach.

The Dispute Settlement Understanding (DSU) was negotiated as a tool of "single undertaking" in the Uruguay Round. According to Article 17.1 of the DSU, if there is a failure to resolve a dispute among WTO members the case is to be solved by an *ad hoc* dispute panel whose decisions are binding unless appealed. In the case of appeals, Article 8 of the DSU establishes a standing body by all WTO members acting through the DSB. In general, the Appellate Body consists of seven members appointed by consensus and may be a substitute for multilateral negotiations.

Payosova (2018) points out that the AB may not have enough members to review cases, and that the DSB is severely endangered if there is no resolution of the crisis. The authors suggest that failure to resolve the DSB crisis generates risk within the world trade system, allowing larger players to act independently, unilaterally, and prone to resort to retaliation to achieve their goals. Thus, the AB impasse might damage the WTO's judicial function, as well as its proper functioning as a negotiating forum.

In the case of restored tire imports, Brazil has been involved in a dispute at the WTO for years. Between the years 2005 and 2007, Brazil imposed barriers restricting the entry of used or restored tires. However, the European Union claimed that this was a protectionist and restrictive measure to protect Brazilian domestic markets. Luz and Durante (2013) describe how the appointed panel gave almost total victory to the EU; however, the issue was not interpreted as being carried out with the EU's interests in mind. The EU appealed, but the outcome reversed almost all initial deliberations, leaving Brazil to benefit greatly from the trial.

Castelan and Santos (2018) showcase statistics on the opening of disputes in the WTO in the last 20 years (1995-2015), with their

final analysis highlighting the main distinctions in the Brazilian diplomatic posture in these decades. The authors demonstrate that the broad period of 1995-2002 includes the majority of consultations brought to the DSB by Brazil. While between 1995 and 1999 Brazil won disputes against a wide dispersion of countries, between 2001 and 2002 the cases were mainly directed against the US. Following 2003, the number of disputes against the United States dropped significantly, and only two disputes occurred in the next decade.

One of the first major cases that Brazil has gotten involved in was the aircraft case against Canada. This case marked a Brazilian shift towards more assertive behaviour in disputes (RAMALHO, 2020). Shortly afterwards, in what became known as the cotton case, Brazil led a dispute at the WTO against the US regarding a farm bill (OLIVEIRA, 2007) that the Brazilian government argued that was harming domestic producers through a unilateral subsidy policy. The result of the dispute was favourable to Brazil, and the WTO authorized retaliation measures that cost US$ 147 million annually (AZEVÊDO, 2013; CASTELAN & SANTOS, 2018).

Currently, the US has been blocking the start of the selection process for new AB members. Following the end of the term of Ricardo Ramirez and Peter Van Den Bossche, in June and December 2017, respectively, and the resignation of Hyun Chong Kim, the US has maintained this policy. In the next year, the US continued its blocking strategy, opposing the reappointment of Shree Baboo Chekitan Servansing, whose first term expired in September 2018. This strategy aims to generate a blockade in the DSB mechanism, given at least three members are necessary for the mechanism to be able to operate.

Brazil is one of the most active users of the DSM system. Ramalho (2020) points out that until November 2019, Brazil had appeared as a plaintiff in 33 disputes, as a defendant in 16, and as

a third party in 147 cases. According to the author, more recently Brazil has usefully argued against American anti-dumping measures on orange juice, South African anti-dumping duties on chicken meat imports, Indonesian restrictions on imports of meat and chicken products, Thailand's sugar sector support regime, and the safeguards applied to sugar imports by China. These cases show how Brazil has been on active WTO participation, one with diverse requests.

The current crisis of the mechanism calls into question the possible difficulties that can arise if it is necessary to reform the model. On the one hand, there is uncertainty regarding the referral and outcome of specific cases so long as the crisis persists. On the other hand, as highlighted by Ramalho (2020), there is a possible threat to the independence and impartiality of the adjudicators, as well as to the mechanism of adoption of reports by negative consensus. The WTO also risks a possible decrease in the consistency and predictability of contractor decisions. The author argues that these two points are situated as the two "systemic" problems, which can jeopardize the proper functioning of the mechanism.

In parallel to the crisis, the EU and Canada have reached a bilateral consensus on how to resolve their disputes. The agreement between the two parties represents a proposed model to overcome the crisis of the mechanism. To maintain the current structure of appeals, the group of arbitrators is composed of former AB members, and legal support is provided by the Secretariat of the Body. Based on the same arrangement, the EU and Norway also recently concluded a bilateral agreement. According to Ramalho (2020), Brazil is not necessarily predisposed to accepting this change in the DSB permanently, as this could bring uncertainty regarding the functioning of appeals. A plurilateral solution in this case is seen as a temporary possibility.

Given that Brazil remains one of the main users and supporters of the DSS, it follows that the unhindered functioning of the dispute settlement pillar is of utmost importance to the country's foreign ministry. Through the DSB, Panels, and the AB, Brazil has acquired noteworthy gains in terms of knowledge and material benefits by acting against unjustified or unfair industrial subsidies (for example the aircraft cases relating to Brazil and Canada) and agriculture-related trade measures (for instance the notorious cotton case) (COZENDEY, 2013; DA COSTA RAMALHO, 2013, 2019; PEREIRA, 2012).

This has led Brazil to propose new to break the deadlock around the AB (DELEGATION OF BRAZIL, 2019a), and to support the Walker process. On 24 January 2020, given the *de facto* paralysis of the AB in 2019, Brazil co-sponsored the idea of establishing a multi-party interim appeal arrangement (MPIA) to temporarily substitute the AB in its time of inoperability (AUSTRALIA, 2020; EUROPEAN COMISSION, 2020). The country has also appointed Ambassador José Alfredo de Graça Lima to be a member of the MPIA (MOREIRA, 2020).

The objective is to have a second degree within the DSS, avoiding it for now as Panels continue to work, so members' right to appeal their reports does not result in manoeuvres that benefit from the "legal limbo" stemming from AB's paralysis. Through this provisional arrangement, members will not be able to steer clear of their obligations by appealing panel reports. Under President Bolsonaro, Brazil argues that the plurilateral arrangement must not become permanent or hinder the larger goal of finding long-term solutions for the AB and the DSS (DA COSTA RAMALHO, 2020).

To summarize, as Gadelha (2020) argues in her interview:

> WTO has been severely affected by the US pressure on the DSB that brought the organization to a stalemate. Since an Investment Facilitation agreement might be

> an interesting tool to boost investments in the post-pandemic scenario, thus reigniting economies and the natural flow of financial resources between countries, they could indeed play a major role in the restructuring of the WTO itself that so desperately needs a clear new mandate, new tasks to pursue.

5.6. Eyes in Geneva: Brazil on Monitoring and Transparency

> *This will benefit all WTO members. It may not be fair that some benefit from the transparency of others when they don't open up. But globally, institutionally, it's a plus for the system.*
> (Gabrielle Marceau, 2020)

As with dispute settlement, the Brazilian diplomatic corps at the World Trade Organization has been active in seeking a reform and reinvigoration of the Monitoring and Transparency Pillar of the WTO. For Brazil, monitoring and transparency seem important; however, outcomes in the so-called "deliberative pillar" are not enough for the reform needed. Within the Ottawa Group, the country is responsible for coordinating the initiative dedicated to enhancing the works of the Sanitary and Phytosanitary (SPS) Committee; there is a proposal being negotiated currently (ARAÚJO, 2019). The goal is to improve the process of consultations among members without changing their rights and obligations, in the process enhancing the likelihood of resolving concerns within the Committee by efficiently discussing matters through facilitated discussions.

With this aim, Brazil has proposed, for instance, that the annotated agenda of the meeting be circulated at a reasonable time prior to the meeting, and that members present their concerned topics in advance as well, to make it possible for every delegation to prepare itself for the debate. Another idea is that the Secretariat

shall provide the means for remote participation when organizing thematic sessions (DELEGATION OF BRAZIL, 2020), a rather important proposal given the current social isolation the world is in due to COVID-19.

Notwithstanding, it can be argued that under President Bolsonaro Brazil opposes the idea of sanctioning non-compliance with notification obligations, particularly because this would privilege the strongest stakeholders, who have greater capacity to gather information through their market-intelligence units. In addition, Brazil co-sponsors Switzerland's proposal on enhancing transparency in non-preferential rules of origin.

Under President Bolsonaro, Brazil seems to maintain that the WTO must continue to provide technical assistance through its efforts of trade-related technical assistance (TRTA) and training (WTO, 2020p). Nonetheless, as in the case of S&DT, no countries must have a blank cheque to act without monitoring and transparency.

5.7. Farm Priorities: Brazil and Agriculture

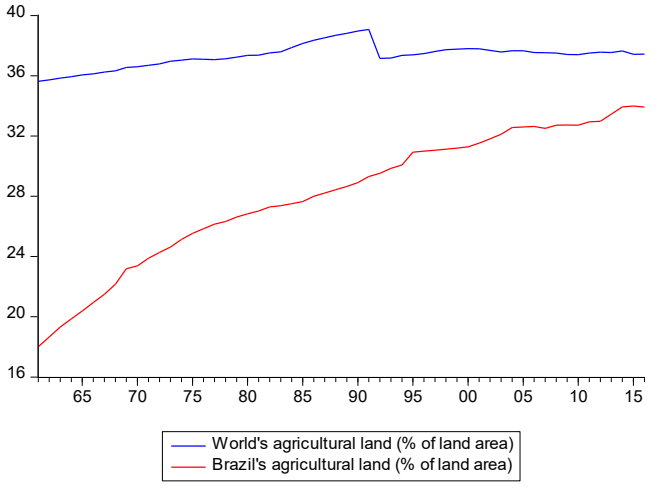
> *In some areas, such as agriculture, Brazil has always had a key role given our role in this global market.*
> (Henrique Moraes, 2020)

Agricultural production is of unparalleled importance in shaping the Brazilian economy, and as a result this section will be devoted specifically to the role agriculture has played in Brazil's diplomatic activity at the World Trade Organization. Since the colonization period, the Brazilian economy has been structured and developed as an agro-export economy, a process which occurs with the ascension and decay of different products, historically including plantation products such as sugarcane, coffee, and rubber. Agriculture has been central to the Brazilian economy since the colonial and imperial periods, as well as in the initial period of the republic. From the

1930s onwards, an effort was made to industrialize the economy; even so, efforts were made conciliating agricultural interests. In Gadelha's (2020) words: "Brazil has been playing a major role as a supplier of commodities. Although it has a sophisticated industrial prospect, with a substantial output in technological sectors like aviation or IT, its trade balance remains highly linked to basic and intermediate goods."

With the adoption of the ISI strategy, agricultural exports assumed the role of generating foreign exchange to balance the Brazilian trade balance and to generate new capital for industrialization (FURTADO, 1961; ABREU, 2014). In the 1990s, following the demise of the ISI strategy, new needs arose, and a more liberal foreign policy that sought to connect Brazil with the foreign market – and allow greater penetration of foreign capital in the domestic economy – was adopted (ABREU, 2014). As Cima (2020) points out in his interview, Brazil has always been a major player in the WTO, and a very active one in issues related to agribusiness. Graph 2 shows the increase in the use of land for permanent agriculture in Brazil since the 1960s. The agricultural land usage refers to the share of land area that is arable, under permanent crops, and under permanent pastures. With a global agricultural occupation average of around 37%, occupation in Brazil approached this average mainly after the 1990s.

Graph 2: Agricultural land (% of total land area)



Source: Author's elaboration, based on figures from the World Bank.

Diplomatically, Brazil has been proactive in the agricultural debate within the WTO. The advancement of negotiations that promote the opening of markets – and better conditions of competitiveness for national agribusiness – is a top WTO priority for Brazil. Agricultural production is of fundamental importance to the Brazilian gross domestic product (GDP), and its results are extremely vital for the result of its trade balance with the rest of the world, with the gains resulting from Brazilian diplomatic negotiations working towards the sector's commercial results. From a global perspective, its importance is also due to the fact that Brazil is one of the largest agricultural-exporting countries worldwide.

Brazil is now the world's third-largest agricultural exporter – after just the US and EU – and the country with the largest agricultural trade surplus. Its exports are expected to continue to rise rapidly, enabling Brazil to potentially overtake the US and EU in the near future. Given the failure of the Doha Round, agriculture remains one of the WTO's main issues to be addressed comprehensively and

satisfactorily. With the exception of the Bali and Nairobi meetings that dealt with tariff quotas, subsidies, credits, and export guarantees, the WTO has failed to agree upon broader liberalizing measures on international agricultural trade.

Regarding agriculture, according to the CAMEX database of the UN's International Standard Industrial Classification (ISIC), Brazil's agricultural exports' free on board (FOB) value in 2019 was US$43 billion, at 19.1% of the total exports. The main product on the Brazilian export basket was soybeans, with a value of US$26.1 billion, which represents 62% of total agricultural exports, while the second-most important item was corn in grains (US$7.3 billion and 17% of total), the third was coffee (US$4.6 billion and 11% of total), and the fourth was cotton (US$2.6 billion and 6.1% of total). According to ISIC classification, livestock exports are classified as part of the processing industry, and in this category Brazil also maintains relevant numbers. Beef brought in US$6.5 billion in 2019, with poultry at US$6.5 billion and pork meat at US$1.49 billion in total. Sugar and molasses, as well as cellulose, were also among the main products in the Brazilian export basket, amounting to US$5.2 and US$7.5 billion, respectively.

According to Hopewell (2013), Brazil successfully waged two landmark trade disputes – the cotton and sugar cases – against American and European agricultural subsidies, as well as created a major coalition of developing countries – the agricultural Group of 20 (G20) – which brought an end to the shared US-EU dominance of the WTO and made their trade policies a central target of the Doha Round in November 2001. The author also highlights that Brazil has emerged as one of the most vocal advocates of free-market globalization and the push to expand and liberalize world markets. In the last two decades, Brazil has emerged as an agro-industrial export powerhouse, transforming the national economy and its trade objectives. Brazil now has one of the world's most

sophisticated agro-industrial sectors, based on massive economies of scale and highly-mechanized, capital-intensive, vertically-integrated production (VALDES, 2006). It is important to recognize how the outcome of the disputes represent a different paradigm in which a developing country has successfully modified a developed country's subsidy policy.

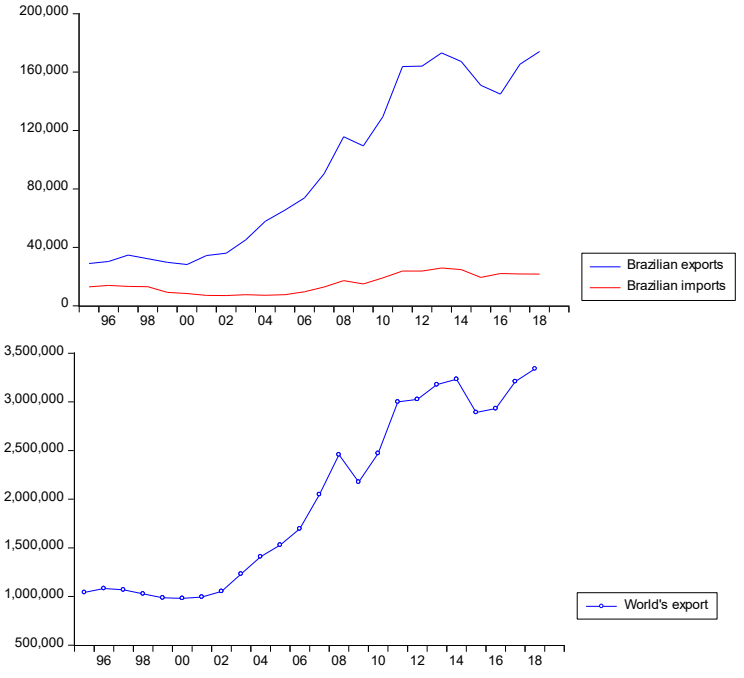
At the time when the DDR was launched, Brazil was already asserting itself as a major agricultural exporter. Brazil has remained supportive of stable rules and effective discipline measures for developed countries spending on domestic subsidies, the elimination of export subsidies, and substantial access to markets in both developed as well as developing countries. In practice, this appears as solidifying ties with traditional partners such as the US, EU, or Japan, while also forging new South-South links with key partners such as China and India.

Agribusiness exports are also seen as a critical means of generating foreign exchange and avoiding the balance-of-payments problem that has historically plagued the country. Agribusiness exports constitute an important pillar of the current development model being pursued by the Brazilian state, and agribusiness has largely been given primacy in determining Brazil's trade policy and its position at the WTO.

Many Brazilian companies, such as JBS, Brasil Foods, Citrosuco, and Citrovita have become transnational, engaging in aggressive investment and acquisitions abroad, expanding their production and distribution facilities around the world, and becoming among the world's largest firms in several sectors (WILKINSON, 2009; HOPEWELL, 2013). In Graph 3 below, Brazilian and global agricultural exports are displayed following the creation of the WTO. While imports of agricultural products from Brazil have remained relatively stable over time, Brazilian exports have shown a positive

trend since the creation of the WTO, following the trend of world exports represented in the bottom panel of the graph.

Graph 3: Agriculture export and imports annual value (million US$)



Source: Author's elaboration, based on WTO data.

Even though Brazil's trade policy has been inward-looking and centred on protecting domestic industries from foreign competition, the development of the export-oriented agribusiness sector raised the incentives for an assertive strategy at the World Trade Organization.

In the context of trade liberalization and growth of primary exports, Brazilian agribusiness identified the Doha Round as an opportunity to reduce trade barriers and other market distortions. Brazil's negotiation objectives were centred on removing barriers

to new markets and revisiting subsidy policies, especially those US and EU subsidies targeting agriculture. These subsidies harmed the market price of commodities exported from Brazil, hindering the growth of the Brazilian primary sector (HOPEWELL, 2013).

The need for reform of agricultural interests remains urgent for Brazil, as an additional guarantee of maintaining the competitiveness of Brazilian exports in the event of a falling price scenario. At the Nairobi Ministerial Conference (2015), Brazil achieved a new and significant negotiating breakthrough by leading, in partnership with the European Union, the proposal that led to the banning of export subsidies for agricultural products. This was a historic moment for the WTO, given that subsidies for the export of industrial goods were banned over 60 years ago, in 1958. Thus, since the Nairobi conference, Brazil has prioritized domestic agricultural support.

Adding to the agricultural conflicts present in the WTO are non-tariff measures such as sanitary and phytosanitary standards, oft-unjustified and arbitrary barriers hinging on a dubious scientific basis. These barriers are increasingly felt in global agricultural trade, and showcase how, besides dealing with agricultural subsidies, any drive for WTO liberalization must deal with non-tariff friction that hinders the functioning of agricultural trade flows (BEGHIN & BUREAU, 2017; SVOBODA, 2019; KHALIQI 2018).

In general, one could argue that under President Bolsonaro, Brazil has two main interests in the rulemaking pillar reform: reinvigoration and assuring that agriculture discussions will lead to some semblance of reform. Reinvigorating the legislative pillar is important to assure not only WTO credibility, purposes, and objectives, but also the proper functioning of the multilateral trading system. This is particularly relevant in a period of growing protectionism, evident in the US-China trade war and worldwide national responses to the COVID-19 pandemic.

Brazil appears to argue that reform of the pillar hinges upon reassessing the consensus decision-making rule, with focus paid rather to plurilateral – such as JSI – initiatives. As a sector of paramount importance for the Brazilian economy and international trade, the country cannot accept that WTO discussions on agriculture have not concretely evolved since the Uruguay Round. Brazil maintains offensive interests in all three pillars of the agricultural agenda, namely, domestic support, market access, and export competition. With the exception of the tariff-quota administration and the 2015 prohibition on agricultural export subsidies, agriculture has not been properly negotiated, let alone been centralized within the WTO agenda, despite having been the most pressing issue in multilateral negotiations since the Uruguay Round. The 7th Ministerial Conference in Geneva (2009), the failure of which led to the demise of the Doha Development Round, was principally due to disagreement on agriculture, particularly on agricultural safeguards (WTO, 2008) (HUFBAUER & CIMINO-ISAACS, 2015). In addition, the failure to reach results in the late 2000s was due to US and Indian opposition at MC11, especially the uncompromising Indian stance on public stockholding and its link to ensuring food security (HINGMIRE & CHINCHOLE, 2017).

5.8. Setting Health Standards: Brazil and SPS

Open plurilateralism is the only way to go forward.
(Marcelo Cima, 2020)

Much as with the agricultural case, Brazil has played a leading role in the discussions surrounding the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), and this section will therefore focus on the SPS situation as it stands for both Brazil and the Organization as a whole. The Brazilian position has consistently stressed the importance of

sanitary assessment with a scientific basis to avoid arbitrary and unjustifiable discrimination. Brazil recognizes the need to protect human, animal, and plant life, but its diplomatic stance also advocates for limiting the effects of SPS measures on trade.

The SPS Agreement aims to find a balance between the right of governments to protect food safety and plant and animal health, and the need to prevent these sanitary and phytosanitary measures from becoming unjustified trade barriers or an excuse for protectionism. The SPS Agreement first entered into force with the 1995 establishment of the WTO.

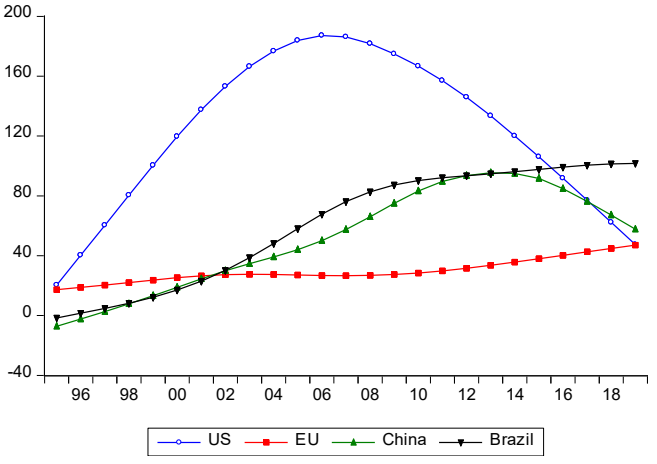
Even though the SPS Agreement provides a solid base to regulate agricultural trade, there has been an increase of non-tariff measures preventing producers from accessing markets, spawning a need to improve the agreement. As Brazil is one of the major agricultural exporters, it is interested in dealing with the matter in a plurilateral perspective, to ensure that SPS measures are addressing human, animal, and plant life and health concerns. Hence, the path suggested by Brazil is starting with a group of like-minded WTO member countries and eventually building a broader coalition at the WTO.

In the recent WTO discussion on the revision of the SPS Agreement, Brazil made several proposals and, together with the USA, has been one of the most active member countries in discussing its improvement. Brazil has consistently opposed how certain WTO members notify only on measures relevant to agricultural trade, such as pesticides and fungicides. In this case, a country imposes limits below international standards (as provided for in the SPS Agreement). Brazilian diplomats have therefore argued that the measures related to SPS should require scientific justification, as well as equivalence in applications across different countries. To simplify the discussion, Brazil has recognized that it is also important that

pest-free areas, confirmed by relevant international organizations, have automatic recognition by the WTO.

Data related to SPS notification are shown in Graph 4. In general, SPS measures that WTO members raise notification of mostly concern regulations and standards, which are dealt with under the Agreement. Under a proposed agreement, WTO members are obliged to notify in advance any intention to introduce new SPS measures or to modify existing measures, and also to notify immediately when emergency measures are imposed. The data shows the trend of SPS notifications calculated by the Hodrick-Prescot Filter for Brazil, the US, the EU, and China since 1995. It appears that for Brazil, China, and the European Union there is a slight tendency for annual SPS notifications. On the other hand, the inverted U shape for the USA data indicates that there were many SPS notifications, well above the amounts for Brazil and other countries reported in the graph. Current notification numbers in the USA are at the same level as China, Brazil, and the EU nowadays.

Graph 4: SPS notifications by country (trend)



Source: Author's elaboration, based on WTO data.

In general, as Lima (2020) points out, Brazil's diplomatic concern on the SPS matter is "to eliminate or at least reduce the restrictive and discriminatory treatment applied to trade in agricultural and livestock goods". The interviewee argues that the SPS Agreement is "an indication of progress towards reducing distortions resulting from policies, measures, and practices contrary to the letter and the spirit of the General Agreement", and also highlights the need of continuing work on this subject in order to fulfil "the mandate stated in Doha as a requirement for the system to benefit all its members."

5.9. The Marine Matter: Brazil and Fisheries

> *The difference is that Bali and import subsidies were multilateral and Buenos Aires is an agenda for plurilateral negotiations, with the exception of fishing.*
> (Paulo Elias, 2020)

Brazil has taken an active diplomatic stance concerning the fishing negotiations in the WTO, providing a model of how

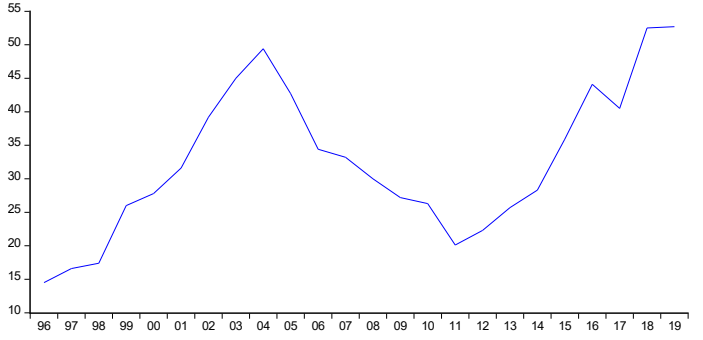
multilateral negotiation in the Organization's third decade can appear. Along with other developed countries in the Global South, the country has positioned itself to seek plurilateral solutions that defend the country's economic interests, especially related to the issues of food security and subsistence that fishing activities provide for the local population. Mesquita (2020) highlights, in her interview, that in January 2017 Brazil engaged in a plurilateral agreement on fishing, the first plurilateral agreement of which Brazil formed part in its history in the WTO.

In general, fishing is one of the oldest productive activities in Brazil and is an important part of the economy. It is responsible for creating and maintaining jobs in coastal communities and also those located on the banks of rivers and lakes, and thus Brazilian diplomacy has been active in negotiating the issue of fishing subsidies. Abdallah and Sumaila (2007) detail how, since the 1960s, the federal government of Brazil, through the Fish Agro-food System (FAS), has shaped the fishing sector through two main instruments, fiscal incentives and rural credit. Both policies have played an important role in developing and maintaining the fishing industry. The authors point out growth in the sector by showing the increase in the fish catch; more specifically, Brazilian fisheries' cumulative catch expanded impressively from 1960 to 2001, increasing by about 281-710,000 tonnes per year.

According to Cho (2015), the issue of fishing subsidies is a complicated matter that encompasses an environmental, trade, and developmental dimension. Firstly, it is an environmental issue, given how it is undeniable that the depletion of fishery stocks causes harm to the environment. Thus, if fishery subsidies cause over-fishing that result in the depletion of fish stocks, they may be regulated. Secondly, it is a trade issue. Overfishing may distort the trade of fisheries products through the displacement of imports or exports, price undercutting, price suppression, price depression, etc. If fisheries

subsidies cause overfishing, it can be argued that the subsidies harm international trade. Thirdly, it is a developmental issue. Considering that many developing and least-developed countries are engaging in the fishing industry, and are largely dependent on it, fishery subsidies provided by relatively developed countries may have a negative impact on the socioeconomic development of under-developed countries.

Graph 5: Fisheries and Agriculture (FOB, billion US$)



Source: Author elaboration, based on Ipeadata figures.

Graph 5 shows the evolution of fish exports from Brazil. As can be seen, there is an increase in the volume exported until 2004, followed by a reversal of this trend that persists until 2011. Thereafter, there is an upward trend once more, one that has already exceeded the historic high reached in 2004. In particular, the data from Brazil's Camex indicates that exports of whole fish (alive, dead or chilled) reached US$ 48.7 million in 2019, mainly exported to the US (85%), Hong Kong (2.9%), and Japan (1.4%). Meanwhile, the exports of fish (dried, salted, in brine, smoked, or edible preparations) arrived at US$ 10.43 million in 2019, with the main destination being China (98%).

In terms of imports, Brazil bought live fish in 2019 mainly from Chile (99%), and imported fish (dried, salted, in brine, smoked, or

other edible preparations) mainly from Norway (64%), China (25%), and Portugal (11%).

Negotiations on fishing subsidies are mainly focused on pursuing a regulatory agreement that generates the proper incentives to support the fishing sector. However, other issues arise, such as problems of overexploitation, which are a risk to the sustainability of the ocean's fish resources. The trade-off between growing the fishing industry and hazarding the ocean sustainability has divided opinions of countries. One group is led by New Zealand, the "Friends of Fish" that stand for limitations on fishing subsidies based mainly on environmental arguments. On the other side of the matter, there are fishing countries such as China, India, and Japan, that are reluctant to weaken their fishing industry.

More recently, a group of countries, led by the USA, indicated their intention to move forward in negotiations on the topic at the WTO, in principle in a plurilateral format. Brazil has already indicated its willingness to participate in exploratory conversations on this subject. It is important to keep in mind that especially for developing countries such as Brazil, artisanal fisheries are an important source of income and subsistence.

Thus, Brazil is engaged in the negotiations, and has been working constructively to help build consensus towards an agreement on fish subsidies. An agreement depends on the flexibility of the main actors and large fishing subsidiaries involved, particularly those countries with large fishing industries such as China, Indonesia, Peru, India, Vietnam, Malaysia, and the Philippines (MALLORY, 2016; RAM-BIDESI & TSAMENYI, 2019). After all, an agreement's effectiveness depends in part on prohibitions, or on substantially reducing the current levels of subsidies.

The Brazilian position on the fishing issue is related to combating unsustainable fishing, maintaining economic fuel subsidy programs

for vessels and the modernization program for the fishing fleet, reducing the support granted to the main fishing enterprises in order to allow the development of "late entrants" in fishing activity, and ensuring that small subsidiaries such as Brazil do not have limited operations. Moreover, Brazil has engaged with the issue by presenting a joint proposition with Ecuador and being involved in the "overfished stocks" thematic pillar.

The elimination of subsidies to illegal, unreported, and unregulated (IUU) fishing will surely stimulate members' positive perceptions vis-à-vis the WTO (BACCHUS & MANAK, 2020), as the topic is seen as "a litmus test for the future of the WTO's negotiating function" (CAPORAL , 2019, p. 38). Some members, such as Canada and Costa Rica, claim that reinvigorating the negotiation pillar implies discussing a new relationship between trade and the environment, particularly the dossier of sustainability. This renders the agreement on the elimination of subsidies to IUU of the utmost importance, given that since 2015, when Agenda 2030 was approved, each country's government has politically committed to reaching an agreement as a way of fulfilling part of the 14th Sustainable Development Goal (WTO, 2020j).[4]

4 The 2030 Agenda set out a 15-year plan to achieve 17 Sustainable Development Goals (SDGs) and several targets, among which the 6th target of the 14th goal aims to "by 2020, *prohibit certain forms of fisheries subsidies* which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation." (Emphasis added)

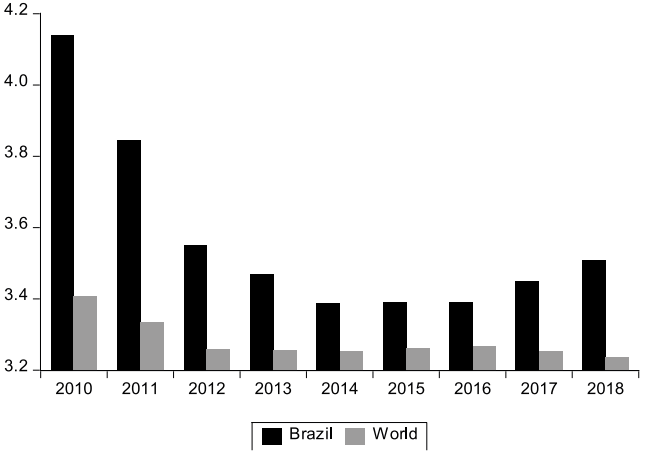
5.10. The Trade Precedent: Brazil and the TFA

Brazil had a very significant participation in the various ongoing negotiations. After a change of domestic position, it effectively supported the efforts that led to the Trade Facilitation Agreement success in 2013.
(Celso Pereira, 2020)

Brazil was actively engaged in the process of creating the Agreement on Trade Facilitation (TFA), an issue that has been on the WTO's agenda since 1996, and one with major implications for the ongoing IF negotiations it has spearheaded in recent years. With Brazilian participation and with the influence of DG Azevêdo, the bases for the agreement were prepared at the ministerial meeting in Bali in 2013. This agreement garnered an expectation that the WTO negotiating pillar could work, even following the Doha debacle. According to CNI (2014), the agreement represented an opportunity for the reduction of domestic and external costs related to Brazil's foreign trade, especially regarding customs, one of the most frequent concerns of Brazilian exporters. Prazeres (2020) highlights that at first Brazil was still intransigent concerning topics that could affect agriculture. However, this position appears to have started changing during the Bali ministerial conference, where momentum was building in favour of a trade facilitation agreement, and Brazil assisted in the final moments of the discussion due to the National Confederation of Industries (CNI). Thus, Brazil began to position itself favourably to the agreement due to its national industry interests. Prazeres (2020) views that this was a sign that Brazilian foreign policy was repositioning itself as more pragmatic, more realistic, and more constructive concerning what was possible. Analysing the Logistics Performance Index (LPI) provides a numerical outlook on this issue, as one can see that there has been an improvement in the Brazilian international trade handling in recent years. Graph 6

shows this index, which attributes values to the frequency in which shipments reach their destination within scheduled or expected time (with 1 being low, and 5 being high). Graph 6 makes it clear that at the beginning of the decade the value of the index for Brazil was very close to the maximum value, which indicates a logistical and customs timetable. In addition, Brazil's LPI score is also high in relation to the world standard at this point in time. However, looking at the most recent values, there is a narrowing of the gap between the Brazilian score and the world average values, leading to a downward trend that indicates an improvement in the efficiency of Brazilian logistical procedures.

Graph 6: Brazil's Logistics Performance Index



Source: Author's elaboration, based on World Bank data.

In general, the TFA is a set of multilateral rules for the WTO. It is the only multilateral agreement negotiated since the creation of the Organization 20 years prior. The TFA consists of a small package of decisions centring on matters of interest to developing countries left behind in the DDR. An effort to boost trade facilitation aims at reducing the costs of international trade operations related to cargo

transportation, customs procedures, and commercial regulations in order to promote an increase in global trade flows.

According to Hoekman (2014), the main features of the TFA include: universal WTO membership, with all disciplines applying to all member countries; setting trade policy disciplines, calling for joint action by donor countries, development assistance providers, and developing country WTO members to assist the latter in implementing certain provisions of the agreement; a mechanism for experts to assess whether and why a developing country is not able to implement commitments according to the timeframe.

Despite the TFA having been agreed to by consensus at the 9th WTO Ministerial Conference, a problem of not meeting deadlines continues the pattern established during the Doha Round (HOEKMAN, 2014). In this context, the TFA entered into force in February 2017. From a Brazilian viewpoint, there are desirable features in TFA such as speeding up customs procedures and international goods trade flows, ensuring transparency and disclosure of customs procedures, as well as providing training and technical assistance (NEVES, 2017). A former representative of a developing country (2020) indicates that, in his opinion, the future of the Organization is more linked to issues of facilitation than to large tariff agreements; with this in mind, the TFA tends to be the parameter of new agreements.

At first, Brazilian foreign policy acted to defend its export interests, especially those related to the agricultural sector. Together with Australia and New Zealand, Brazil presented a proposal for accelerated customs clearance. To avoid commercial damage to perishable products, it would be necessary to facilitate product storage, increase the efficiency and transparency of the release process, and avoid unnecessary product load controls.

In particular, the TFA, due to its flexible structure, allows developing members to point out commitments for immediate implementation or to indicate the need for additional time or technical assistance. The TFA arrangement is seen mainly by developed countries as a possible model for future multilateral agreements at the WTO.

Brazil pointed out most (approximately 95.8%) of its commitments as belonging to the immediate implementation category, and yet the Brazilian current rate of implementation commitments is at 100%, well above the average rate of implementation commitments by all WTO members, which is 68%. In general, Brazil is increasingly interested in removing administrative barriers, including in other developing countries which also are important markets for Brazilian products. In practice, the TFA aims to reduce transaction costs, which could have positive effects not only for Brazil, but also for many other WTO members.

5.11. Digital Consumption: Brazil and E-Commerce

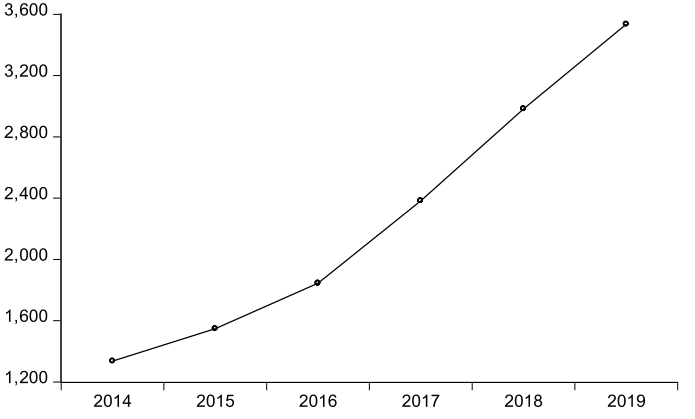
> *So, I think investment facilitation, along with e-commerce, has the power to transform the way members and the general public view the WTO's negotiating branch.*
> (Tatiana Prazeres, 2020)

Brazilian diplomats have shown active participation in matters related to electronic commerce at the WTO, and have thus spurred the need for this subchapter, which deals exclusively with the question of e-commerce within the Organization. Since the beginning of discussions on Internet governance, the country has been seeking conciliatory solutions that benefit WTO members. Regarding e-commerce specifically, Brazilian foreign policy has been proactive, both in terms of understanding the impacts of possible regulations

on a relatively new sector of the economy, and in defending an active diplomatic position that protects its interests.

Sales on digital platforms are a relatively new topic in world trade, but they keep pace with digital technological developments. Global e-commerce figures indicate that the sector is experiencing rapid growth and has an upward trend, as seen in Graph 7, which shows the world values of e-commerce.

Graph 7: Annual e-commerce world sales (million US$)



Source: eMarketer. Author's elaboration.

At the 11th Ministerial Conference in Buenos Aires in 2017, a set of measures related to the issue of e-commerce was brought to the table within the broader discussions about IF measures for the domestic regulation of services. These initiatives emerged from the impasse in the WTO negotiating pillar, due to the difficulty of considering new topics for the agenda outside of the Doha mandate.

In this context, nine explanatory meetings were held in 2018 in which pre-existing legal texts, domestic legislation, and bilateral agreements on the subject were analysed. Then, on 25 January 2019, the Davos ministerial declaration on e-commerce marked the beginning of the initiative's negotiation phase (THORSTENSEN,

2019). In addition to Brazil, other members presented proposals on the subject, such as China, the US, the EU, Japan, Canada, New Zealand, Taiwan, Hong Kong, Singapore, Ukraine, and the Pacific Alliance countries.

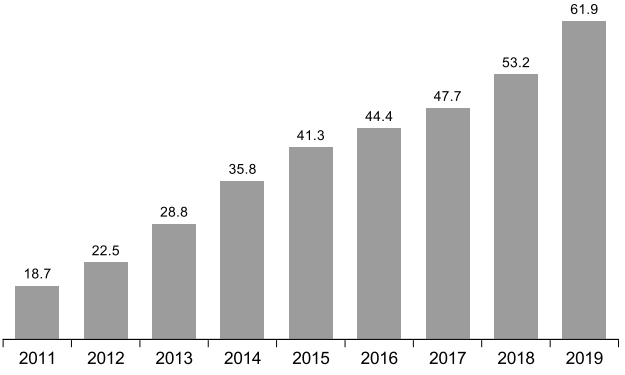
The July 2019 Brazilian document INF/ECOM/27/Rev.1, the product of coordination between various government agencies, shows the country's commitment to an open and free Internet, consumer and personal data protection, as well as tax, competition, and cybersecurity issues (THORSTENSEN, 2019).

Regarding competition, Thorstensen (2019) points out that Brazil's diplomatic approach to e-commerce is focused on avoiding restrictions to competition by online platforms. In addition, there is an effort to prevent online platforms from engaging in arbitrary or unjustifiable discriminatory advantages within their services, products, or apps. The authors highlight that Brazil also suggests that members should establish measures protecting consumers from misleading and fraudulent commercial practices in the digital environment.

Moreover, to prevent a disadvantage to national companies, Brazil's proposition highlights the importance of the capability of imposing internal and income taxes, including for companies with no commercial presence in the national territory. The proposal also considers the issue of free transit of data, preserving the protection of personal information and privacy in Brazilian cases according to the domestic General Data Protection Law (Law 13.709/2018).

In numerical terms, there is an increase in revenue from e-commerce sales in Brazil, providing background for the Brazilian diplomatic position in seeking regulation for the sector. Graph 8 shows a positive trend that indicates e-commerce growth in Brazil. As can be seen, Brazilian data demonstrates that e-commerce in Brazil follows the global trend of expansion.

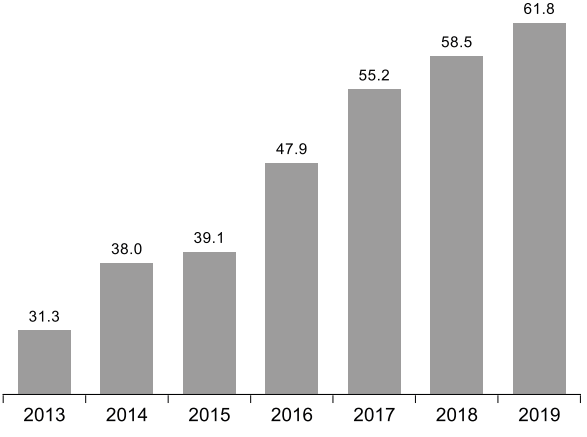
Graph 8: Brazil's e-commerce sales (billion US$)



Source: Webshopper/Ebit. Author's elaboration.

In addition to the absolute and continuous increase in e-commerce sales, there is also an increase in the number of consumers, as new individuals start to enter and make purchases in this market. Graph 9 below shows this positive trend in new consumers.

Graph 9: Brazil's new e-commerce consumers (million)



Source: Webshopper/Ebit. Author's elaboration.

From a global point of view, there is a certain polarization in plurilateral negotiations with China and the US. The main goal of the US is to regulate data safety and other requirements involving the forced transfer of technologies and industrial secrets. In contrast, China's approach avoids dealing with the data regulation matter and is more focused on themes that favour the facilitation of e-commerce. The Chinese argument is that data regulation is complex to implement due to the divergence of opinions among WTO members.

5.12. Brazil's WTO Past, Present, and Future: Concluding Remarks

> *Of course, Brazil can play a really important role in shaping the future of trade negotiations at the WTO if it manages to exercise leadership so that the agreement is effectively materialized with a significant number of participants.*
> (Tatiana Prazeres, 2020)

In this section, the evolution of Brazil's positionings within the WTO, and thereby across the international trade regime, has been reviewed and assessed. One key insight demonstrated by the analysis is that the Brazilian diplomatic position has transitioned from a defensive, self-interested posture towards a proactive, pragmatic position of leadership within the organization.

One major aspect explored in this chapter was the failure of the Doha Development Round to achieve concrete results. Indeed, in a context exacerbated by the 2008 global financial crisis, the negotiations regarding the DDR reached a deadlock where developed countries were less likely to meet developing countries' demands. In this turning point, Brazil's position relied on pragmatism, as the country sided with those willing to let go of Doha themes, such as agricultural subsidies, to pursue more pressing matters that had high

potential for international agreement, even if achieved plurilaterally. Brazil's IF agenda is indicative of that new diplomatic posture.

On the other hand, this shift set Brazil up to come into opposition with other emerging economies such as India or South Africa, who chose to remain faithful to the themes debated throughout the DDR. This may be analysed in contrast to Brazil's previous position, which favoured more aggressive pro-development reforms within the WTO. One cited example is the country's creation of the Agricultural G20, along with India and Argentina, in 2003. However, this new disagreement among BRICS (Brazil, Russia, India, China and South Africa) members has not impeded the obtention of win-win concessions for development within the WTO. The Ministerial Conferences of 2013 and 2015, the latter of which led to the establishment of the Trade Facilitation Agreement after 20 years of negotiations, were cited as examples of that.

From the 1990s, Brazil has started to endeavour towards a more open economy and has intensified its trade flows globally. Simultaneously, the country experienced massive growth rates, having emerged from a difficult economic situation in the 1980s. Inevitably, as the country's economy began to devote more attention to international trade, it is unsurprising that it also began to push for better and more pragmatic gains within the WTO. As has been argued previously, Brazil's diplomatic assets are usually put in the service of its ability to develop, and to establish, *concrete* negotiation proposals. Once again, IF has been interpreted as a logical conclusion of this long trend within the Brazilian diplomatic posture.

Furthermore, this chapter has argued that the 2013 election of a Brazilian Director-General in the WTO, Roberto Azevêdo, is the culmination of the country's successful leadership among developing countries throughout the previous decade. The organization was led to tackle more and more themes of interest to developing countries,

a trend that went hand in hand with the increasing weight of these countries' economies within the international trade regime.

Unfortunately, these same developments that relate to the improved political and economic presence of emerging member countries also contributed to tightening the dysfunction of the WTO's three main pillars. Indeed, as this chapter has observed, the lasting effects of the 2008 crisis, the rise of China as a trade power, and the failure of multilateralism to generate results have all contributed to an explosion of both developing and developed countries' frustration with the state of the organization. Hence, this chapter has considered the increasingly successful IF talks, as led by Brazil within the WTO, as a crucial counterweight to this inertia present in other matters. Once again, the chapter's analysis attempted to demonstrate the pragmatic posture of Brazil despite the current situation.

Another aspect that characterizes Brazil's diplomatic pragmatism within the organization, put forward by this analysis, is the country's search for an alternative that would allow the functioning of the dispute settlement mechanism (DSM), which is currently in crisis. As one of the most active users of the latter, it is in the interest of the country to find a durable solution. While some members, such as the EU and Canada, have resorted to bilateral agreements in order to circumvent the deadlock, Brazil has been pushing for a plurilateral solution. Just as the chapter highlights the complications of the WTO negotiating pillar, it also highlights the difficulties that complicate the functioning of the WTO dispute settlement system, and the potential of Brazil in relation to this issue. In summary, the main idea is that Brazil is not favourable to the judicialization of the dispute settlement process, but in favour of enhancing monitoring of the transparency pillar.

Finally, the chapter has discussed the Brazilian position across several important themes of the organization that are relevant for the country's industrial characteristics. As the country's most important economic sector, agriculture occupies much of Brazil's activities within the WTO. However, negotiations concerning agriculture suffer from intense competition within the organization. Thus, the world's three largest agricultural producers – the USA, the EU, and Brazil – have previously been unable to find a satisfactory agreement, until the 2015 TFA between the EU and Brazil. The USA remains resilient to further concessions. Today, agriculture is the country's main priority within the WTO. In fishery negotiations, Brazil has sought plurilateral solutions in order to guarantee food security and subsistence for relevant populations. The agreement reached in 2017 on this topic was the first ever plurilateral achievement within the WTO, and Brazil's role in that success was highlighted. However, considering the triple nature – the environment, trade, and development – of fishery activity, negotiations have been fierce between the primary producers. Thus, Brazil's focus in these discussions has been to defend sustainable fishing, enabling the modernization of fleets, and reducing subsidies in order to help smaller actors in the industry. Regarding e-commerce, a new and relatively unexplored area for negotiations, it was observed that it was only in 2017 that the issue was first brought to the table. Considering the relative fragility of Brazilian online shops against foreign competitors – such as China, or the USA – the country's priority on this topic has been to prevent disadvantageous measures against its national companies.

In short, this chapter has proposed reasons to believe that Brazil's role in the WTO has only increased in the last 30 years, along with the country's liberalization. Although its agenda has faced setbacks, such as the 2008 GFC and breakdown of Doha talks, the Brazilian diplomatic position has nevertheless contributed to secure agreements, as in the Bali Package of 2013. Combined

with the election of one of its nationals to the highest level of the organization's executive branch, Brazil's profile within the WTO has been that of a strong soft power, one who possesses significant diplomatic and technical capacity. However, recent developments in multilateral governance have put the country in an uncomfortable position, having sometimes to arbitrate between self-interest and the conflictual positions of its two main economic partners (China and the United States). Nevertheless, Brazil's pragmatism remains a leading force within the WTO, and investment facilitation is but one of many examples of that aspect.

6. AN UPHILL PROCESS: INVESTMENT FACILITATION AT THE WTO

6.1. Introduction

[...] I don't think it will change; in fact, I don't even know if, in the current context, it is possible to close a multilateral investment facilitation agreement.
(Felipe Hees, 2020)

With the expansion of commercial and financial globalization over the past few decades, investment is becoming increasingly essential to trade as the world economy – and most nations – have gone through a process of economic integration. Due to this, the facilitation of investment and trade can arguably be associated as synchronous concepts. As discussed throughout the thesis, since Brazil was directly involved in the emergence of the idea of investment facilitation (IF), as well as in the facilitation negotiations and discussion of the agreement, it is critical to emphasize that the IF analysis is inextricably linked to Brazilian leadership in the process. Elias (2020) highlights this in his interview, stating: "The change

of Brazil's approach began by accepting these specific agreements, starting with the Bali agreement and the others, thus recognizing that it was no longer possible to have wider packages."

Taking into consideration that current IF negotiations constitute a solid instance of a plurilateral joint initiative within the broad spectrum of WTO law and policies, this chapter argues that plurilateral negotiations contribute towards updating ancient soft laws by proposing new rules and guidelines to level the playing field of the world economy. Thus, to advance the current multilateral trade system, WTO member states could review the principle of single undertaking and recognize the pragmatism of plurilateral joint initiatives. In fact, this chapter seeks to investigate the argument that the plurilateral framework of investment facilitation is a model to revive the multilateral trade system, as well as a symbol to revitalize the decaying WTO. The hypothesis – IF as an instance for WTO reform – is based on interviews with experts in the international trade system. The main idea of this chapter is to analyse the interviews extensively so that the analysis brings clarification to the thesis discussion.

In general, results indicate that most interviewees believe an IF joint initiative provides both momentum and progress to the WTO, and to the multilateral trade system more generally. Conversely, some claimants defend that the IF framework is not able to halt WTO decline or is even fated to become another fiasco of the international investment agreement. It is also important to analyse the role played by developing countries, especially Brazil, to launch and support the IF process, which is predominantly oriented towards developing countries, at the WTO. In fact, developing nations seem to have increasing leadership in the world economic order, and the rise of China as a major participant in the world economy reinforces this phenomenon.

Structurally, each question is presented throughout the text and the responses of the interviewees are exposed in detail. The chapter is organized as follows: Section 5.2 investigates the IF idea as a new approach to investment rule-making; Section 5.3 presents the answers on the current state of IF negotiations; Section 5.4 examines the impact of investment facilitation across all Joint Initiatives; Section 5.5 explores the main obstacles to an IF agreement within the WTO; Section 5.6 interrogates to what extent developing countries are a major part of investment facilitation; in Section 5.7, the role of China in the IF negotiations is assessed; Section 5.8 investigates the relevance of investment facilitation for global development needs; in turn, Section 5.9 presents an introduction of Brazil's engagement amid the ongoing IF initiative; section 5.10 presents Brazil's initial and recent contributions to investment facilitation; section 5.11 explores Brazil's IF push within the WTO; and finally, section 5.12 addresses key countries' positions concerning investment facilitation relative to Brazil.

6.2. The IF Pitch: A New Approach to Investment Rulemaking

> *It is focused on practical measures to facilitate investment. It does not deal with market access or investment protection, which have been more contentious issues in the past.*
> (Juan Carlos González, 2020)

Aimed at investigating the hypothesis of IF negotiations in WTO structural transformation, the interview proposes the following questions to specialists: "How does investment facilitation differ conceptually from more traditional approaches to investment rulemaking?" In the words of Moraes (2020): "Unlike the BIT format, we believe investment facilitation allows for a solution that addresses

a number of concerns that investors have without encroaching upon the states' concerns with maintaining policy space."

In general, individuals who believe that the IF framework empowers the WTO in the international economic sphere advocate that IF negotiations tend to succeed or, at least, to be regarded as guidance, because they differ conceptually from more traditional approaches to investment rulemaking. These differences explain why IF seems to have more appeal and traction in the WTO than previous efforts to start multilateral investment discussions – for example, the failed efforts to launch investment negotiations as part of the Doha Round and the Singapore Issues, in the WTO Ministerial Conference, in 1996.

6.2.1. The Devil's in the Details: Key Distinctions

Some respondents highlighted the difference between traditional WTO investment agreement models and the new IF proposal. As Ambassador Alexandre Parola (2020) distinguishes, investment facilitation ontologically differs from traditional investment approaches and should therefore be considered as a separate initiative. Similarly, another ambassador from a developing country within the WTO (2020) reiterated the difference between investment facilitation and more traditional approaches to red tape, while a Brazilian diplomat working in Geneva (2020) affirms that the plurilateral nature of current discussions on IF bypasses the rigidity of consensus-based decisions and includes any member wishing to discuss the issue. It fosters cooperation and hinders members wishing only to block the process moving forward. As Prazeres (2020) highlights:

> We are talking about an agreement that would most likely be a plurilateral agreement and I think that plurilateral agreements can be a way to keep the organization active and relevant. So, the fact that this topic is enabling a

> discussion on new modalities of trade negotiation in the WTO, in fact it is not new, but the fact that the possibility of concluding agreements with the sub-groups of the members is being rescued from within the WTO toolkit is something important. So, I think investment facilitation along with e-commerce has the power to transform the way members and the general public view the WTO's negotiating branch.

In this sense, an important idea that appears in the interviews is that IF initiatives are not limited to issues of market access or investment protection, and there are practical tools that facilitate integration. In particular, Juan Carlos González (2020) states that investment facilitation is more focused on practical measures which serve a country's own interests. He believes that investment facilitation does not deal with market access or investment protection, which have been more contentious issues in the past, while understanding that multilateral cooperation and IF agreements form a positive agenda to pursue in the context of rulemaking. In this way, WTO staff member (2020) specifically points out that the main difference between investment facilitation and more traditional approaches is that IF focuses more on ground level obstacles faced by investors (e.g., enhancing the transparency of trade laws and policies, streamlining administrative procedures/ reducing red tape, international cooperation), while not covering market access, investment protection, or investor-state dispute settlement. Additionally, Samo (2020) remarks that IF excludes investment protection, market access, and international dispute settlements, which are more common in traditional approaches. That interview highlights that IF negotiations in mid-2020 gathered 101 countries, which is a higher number compared to other joint statement initiatives – such as those concerning e-commerce or MSMEs. In specific, a Senior Ambassador of a Developing Country to the IF discussion (2020) highlights the difference between

investment facilitation and more traditional approaches to red tape. The avoidance of government inefficiencies is the core objective of the future IF agreement; meanwhile, it has not been tackled in the traditional investment agreement framework.

Along the same lines of thought, Carlo Pettinato (2020) underscores that traditional investment rulemaking addresses the conditions under which investors can enter foreign markets ("liberalization") and under which their assets and interests are protected there ("protection"), including different forms of dispute prevention and settlement. He differentiates this from investment facilitation, which features regulatory disciplines aiming at eliminating obstacles and barriers to foreign direct investment, theoretically desired by both the host state and the investor. He concludes that IF is complementary to traditional international investment agreements, but of equal importance in investment policymaking to ensure that countries can utilize their entire potential to attract foreign direct investment (FDI).

6.2.2. The IF Selling Points

The comparison between traditional BITs and IF initiatives is recurrent in the responses of several respondents. Felipe Hess (2020) believes that the essence of investment facilitation is the opposite of traditional BITs, since the latter are focused on protection and guarantees for the investor that they will not lose money, as a mechanism to attract investments. He differs this from ACFIs and Brazil's proposal, due to their focus on simplifying and navigating a series of tangled institutions and rules, a focus therefore more geared towards breaking the gridlock on more practical issues that can inhibit investments. He sees Brazil's IF proposal as a tool to avoid controversy altogether and smoothen the investment procedure. In addition, Henrique Moraes (2020) believes that IF initiatives

> […] avoid the adversarial rationale that inspires the BITs. More importantly, investment facilitation – however harder to achieve – goes to the heart of the concerns that arguably inspired the need for the BITs in the first place, which is to improve the domestic investment framework.

This complements with Willy Alfaro (2020), who states that the differences between investment facilitation and traditional BITs fall into two elements: one related to the strong opposition to negotiate investment rules at the WTO, and a second concerning its more appeasing approach directed towards countries that were opposed to negotiating rulemaking. On this second point, he notes that these opposing countries would be more open to an approach in which investment flows could be facilitated. In this regard, the win-win nature of investment facilitation was in line with the position of these countries to preserve their sovereignty regarding investment rules.

In general, interviewees emphasized the intrinsic characteristics of IF initiatives. Gabrielle Marceau (2020) highlights the transparency-like nature of investment facilitation and its greater focus on non-substantive norms to enable the development of new and better substantive rules. She recalls that this essence was already established within the GATT and that the IF initiative is the newest discussion to address this matter. Regarding coordination and the focus of investment facilitation, the ITC experts (2020) believe that investment facilitation is more coordinated within the context of the WTO than regional approaches or bilateral BITs are. They believe that investment facilitation gains much support from developing countries for not focusing on controversial topics but, instead, on streamlining processes and transparency. They believe that the approach given to investment facilitation within the WTO has much to complement the organization's roles and its strategic

approach without going down the route of dispute settlement; this has invited more support from members.

6.2.3. Fitting Together Like a Puzzle: IF Complementarity

The complementarity of IF initiatives is a point discussed in the interviews. Ana Novik (2020) believes that the traditional approach to investment focuses on protection for investors and that this is traditionally implemented through treaty negotiation. She understands that investment facilitation is not among the typical investment provisions such as "national treatment", "expropriation", and "fair and equitable treatment", and concludes that investment facilitation is a different and complementary approach to investment. In turn, Manuel Teehankee (2020) notes that there is no internationally acknowledged organization supervising international investments despite the numerous, but unsuccessful, efforts to have an international framework similar to the WTO. He remarks that what prevails in the investment regime are mainly arbitration and dispute settlement mechanisms such as the UNCITRAL, ICC, and ICSID, which compose the three major frameworks for investment rulemaking, albeit through voluntary arbitration. Teehankee observes that this model is structured with the investor in mind, which differs from the WTO initiative that focuses on facilitating transparency and regulation, as well as speeding up the bureaucracy and lessening red tape in order to allow investors greater access to knowledge on how to enter and invest in a domestic market. He sees the WTO's IF working group approach as assisting organization members on how to improve their domestic regulatory framework in order to attract investments that will serve to facilitate their national and domestic priorities, and therefore development.

Karl P. Sauvant (2020)'s answer fell more along the lines of substance and content:

> I assume you talk about rulemaking in the WTO. I am not sure that there is much of a difference; an IFF would presumably deal with very technical matters (like the TFA), but still, be subject to the DSU. And if it isn't multilateral, it would resemble, presumably, the plurilateral agreements.

Considering the current idiosyncrasies of the WTO, Vera Thorstensen (2020) stated that many academics believe that the basic WTO principles remove the need for a new investment agreement at all. She believes that investment facilitation differs greatly from more traditional approaches; however, she credits the attraction of investments not to the existence of a particular set of rules, but instead on whether the economy of a particular country is doing well or not. For this, she uses Brazil itself as an example. She remarks on the WTO's anachronism regarding the issues they are trying to assess, and its dissonance with the current economic order.

Based on the interviews presented, it can be argued that most experts agree that investment facilitation differs conceptually from more traditional approaches to investment rule-making due to its substance and acceptance among nations. Specialists present the notion that IF entails a smoothening of investment procedures, the removal of ground-level obstacles faced by investors such as red tape or a lack of transparency, an improvement of the domestic regulatory framework of nation-states, the elimination of obstacles to FDI, and the ruling out of market access, investment protection, and international investment dispute settlements. They also express that the IF process has an appeasing rationale due to the fact that it avoids controversy, lessens opposition to negotiate investment rules at the WTO, and is presently more feasible within the WTO context than regional or bilateral agreements.

Nevertheless, it should be pointed out that some interviewees have expressed that investment facilitation is a different but

complementary approach to traditional investment treaties, given that both are equally relevant in guaranteeing that countries can improve their potential to attract FDI. Defenders of the WTO's alleged anachronism state that the investment attraction of a country does not depend on understanding the difference between the IF framework and traditional investment texts, but rather relies on the country's specific economic variables.

6.2.4. Success Where All Have Failed Before: Overcoming Prior Hurdles

With the objective of continuing to test the hypothesis of the relevance of the IF framework to the impulse of WTO modernization, this section will now compare the momentum caused by IF negotiations with previous (failed) investment-related negotiations at WTO since the Singapore Ministerial Conference. In this vein, the following question has been posed to experts: "Why does investment facilitation seem to have more appeal and traction in the WTO than previous efforts to start multilateral investment discussions – for example, the failed efforts to launch investment negotiations as part of the Doha Round?"

As Ambassador Alexandre Parola (2020) points out, IF discussions seem to have more traction because it is difficult to be against such an initiative, especially as it promotes development. However, he believes that traditional investment negotiations, with their associated rules, are much more complex. In this same line of thinking, Carlo Pettinato (2020) notes that investment facilitation is less controversial as an area to engage in than the traditional areas of investment rulemaking, and that it has support from both developing and developed countries. He correlates this to the growing awareness among WTO members of trade and investment being intrinsically linked to each other, especially in the context of highly diversified global value chains and the trend of developing

countries placing a stronger emphasis on the attraction of FDI in their domestic economic development strategies.

Tatiana Prazeres (2020) observes that investment facilitation has gained much from the pioneering efforts of trade facilitation, because the latter has drastically decreased the resistance to facilitation within the WTO and helped to reduce the natural opposition from some members, such as South Africa, that disagree with both the form and content of plurilateral agreements. She specifically claims that

> Trade facilitation was the first and only multilateral agreement in the history of the WTO, as a standalone agreement, and has somehow brutally decreased the resistance against facilitation. Facilitation came to be seen as an agenda embraced by all members of the Organization. So, by reducing resistance in relation to trade facilitation you won the part of the members who also felt as "champions" in terms of trade facilitation, and this generated a much greater openness in relation to investment facilitation. Of course, investment is a subject that has a huge baggage in the history of negotiations, and you see India or South Africa, for example, that have a problem with plurilateral agreements, in relation to form, but also in relation to content, but the fact that the investment facilitation agreement is inspired and somehow takes advantage of the moment of the great success of Trade Facilitation helps a lot. I think the focus of the discussion is one of the main reasons for success, we can talk about relative success so far. The fact that it is "facilitation" helps to explain a lot.

6.2.5. Bringing Together Adversaries: IF As a Tool of Unification

In general, the interview responses indicate a greater acceptance of IF initiatives, either by avoiding controversial issues or by finding less resistance among WTO members. In this way, Henrique Moraes

(2020) believes that the difference is that investment facilitation does not meet the resistance existing with respect to the BITs, whose provisions were at the core of previous multilateral investment initiatives. Felipe Hees (2020) believes that the difference is due to the removal of very contentious topics, such as investor-state protection and dispute settlement, from the current discussion on investment facilitation since these topics will hardly have consensus from WTO members, especially developing countries.

Furthermore, Willy Alfaro (2020) trusts that investment facilitation has more appeal due to the removal of more contentious issues in the discussions. He believes that the removal of rigid issues such as dispute resolution between states and the private sector has increased the appeal of investment facilitation for countries. To this end, Karl P. Sauvant (2020) argues that it is "Because it leaves out highly controversial issues and focusses on technical issues only and because (at least implicitly) there is a promise of TA funds".

Regarding the interest of developing countries in the IF initiatives, Samo (2020) sees differences in both initiatives due to the IF context of plurilateral trading between like-minded members. He then draws attention to the different overall international context that has favoured the current negotiations, and to the change in the substantive parts of investment facilitation which has attracted the interest of developing countries.

For her part, Ana Novik (2020) attributes the difference to the topic itself of both initiatives. She thinks that investment facilitation, as it is being discussed in the WTO, publicises a transparency process, and does not address more controversial issues of past discussions, such as national treatment, market access, fair and equitable treatment, and non-investor-state disputes.

The ITC experts (2020) credit the distinction to the differing context of the present negotiations, and the change of perspective

from some stakeholders on investment such as developing countries to a more positive point of view. In this regard, they specify that developing countries realized the role that investment can play in bringing in capital and expertise, creating jobs, and developing local capacities, especially considering the successful case of China which showcased that an open economy, open trade, and investment can develop the national industry and their manufacturing capacities. The experts have found that after the Singapore Round, investment started not to be seen as a topic for developed countries only. They believe that investment facilitation is benefiting from the demystification of imprecise understandings concerning investment itself. They believe that IF advances are not contentious and promote a win-win scenario in which both developing and developed countries benefit from improvements from technical assistance and capacity-building models. The experts also find that developing countries have noted that facilitation agreements help them participate in the international exchange of trade or investment without affecting their national policies, in a win-win scenario where they can become more transparent and approachable to foreign traders or foreign investors and vice versa.

The context in which IF initiatives are being addressed at the WTO is also highlighted by respondents. In particular, Manuel A. J. Teehankee (2020) recalls that the initial discussions before investment facilitation were focused on investor advantage, protecting investors due to the preferences of developed member countries. He differentiates this initial approach from the current one for investment facilitation, which excludes market access, investment protection, and investor-state dispute settlement. The new IF approach also features a declared focus on transparency, and on balanced regulatory reform, wherein member states can improve their investment regulations to attract investments and incorporate best practices to protect their own domestic interest.

Meanwhile, the WTO staff member (2020) credits a different context for the varied responses. She remarks that the investment facilitation does not cover market access (MA), investment protection, or international dispute settlement, but does cover FDI issues. She notes that the difference in the context of both initiatives is mainly due to many developing countries becoming recipients and exporters of FDI. Lastly, she recalls that the IF initiative was kickstarted by developing countries, and therefore the development dimension is more pronounced.

In general, the favourable position of WTO members is seen as a positive factor for the development of IF initiatives. In this sense, Senior Ambassador of a Developing Country to IF Discussion (2020) believes that the very concept of facilitation is the main difference, and that all countries are willing to carry out this initiative. The ambassador expressed that "because it is facilitation, all countries are trying to do it". This pairs with Vera Thorstensen (2020), who believes that investment facilitation is trendy and that thinking about important topics will not work anymore in the context of the WTO. Thorstensen (2020) said "Because facilitation is itchy, for God's sake! There will be none of the important topics. Thinking about important topics won't work anymore."

The various interviews show that all experts agree that the IF debate tends to have more adhesion in the WTO than previous attempts to start international investment discussions due to a few factors: it has the support from both developing and developed countries – since it does not touch upon sensible topics, such as expropriation, market access and investor-state dispute settlement, and it is not focused on the protection of the investor; it strengthens the transparency process at the WTO; it is based on the accomplishment of the TFA; many developing countries have become pro-investment, as the successful case of China has showcased to developing countries that FDI can be a win-win scenario

for nations; and some developing countries became FDI exporters. Taken together, these results provide important insights into the increasing viability of the IF process at the organization.

6.3. Pandemic-Era Problems: The Current State of IF Negotiations

> *I think the focus of the discussion is one of the main reasons for success so far. The fact that it is "facilitation" helps to explain a lot.*
> (Tatiana Prazeres, 2020)

With the purpose of assessing the hypothesis of the contribution of the IF framework to reshape the negotiation pillar of the WTO, the power of investment facilitation to boost development and momentum among member states will now be examined. The following questions were thus posed to experts: "To what extent did the model of investment facilitation discussions in the WTO – i.e., an open plurilateral approach – encourage progress and momentum?"

Firstly, Ambassador Alexandre Parola (2020) believes that the plurilateral approach of IF negotiations allowed countries to accommodate positions more easily. Also, he argues, plurilateralism enables participants to avoid seeking solutions at the lowest common denominator. The Senior Ambassador of a Developing Country to IF discussions (2020), meanwhile, believes that open plurilateralism is necessary in the modern WTO, expressing that "it is the only way to go forward, open plurilateralism."

Juan Carlos González (2020) believes that IF discussions have led to openness and transparency among members, as well as the possibility of addressing their existing and potential legitimate concerns and to bridge the process knowledge gap between Geneva delegates and officials in national capitals. This complements Henrique Moraes's (2020) viewpoint, as he understands that flexibility is the

main benefit that the IF model promotes, "to the extent that it gives flexibility to the process." Gabrielle Marceau (2020), for her part, believes that flexibility and benefits for all are encouraged by the IF model, declaring that even if it may not appear fair that some benefit from the transparency of others while they do not open up, it is an achievement for the institutional system as a whole.

In turn, Carlo Pettinato (2020) notes that the plurilateral approach allowed the IF initiative to be launched at MC11, and to subsequently establish a successful work process in the WTO without the need for a member country consensus. He credits the inclusive nature of this initiative as the main reason for the significant progress since MC11, as it allows members to keep track, join, and contribute at their own pace, without being rushed or side-lined in the process.

Willy Alfaro (2020) draws attention to the fact that all members should benefit from an open plurilateral initiative. He thinks that this model can generate momentum, especially to the countries that are still doubtful about the advantage of the proposals. Alfaro (2020) notes that "not all members are participating, but the idea is to show that it is moving into that direction so that all members could benefit. Soft law, I would call this soft law, in the sense that it's not what was expected to be a few years ago."

The fact that IF initiatives promote negotiation between members with aligned objectives is also highlighted in the interviews. Indeed, the WTO staff member (2020) believes that the open plurilateral approach has allowed the proponents (like-minded members) to advance discussions on a current topic of relevance for many members. She understands that due to the initiative having progressed in stages, members have been able to better understand investment facilitation, thus building confidence in the system. Samo (2020) also notes that the three plurilateral negotiations contribute to creating momentum, since they promote negotiations

between like-minded members in a more agile process than WTO negotiations tend to be.

To that end, Thaís Mesquita (2020) also argues that the plurilateral approach encourages progress and creates momentum within the organization. She notes that the organization has 164 members, each with their own priorities and economic and political situations, yet all matters are decided by consensus. Therefore, it is difficult for the agenda of a meeting to be adopted by the consensus of 164 members, complicating any attempts at moving forward or creating momentum. Indeed, plurilateral initiatives have shown, especially considering the number of members – almost three-quarters of members participate in at least one of the initiatives – that join them, that members want to move forward, but they are not always ready, and it is not always possible to move forward with full consensus.

Mesquita (2020) believes that the success of plurilateral initiatives indicate that there is a desire to move forward, but that desire was not very clear due to certain delegations with greater weight which followed a "hostage-taking" policy, preventing the organization from moving forward. She sustains that when once the possibility for countries to decide if they wanted to participate or not existed, it became clear that there were some countries that did not want to move forward. She notes that until the present date, these countries argue that the plurilateral agreements are illegal and that it will not be possible to integrate them into the system. Mesquita mentions that such countries maintain that in order for this to be approved and be part of the system, the plurilateral agreement must be adopted by consensus, and that this is the only possible manner to enable such an agreement, when in fact there are other ways being explored.

Finally, Mesquita (2020) affirms that in recent times it has become clearer that the problem is not that the organization is bankrupt or that members no longer want the agreements, no longer want to strengthen and advance the system or renew the rulebook. She asserts that the reason has been a very specific group featuring one or two major countries that did not desire such changes. Therefore, she believes that it was very important to encourage agenda advances that create negotiation within the WTO. When members are able to close these agreements for solid and technical solutions and incorporate these agreements into the system in a technically sound manner, they will have completed the great revolution that is taking shape.

The idea that plurilateralism is a better way to move forward in WTO negotiations is a feature present in most responses. In this sense, Felipe Hees (2020) understands that the plurilateral model is the only negotiation structure that has any prospect of advancing in the present moment due to the decline of multilateralism. He recalls that the plurilateral approach used to be the norm until the Uruguay Round, in which multilateralism took over. Hees (2020) believes that returning to plurilateralism is natural, with conversion into a multilateral model when a more opportune moment arrives. Besides that, Ana Novik (2020) understands that IF discussions are indeed capable of encouraging progress and momentum in the WTO, since IF is a topic that is not conflictive, but will not lead to WTO reform. She thinks this topic will remain relevant even after the COVID-19 crisis, and in sum believes that this is a very important economic topic, simply at an inappropriate political moment.

Regarding the participation of developing countries, Manuel A. J. Teehankee (2020) recalls that there was always the possibility for a limited group to engage and negotiate at the WTO, such as in the plurilateral frameworks that were agreed for aircraft or telecommunications, with the Government Procurement Agreement

(GPA) as the foremost example. He believes that an open plurilateral approach in investment facilitation encourages greater developing country participation, since the objective of the discussions is to facilitate investment facilitation for development. Ultimately, he concludes that the initiative does encourage progress, albeit not yet achieving it.

In turn, Vera Thorstensen (2020) underscores that peer pressure is one of the key mechanisms to ensure success within the WTO, saying "[…] go on doing plurilateral, leave those who don't want out, I'll say again, this is how it works, peer pressure works… Today I look back, and I say that everything was wrong, the whole view of ridiculous legal purism… Here is the result."

Experts all tend to agree that IF talks within the WTO – through an open plurilateral approach – empower advancement and momentum in the organization. This is for a variety of reasons: plurilateralism is the only possible negotiation structure due to the decline of multilateralism; it used to be the norm until the Uruguay Round; it leads to openness and transparency; it does not require member consensus; it is flexible; it helps members understand the proposal's advantages; it benefits all, including free-riders; it builds confidence in the system; it is more responsive; it is not conflictive; it is economically important; it utilizes IF for development purposes.

Nonetheless, a professor added that peer pressure is the key to encourage progress and momentum at the WTO. It seems that there is a consensus that the model of IF discussions in the WTO – i.e., an open plurilateral approach – encourages progress and momentum. Interviewees confirm one of the main arguments of the present thesis since they affirm that this approach can render the WTO more efficient to face new challenges of international trade and investments. The open plurilateral model provides evolving concepts of flexibility, openness and transparency, and pragmatism, in the

process representing the resilience of countries to the increasingly protectionist and nationalist multilateral trade system.

6.4. Safety in Numbers: The IF Impact Across Other Joint Initiatives

> *I think there was a really positive impact. Joint initiatives are just another name for plurilateral initiatives. And investment facilitation seemed like a less contentious starting point, and that had a positive impact.*
> (Ambassador Alexandre Parola, 2020)

With the purpose of assessing the hypothesis of the prominence of the IF process on open plurilateral models at the WTO, correlation between the foundation of the IF debate and the creation of the other Joint Statement Initiatives (JSIs) from the Buenos Aires Ministerial Conference – electronic commerce, domestic services regulation and micro, small and medium enterprises (MSME) – will be addressed. It is said that investment facilitation stimulates WTO reform because its model has influenced other so-called open plurilateral negotiations, given it was the first and thus far most successful initiative to take this plurilateral approach. Thus, the following question has been presented to experts: "How has the investment facilitation model (the informal dialogue process, the Abuja High-Level Forum, the MC11 Joint Ministerial Statement, the structured discussion approach) impacted and shaped other so-called Joint Initiatives, such as e-commerce, domestic services regulation, and MSMEs?"

Based on a positive view of the proposed question, Ambassador Alexandre Parola (2020) argues that the IF initiative has had a positive impact on parallel JSIs at the WTO. First, as a less contentious issue, it enabled countries to find common ground more easily. It also demonstrates the positive potential of a plurilateral process

at the WTO, given they used to be the pre-Uruguay Round norm at the organization. This parallels testimony from another expert, the Ambassador from a WTO Developing Country (2020), who believes that joint initiatives are opportunities to keep the work of the WTO going, despite the failures of the Doha Round.

Conversely, Felipe Hees (2020) questions whether it may be misleading to draw parallels between the different initiatives despite all being plurilateral in nature. He believes that the common trait is due to the current environment, which only allows for plurilateral initiatives. He notes the unfruitful negotiations around MSMEs, in particular how the parties never managed to come up with a common idea for its content. He remarks that the issue of domestic regulation of services, as a mandated negotiation of the GATT and therefore lacking in any influence on other aspects, showcases that it does not have parallels with IF itself, but only with the plurilateral model. He also emphasizes that e-commerce was one of the first topics to be dealt with under the plurilateral scope after the Uruguay Round, which enabled a dynamic learning experience for both initiatives. He concludes by highlighting that it may be imprecise to say that the IF initiative has reshaped the other initiatives.

In turn, a Brazilian diplomat working in Geneva (2020) admits that investment facilitation seems to have more appeal and traction in the WTO than previous efforts to start multilateral investment discussions, in part because of the open plurilateral structure and existing problems with traditional BITs and arbitration ease acceptance among other WTO member states. Along the same line of thinking, Juan Carlos González (2020) believes that one of the main aspects is the ease with which a discussion can be adhered to within this model due to its transparency and openness. González (2020) states that

> [...] there have been positive synergies among the different initiatives. One of them is the possibility to advance in the

> open and transparent discussion of issues of relevance to a significant group of members in a way that others can get involved as they feel ready to do so. In the case of the IFD process, it was conceived as a bottom-up approach-structured discussion to identify what investment facilitation means in terms of the potential elements to be included under an agreement, and the different options for levels of "depth" of commitment that those elements could have, keeping also in mind the practical elements/challenges related to their implementation.

In particular, the WTO staff member (2020) believes that there is some cross-fertilization among the different joint initiatives, which shows some similarities such as their open and plurilateral model, but also some differences in terms of process. The staff member (2020) stated that

> There is some cross-fertilization among the different joint initiatives. While they share some commonalities (the fact that they are open and plurilateral), there are also differences in terms of process. Some other initiatives started negotiations earlier (e.g., e-commerce), while some do not really focus on negotiations or do not aim at rulemaking (e.g. MSMEs).

According to Willy Alfaro (2020), the discussions on e-commerce appear to be advancing faster than the other initiatives, despite all forming part of the broader scope of a plurilateral negotiation model. Alfaro (2020) details that

> [...] from what I heard is that these discussions on e-commerce may seem to be advancing a bit more rapidly than the others, including investment facilitation, MSMEs in particular, but they are all part of these efforts to move ahead. As far as the members can, with those that are willing to move quicker than the rest. They are part of these things.

In turn, Gabrielle Marceau (2020) presents an interesting argument related to the claim that informal dialogue is a new approach to the WTO. She notes that the success of investment facilitation has impacted the method of conducting the other joint initiatives. She sees the joint initiatives as a path forward to gain more appeal and traction in the WTO than previous efforts on multilateral investment, which she credits to the higher involvement of developing countries. In sum, she thinks that investment facilitation and the joint initiatives, in general, respond to the need to repurpose the WTO and offer flexibilities that did not exist with more traditional multilateral approaches.

The ITC experts (2020) recall the origin of the open plurilateral approach as a compromise in the face of the failure of the multilateral model. At the same time, they credit the rising role of developing countries in international trade, and the newfound impossibility for a couple of countries to simply force-push certain provisions past these members, as one of the reasons for following the open plurilateral path. They think that among the joint initiatives, investment facilitation has the best chance, because of the regional agreement, to prosper. They note that this is not the case for e-commerce, since different members may have different points of view regarding the regulations related to data and cross-border transfer of data. They think that domestic regulation on services may be a likely candidate in the future and lack further information on MSMEs. They then conclude that investment facilitation is indeed the best candidate for an agreement.

In turn, the Senior Ambassador of a Developing Country to IF Discussion (2020) believes that the joint initiatives are opportunities to keep the work of the WTO going despite the Doha failures. The ambassador (2020) expresses that "as I mentioned the issues are beyond the Doha Round and they allow us to continue working despite the blockade by members like South Africa, India, Benin, etc."

Meanwhile, Ana Novik (2020) emphasizes that each joint initiative has its own *modus operandi,* with e-commerce being carried out mainly by developed countries, for example. She sees the negotiation on investment facilitation as having good momentum due to the engagement of countries that would have likely opposed it at first glance. However, she does not think that one initiative is reshaping the other, since each one of them has their own logic, although acceptance on one of the initiatives could transfer traction to the others and open more doors to similar initiatives. Also, Manuel A. J. Teehankee (2020) points out that since the joint initiatives have adopted a common approach, they allow for knowledge-sharing on how to advance their negotiations and adopt procedures that are similar or mutually supportive of each other. He notes, however, that they are at different levels of development, and remarks that joint initiatives allow for open comments and participation by non-signatories although with varying degrees of discipline depending on the group. Teehankee (2020) thinks that this approach allows for a better assessment of the best timing for members to adhere to the initiatives, thereby strengthening them.

In particular, Carlo Pettinato (2020) notes that the informal dialogue process, the Abuja High-Level Forum, and the MC11 Joint Ministerial Statement have all been crucial in building political momentum for the structured discussions on investment facilitation. However, he observes that initiatives such as e-commerce and domestic service regulation have started earlier and are generally more advanced, thus have not been influenced significantly by the IF initiative.

Conversely, Vera Thorstensen (2020) warns that e-commerce discussions are already starting to get outdated due to their dissonance with the current practices of the sector that are greatly commanded by the private – not public – sector. She believes that the WTO is not the place anymore for plurilateral treaties with ratifications.

Not all experts verify a relationship between the initiatives. Henrique Moraes (2020) is emphatic in stating that he does not see a link between the initiatives. In turn, Thaís Mesquita (2020) sustains that each joint initiative has its own dynamics and has established its own *modus operandi*, which is not necessarily being influenced by what other groups are doing. The joint initiative for MSMEs, for example, has a very different dynamic and expects different results. She believes the dynamic depends on the group which is negotiating and the expectations regarding that matter. She asserts that the format and model which was adopted in investment facilitation was very smart, safe, and at the same time firm; all in all, she cannot affirm if such a model could be replicated as the e-commerce model was. Mesquita (2020) identifies multiple similarities between the IF, e-commerce, and regional models; however, she cannot conclude that it started with investment facilitation in order to argue that there is an IF model as stated in the question.

While most of the interviewed experts seem to agree that the IF model did not shape other so-called Joint Initiatives, such as e-commerce, domestic services regulation, and MSMEs, they also tend to recognize their interconnectivity. The relationship between IF discussions and the other open plurilateral models can be summarized as stemming from the same environment that only allows plurilateral initiatives, one of cross-fertilization of ideas and techniques, equivalent in transparency and open process, at different levels of advancement, and a relationship of each joint initiative having its own *modus operandi*. While the conclusion of one negotiation may encourage the process of the other, producing knowledge-sharing on procedures and advancement of negotiations, some experts warn that it may be misleading to draw parallels between the different open plurilateral initiatives. Others note that the e-commerce and domestic service regulation JSIs have started earlier and are farther along than investment facilitation.

Nonetheless, some interviewees affirm that the success of investment facilitation has impacted the method of conducting the other joint initiatives and that IF negotiations have the best chance to produce concrete outcomes. Other connoisseurs defended that the influence of investment facilitation to the other plurilateral frameworks does not matter because the subjects of all of them are outdated, or the joint initiatives are opportunities to overcome the blockage of the WTO. It seems that the idea of the influence of the IF process to launch the process of open plurilateral models at the WTO is not approved by most interviewees; therefore, it may be concluded that the IF model, taken together with other so-called Joint Initiatives, such as e-commerce, domestic services regulation, and MSMEs, influences the reform of the WTO, while all plurilateral initiatives shape and impact each other to an equal degree. This finding represents a reciprocal system of interconnection among these JSIs that contribute to shaping the modernization of the WTO.

All in all, while certain interviewed diplomats and experts have argued to the contrary, when taking into account the history of IF negotiations at the World Trade Organization, and how Brazil – along with China, Argentina, and to a certain degree Nigeria – shaped the discussion around facilitation into a plurilateral one over the wishes of multilaterally-minded states such as Russia, India, and South Africa, it is clear that this initiative was the clear pioneer in plurilateral discussion. Investment facilitation was the model; without it, the climate and precedent for most of these other issues such as MSMEs and e-commerce would simply not have been there.

6.5. Potholes in the Road: Obstacles to an IF Agreement Within the WTO

> *But I think that you cannot romantically believe that this will change, that it will be the reshape. I think it is not, it was never intended for that, and it will not be that.*
> (Felipe Hees, 2020)

In this section, the hypothesis that the present IF negotiations constitute a concrete example of a plurilateral joint initiative within the broad spectrum of WTO law and policies shall be analysed. Therefore, this subchapter will evaluate whether the IF framework is fated to become just another failed international investment agreement, or if it has a tangible chance of success. Thus, to elaborate on the challenges that are currently faced by member states, the author has posed the following question to experts: "What are some of the main obstacles to reaching an investment facilitation agreement in the WTO?"

Overall, the insights generated by the interviewees can be classified in three grand categories, namely, the plurilateral nature of the negotiations on an issue of hard law, the existence of more pressing matters – and unfavourable global context – which demand attention, and the general uncertainty, lack of coverage, or depth of investment facilitation with regards to development needs. Each of these points shall be examined in the following paragraphs.

Firstly, there are those who fear the precedent a successful plurilateral agreement may set for the functioning of the WTO. These experts tend to believe that a successful hard-law agreement on investment facilitation would be difficult to integrate into the organization's rule book, as well as its general mandate. Among them, we find Brazilian Ambassador to the WTO Alexandre Parola, Carlo Pettinato, Gabrielle Marceau, the experts from the ITC, as well as Felipe Hees.

First, Ambassador Alexandre Parola (2020) argues that the main obstacles to a successful IF agreement are systemic. Some members claim that plurilateralism should not be encouraged within the organization, and therefore they will not back the initiative to avoid setting such precedents. Thus, Ambassador Parola thinks that opposition to the initiative is not necessarily because of its intrinsic merit, but rather because of its systemic impact.

Likewise, Gabrielle Marceau (2020) trusts that the main obstacle still consists of the same traditional countries, such as India, that tend to oppose plurilateral initiatives because they go against the stated mandate of the WTO, as well as its principle of single undertaking and consensus-based decision-making. Describing that country's position on this matter, Marceau (2020) stated that "it's everything and nothing. They shall only pursue agreements that include everyone, and India, from the start. They can block everything". Furthermore, describing the political bargaining the country leads behind the scenes, she argues that "this is politics. It does not mean that India is a multilateral player. They never have been. Look at the disputes; they don't want to sign anything because now they have this sugar case" (MARCEAU, 2020).

Regarding the legal implementation of a successful agreement, Carlo Pettinato (2020) has emitted some doubts. Indeed, he considers the integration of a final agreement in the legal architecture of the WTO (and related challenges of ensuring member consensus) as the biggest obstacle for investment facilitation. Thus, he expressed a similar position to the interviewed ITC experts (2020), who discussed that a possible lack of WTO mandate in this area is a potential barrier for the formal development of an IF agreement. Thereby, they also see possible hurdles on how to incorporate this into the WTO rulebook.

Finally, Felipe Hees (2020) believes that the biggest obstacles stem from the fact that these are hard law negotiations in a context where countries are looking for national and individual solutions. He further notes that investment facilitation addresses issues such as red tape, which goes against the desire of select countries to not change the status quo. Per his understanding, besides Brazil there is a general lack of ambition and desire to really move forward with this issue. According to Hees (2020), this lethargy originates from the present situation and constitutes the main obstacle to the IF initiative. Overall, he ponders whether this negotiation will achieve anything at all, given that very few countries are willing to act.

In sum, the issue of lack of ambition, and the lack of will to act, has been noted and observed by several other interviewees. Indeed, some such as Henrique Moraes (2020) believe that there are currently broader questions at the WTO that should be addressed and are thus diverting attention away from the IF initiative. Furthermore, he sees another barrier in the current level of uncertainty on what exactly the measures on investment facilitation entail, both for emitters and receivers of capital flows. His view is shared by Ana Novik (2020), who foresees that the lack of a defined scope can hamper the IF initiative itself, and Samo (2020), who notes that there are still considerable divergences on the contents of the agreement and its scope across members.

On the matter of progress achieved, Juan Carlos González (2020) notes that the rapid pace of progress in the discussions and the increasing number of members participating are good signs. However, he draws attention to the need to strike a balance between the depth and significance of a potential agreement with the number of participating members to reach an IF agreement.

On the same note, Willy Alfaro (2020) thinks that the main obstacles are the same as in the other joint initiatives: the challenge

to engage key stakeholders, a big number of participants, and a good margin of the coverage market. The ITC experts (2020) have expressed similar concerns, as the most important thing in a negotiation such as this one is to balance the level of ambition and the number of participants. Thus, a senior Ambassador of a developing country contributing to IF discussions (2020) thinks that the main issue is the lack of willpower, expressing what he perceived as a "lack of ambassadors with the stamina required to push this agenda forward."

Regarding these worries expressed by interviewees, the WTO staff member (2020) interviewed observes that proponents of this initiative need to intensify their outreach efforts towards other members by demonstrating the impact of investment facilitation on development. She also notes that the developments of other joint initiatives in the WTO can themselves impact talks on investment facilitation.

Therefore, two main aspects concerning the issue at hand are the adjustment of scope concerning the development needs of member countries, as well as the current political climate. For instance, Samo (2020) believes that an agreement will happen despite existing disagreements. However, he sees the current international context, especially the USA-China dispute and the possible rise of nationalism in the post-COVID-19 era, as a potential obstacle. Still, while Ana Novik (2020) agrees that the current main obstacles are political, concerning the adherence of countries such as India, South Africa, and Indonesia, she expects that additional challenges may appear and will be modulated in accordance with the ambition attached to the agreement's negotiation. Likewise, Manuel A. J. Teehankee (2020) expressed concerns on this topic. He notes that there is concern about the structure of the initiative and whether this would be a fully multilateral agreement, eventually, or if it shall remain stuck as a plurilateral initiative.

With regard to development needs, Novik (2020) questions whether capacity-building may pose a barrier for the initiative, since developing countries will assume more obligations on investment facilitation – but only if they have the capacity to implement them. Ambassador Teehankee's (2020) insights agree with this statement, as he draws attention to the different levels of development in the WTO and the different types or levels of regulatory reform and transparency needed to put hard law into effect. Thus, he warns that alike to what has been done within the Trade Facilitation Agreement, it should be ensured that the members which have a need for technical assistance, or transition mechanisms, feel their concerns are being addressed. Scholar Karl P. Sauvant's (2020) insights contribute another aspect to these development-related issues. He considers that "if the development dimension is not clearly addressed", then countries, as well as the WTO, could "potentially face opposition organized by NGOs, especially" (SAUVANT, 2020).

When questioned on the plurilateral framework of investment facilitation, many interviewees have touched upon the question of the revival of the multilateral trade system. However, Vera Thorstensen (2020) has expressed much deeper concerns with the incompatibility of the current international system with the outdated WTO structure.

Thorstensen (2020) first states the drawbacks of the organization, noting that there exists an anachronism regarding the issues the WTO is trying to resolve and its dissonance with the current economic order. She believes that the WTO is not the place anymore for plurilateral treaties with ratifications. China's disregard of WTO rules recently only reinforces her assessment, she claims, and calls into question that country's goodwill into reforming the organization for the better. Furthermore, Thorstensen thinks that the structural hurdles of the WTO itself and its imminent death are the true obstacles for IF discussion.

Concerning the hindrances of the IF process, the issue at hand, she believes that the latter is a "trendy" concern among members because thinking about more contentious topics will not work anymore in the context of the WTO. Thorstensen (2020) laments that if the basic principles of the WTO were successfully applied by members, a new investment agreement would not be needed at all.

Still, she concurs that investment facilitation differs heavily from more traditional approaches, and thus, stands a good chance of reaching agreement among participating members. According to this scholar, thus, investment attractiveness is not necessarily due to the existence of a particular set of rules but instead on whether the economy of a particular country is doing well or not, Brazil itself serving as an example of this. Hence, this initiative stems from developing countries, given these actors' natural need for investment flows. However, these countries also have other priorities concerning investment, which are not necessarily addressed by investment facilitation. These needs include, for example, the protection from exploitation measures carried out by multinationals from richer countries.

Overall, Thorstensen's (2020) insights on the state of the WTO are pessimistic. She warns that e-commerce discussions are already starting to get outdated, due to their dissonance with the current practices of such a fast-changing sector, which is in a major sense commanded by the private and not public sector. Concerning possible solutions to these setbacks, she underscores that peer pressure is one of the key mechanisms to ensure success within the WTO, and that perhaps plurilateralism could enhance such type of behaviour within international relations.

In sum, this subchapter has put into light that there are some obstacles in the current WTO context to be overcome to guarantee the success of an agreement on investment facilitation. Furthermore,

while some interviewees are generally positive about the contribution of these challenges to the revival of the WTO, others have come to doubt it. Some specialists have stressed hurdles connected to the challenges of the international system, such as the dispute between the United States and China, and the potential rise of nationalism in the post-COVID-19 world. There are also structural barriers to an agreement within the WTO, such as the balance between the depth of the content of the agreement, and the number of participating members with significant coverage of the international investment market. The lack of mandate at the WTO with regards to investment-related issues raises concerns regarding the integration of the final agreement in the legal architecture of the WTO and could also serve to explain the undefined scope of the notion of investment facilitation.

Experts have also produced the insight that powerful emerging countries, such as India, South Africa, and Indonesia, tend to oppose plurilateral initiatives, and that the shortage of determination of some countries to produce concrete outcomes has come to slow down the pace of the negotiations. For some, this is due to the scarcity of ambassadors based in Geneva with the dynamism to reach an agreement, as well as the waning interest, or the shifting priorities, of some main states. The possible opposition of some NGOs against the issue has also emerged as a hurdle, concerning the privation of development-oriented provisions, especially capacity-building clauses to tackle the different levels of development among members.

Overall, the current political climate suggests that the impasse of the other plurilateral initiatives can negatively influence progress on IF negotiations as a bargaining piece in the WTO chessboard. Similarly, the negotiating of hard law in a context characterized by the rise of nationalism and individualism poses a challenge. Thus, the presence of sensitive topics, such as red tape, hinders the plan of some countries to maintain their favourable position in the status quo.

6.6. New Kids on the Block: IF As a Developing Country Initiative

> *It is not by chance that in the WTO, Russia, China and Brazil raise the issue of facilitating investments in the G20. Why? For the same reason that in 2010 we started to notice that there was Brazilian investment going abroad, which is the genesis of our ACFI.*
> (Felipe Hees, 2020)

The debate about the impact of investment facilitation on the renewal of the WTO as an organization notwithstanding, interviewees share the opinion that developing countries, such as a rising China and our case study of Brazil, were pioneers in providing the ideas and political articulations of the IF framework at hand. Thus, the rise of investment facilitation as a formal discussion within this organization represents, more broadly, the remarkable rise of China, as well as other developing countries such as Brazil, within the new global economic order. Considering this, investment facilitation can be deemed as a landmark: It is the first developing country-oriented initiative in this organization. Hence, perhaps there are reasons to explain why developing countries were the initial proponents and drivers of these negotiations. It is also relevant to discuss what seems to be China's interest in seeking to reach an agreement. Therefore, in the interest of clarifying why developing countries launched IF negotiations in the first place, the author posed the following questions to experts: "Why were developing countries – rather than developed countries – the initial proponents and drivers of investment facilitation negotiations in the WTO?"

To successfully answer this question, it is important to be reminded of whose interest it is to facilitate and thereby increase international capital flows for development. On this issue, an Ambassador from a WTO developing country (2020) believes that

this initiative stems from developing countries because these are the countries that most need FDI. Similarly, Ambassador of Brazil to the WTO Alexandre Parola (2020) believes that developing countries will be the biggest beneficiaries of investment facilitation, so it is in the interest of developing countries to improve the availability of information and other facilitating processes for foreign investors. Thus, he argues, many things proposed in the IF negotiations already existed in developed markets. In Parola's (2020) words: "[...] we, developing countries, are going to be, I imagine, the biggest beneficiaries of greater simplicity brought on by investment facilitation. The richest countries already have this simplicity."

This view is corroborated by the insights of Willy Alfaro (2020), which attribute the increased participation of developing countries in these matters to the fact that these countries are far more dependent on foreign investment for their economic development, in terms of added capital and know-how. Thus, he sees investment facilitation as a mechanism for developing countries to attract foreign investment through cooperation. Similarly, Samo (2020) states that "these countries are net capital importers, so the agreement tends to benefit them more, in the margin. That's why they were the proponents." This testimony backs up the idea that developing countries are net importers of capital and thus they stand to benefit the most from this initiative.

Ambassador Manuel A. J. Teehankee (2020) also attributes the predominant role of developing countries to their perceived need for funds to complement their development efforts, where budgetary or domestic savings and resources have constraints. Indeed, he cites that for these countries, domestic capital investment for socioeconomic development must often be complemented by foreign investment, which explains the need to expand and facilitate FDI.

Of course, one may also approach the question of investment flows through its historical context. Felipe Hees (2020), for example, recalls that past agendas on investment were focused primarily on litigation and protection of investment. These were thus embodied mainly in a topic for developed countries that are capital-exporters. In fact, he argues, back in the 1970s and the 1980s "the investors were from developed countries and they wanted to protect their investments in the former colonies, as the world was in process of decolonization." Investment facilitation, in turn, seeks to facilitate incoming investment flows across developing countries, and therefore this issue is naturally backed by them. He also draws attention to the fact that, currently, large developing countries such as China and even Brazil have also started to invest abroad, as it goes hand in hand with these countries' emergence in the global financial economy.

In a similar line of thought, Juan Carlos González (2020) argues that developing countries face more challenges than developed countries when trying to attract investment, and thus investment facilitation was seen as more of a priority for developing countries that wanted to enhance their participation in global FDI flows. In fact, the United States, for example, is the world's foremost receiver – and emitter – of FDI. He also notes that developing countries have been acting not only as recipients of FDI, which increases the importance of this discussion for them. Ambassador Parola (2020) expressed a similar view, noting that developed countries, like Switzerland or the USA, already have simplified measures in place when it comes to investment. In a similar vein, Henrique Moraes (2020) stated that developed countries still have strong domestic legal frameworks that favour the traditional bilateral investment treaty (BIT) approach, a common practice in the 1990s that shall be explored in a later chapter.

Crucially, the global rise of South-South cross investment and the new role of developing countries as investors themselves

must not be ignored, according to Ana Novik (2020). Indeed, Novik (2020) states

> the main drivers of the discussions were China, Brazil, but Australia and Mexico were also part of it. I will say that it is because these developing countries, and particularly China, have started to be important investors, most notably in other developing countries, and South-South investment has increased a lot after the 2008 crisis.

Today, China is the second-largest global investor. Thus, as argued also by Karl P. Sauvant (2020), "developing countries are the principal drivers of investment facilitation because they have become relatively important outward investors and, hence, want to further the interests of their multinational enterprises".

With regards to developed countries such as the US and EU, the world's first investors, Novik (2020) dutifully reminds that while these countries are "very important, and that they are interested in investment facilitation", they would rather avoid bringing these issues to the multilateral level. Indeed, according to her, such a move implies that other areas of international negotiation, such as e-commerce, could then become vulnerable to political bargaining, as more cards are distributed across the negotiating table. Finally, she states, one must remember that because this initiative is in a significant way carried by China, "the US doesn't want to be very involved". Thus, "they appreciate negotiations but are not willing to pay in other areas of more crucial interest" (NOVIK, 2020).

More generally, Gabrielle Marceau (2020) proposes that this leadership from developing countries is not only due to the concrete benefits they gain from the initiative, but, more crucially, to the new context in which the discussions are taking place: developing countries have more importance in the WTO and the whole global context as well. Thus, should global trends continue, investment facilitation shall remain but one of several future initiatives carried

by the emerging powers. Thus, the ITC experts (2020) believe that the desire to keep the WTO running and to explore different topics, after the failure of the Doha Round, are among the reasons why developing countries initiated this discussion. They also note the pro-development approach of the initiative highlights that the self-interest of developing rather than developed countries, as the latter of which would have preferred to touch upon contentious issues such as market access.

Overall, the expert interviews show agreement that there are three main reasons behind developing countries leading the IF negotiations, namely, the delicate structure of the international financial system, the need for pro-development inward investments, and the rise of outward investments in the Global South.

Structurally, experts have signalled an increasing importance of developing countries in the WTO and the international system, as well as a push for enhancing the participation of these developing countries in the global investment market. The initiative simultaneously stems from these countries' aspiration to maintain the WTO functioning and to explore new themes within the organization, after the Doha-era deadlock. Regarding the matter of inward investment, experts have duly assessed the huge dependence of developing countries on foreign investments to ensure economic development. For some, this is related to these countries' scarcity of savings and know-how in matters of development, as well as budgetary constraints. Finally, concerning outward investments, interviewees consider that large developing countries, such as China and even Brazil, have also started to export investments and thus have become implicated in the desire to improve these global flows.

Thus, some have argued that while developed countries still have fixed domestic laws and policies that support the traditional BIT approach, some are nevertheless starting to see the value of a

multilateral solution for investment facilitation. Likewise, South-South cross investments have increased, and big developing economies want to secure easier access for their multinational enterprises, which have emerged because of their aggregate economic development. In sum, while past agendas on investment, concerning mainly litigation and protection, benefited capital-exporting developed countries, a multilateral solution could provide the basis for cooperation that is crucially needed today to ensure the sustained prosperity of all countries.

6.7. Beijing Breaking Bread: Assessing China's Role in the IF Negotiations

> *Moreover, I would suppose that China sees the systemic value of this initiative as a case for modernizing and preserving the rulemaking function of the WTO.*
> (Carlo Pettinato, 2020)

To consider the relevant role of developing countries, including Brazil, to start and maintain IF negotiations at the WTO, as well as the shared belief that the IF framework is one of the first initiatives in this organization to be guided by developing countries, this section shall examine the interests of China in promoting the IF agenda within the multilateral trade system. The author has thus posed the following question to specialists: "What seems to be China's interest in seeking an investment facilitation agreement in the WTO?"

Overall, the responses provided in this section can be split into two main categories. The first argument relates to China's systemic position at the WTO, while the second draws on China's specific interests as both an investor-state and a recipient of foreign investment. As Brazilian WTO Ambassador Alexandre Parola (2020) notes, China's interest in investment facilitation is mainly systemic. The country wants to be the major player in multilateralism's

normative construction process, and investment facilitation provides it with an opportunity to do just that. Carlo Pettinato (2020) also thinks that China sees this initiative as an opportunity to modernize and preserve the rulemaking function of the WTO.

Another developing country WTO ambassador (2020) also credits China's interest in its role as a key investor abroad, while according to the ITC experts (2020), China is becoming a global investor whose outbound investment has already exceeded its inbound investment. According to Juan Carlos González (2020), China sees this topic as a positive element in the rulemaking agenda, and the country's leadership feels comfortable supporting it as a way to strengthen China's investor role by establishing more transparent and homogenous rules.

This view is corroborated by Henrique Moraes (2020), who observes that "China's role as a leading provider of FDI should serve as a guide to understand that their position with respect to investment regulation is changing". Gabrielle Marceau (2020) and Manuel A. J. Teehankee (2020) are each of the mind that China has concerns about the practice of other countries concerning investment, and thus wishes to promote more transparency on the recipient's side of FDI. From China's perspective as an investor-state, there is an increased interest in advancing transparency and efficiency, as well as reducing red tape and regulations.

However, it is not sufficient to consider only China's role as an FDI emitter. In fact, Willy Alfaro (2020) thinks China's interest may be tied to both its outward and inward investment. For Samo (2020), this dual perspective enables one to understand why an IF agreement at the WTO "benefits China in two points", as the country is acting as both a capital exporter and importer. This view is shared by Carlo Pettinato (2020), who observed that investment facilitation translates into a win-win situation both for host and home countries

of FDI, and China, due to it playing both roles, can therefore benefit in both ways from an international IF agreement. This view is shared by Manuel A. J. Teehankee (2020), who notes that China's double facet of having inbound and outbound investments materializes in its desire to foster and promote domestic regulatory reform, and advance investments, both at home and abroad.

As Ana Novik (2020) recounts, China is an important investor in Africa, Asia, and Latin America. The country is especially present in developing countries and thus seeks a leadership position on investment in the WTO. Similarly, the ITC experts (2020) argue that China's interest is due to its desire to have a more prominent leader role in the organization, and the IF discussion is a way to advance this goal, tying into a claim from Novik (2020) that "since China entered the organization, they have not had a positive leadership, for example, or a negotiation that is not controversial". In sum, Novik (2020) believes that this new posture from China could be a good output for many countries, and that generally, attracting more investment might become something that will gain traction in the aftermath of the COVID-19 crisis. Thus, she argues, "if China has a positive agenda with the WTO with some kind of leadership and, in addition, in a topic that they have an economic interest", it could promote very positive grounds for international cooperation, especially among developing countries. One such example of the desire for leadership on the part of China is mentioned by the interviewed WTO staff member (2020), as she notes that the country is the coordinator of the "Friends of Investment Facilitation for Development" group, and that it has been focusing on outreach, particularly towards developing and LDC countries, on this matter.

In a stance more critical of the Chinese posture, Felipe Hees (2020) doubts whether the country even wants to negotiate an IF agreement at the WTO. Similarly to Novik's remarks, Hees (2020) thinks instead that China sees investment facilitation as a tool to

act more as a leader and have a proposal on the table vis-à-vis other developed countries on the matter of transparency. Meanwhile, it enables China to pressure developed economies due to the barriers currently being imposed on Chinese investors. Hees (2020) ponders whether China would truly be willing to change their political environment and economic model to be on par with whatever kind of plurilateral or multilateral agreement emerges from the IF discussions.

With a similarly sceptical perspective, Brazilian diplomat Renato Rezende (2020) remarks that

> China is a delicate thing. Brazil, for instance, benefits from the influence of China to move this agenda forward, but on the other hand, I understand that they are very concerned, and now more and more after this COVID-19, with screening. Market access discussions and scrutiny over Chinese reach to strategic sectors, especially in the West, have caused concerns among some countries.

Rezende (2020) hence ponders whether China is not simply interested in investment facilitation as a way to keep the investment discussion alive in order to, at another time, advance other agendas that are more contentious, such as dispute settlement, or market access.

With these considerations in mind, the interviews generally reflect a consensus that China has key interests in advancing the discussion on investment facilitation at the multilateral level, and some experts have assessed China's systemic position at the WTO as holding a few key implications. Firstly, the country sees this initiative as an opportunity to modernize and preserve the rulemaking function of the WTO while it develops a positive leadership position within the organization. Next, by acting as a leader, China wishes to make a proposal regarding transparency vis-à-vis other developed countries. Third, China is the Coordinator of

the Friends of Investment Facilitation for Development group and has been focusing on outreach, particularly towards developing and least developed countries. Finally, the country sees the initiative as a way to keep the investment discussion alive in order to, at another time, advance other agendas. This sums up the idea that China's systemic position plays into its IF discussion support.

The other predominant argument for this support from Beijing draws on China's specific interests as both an investor-state and a recipient of foreign investment. According to the experts, this implies that: China's outbound investment has exceeded its inbound investment, and the Chinese are important investors in developing countries across Africa, Asia, as well as Latin America; China wishes to strengthen its role as an investor by establishing more transparent and homogenous rules, and advancing efficiency by reducing red tape and regulations; and China pressures developed countries to drop the barriers being imposed on Chinese investors, as it has concerns on the practice of other countries concerning investments. Nevertheless, some experts maintain doubts over whether China has ever truly wanted to negotiate an IF agreement at the WTO.

Ultimately, China's influence across the international trade system – as well as the global economy – has increased significantly since it joined the WTO in 2001 as the Organization's 143rd member. Moreover, considering the profound impact the Doha Development Agenda had on the notion that the WTO may encourage and enhance members' economic development capacity, as well as the established fact that investment facilitation is an initiative being propelled mainly by developing countries, it is now of the utmost importance to assess the contribution investment facilitation makes to global development. Thus, the following section shall evaluate the current proposed framework for investment facilitation with regards to the United Nations' well-established Agenda 2030 for Sustainable Development.

6.8. The Social Component: IF for Global Development Needs

The trend of developing countries placing a stronger emphasis on the attraction of FDI in their domestic economic development strategies seems to also impact discussions at a multilateral level.
(Carlo Pettinato, 2020)

In order to assess the hypothesis that investment facilitation is essential for the WTO's global mandate to promote economic development, this section shall examine the reasons why discussions on the topic are timely and respond to the current needs of both developing and developed countries. Moreover, considering contemporary development challenges must also naturally face the issue of sustainability, we may also consider and analyse the relationship between investment facilitation and sustainability issues. This subchapter shall therefore examine the degree to which investment contributes to sustainable development, as it has been defined and multilaterally endorsed by the United Nations' 2030 Agenda for Sustainable Development.

To do so, it is first and foremost necessary to shed light on the relevance of investment facilitation for the WTO's framework for development. Hamdani (2018) affirms that IF, including investment in services, is relevant for discussion at the WTO for five key reasons:

- First, investment is intrinsically linked to multilateral trade. It is estimated that at least 46% of global trade is achieved through corporate networks (UNCTAD, 2013, p. 135, Figure IV.14). Trading cost reductions therefore have crucial implications for investment and the rationalization of international production. Investment facilitation is critical

to the successful implementation of the Trade Facilitation Agreement (TFA).

- Second, as previously established, IF negotiations at the WTO focus on practical matters and avoid investment issues that have proven contentious in past discussions. The sovereign right to regulate has been acknowledged since the first informal processes. Therefore, these discussions have shifted the debate on investment away from investment protection, towards investment facilitation, as affirmed by former WTO Director-General, Ambassador Roberto Azevêdo.
- Third, investment facilitation is an issue that is particularly significant for, and put forward by, developing countries, as it has been established by the interviewed experts. Hence, it is not, as used to be in the past, a simple bargaining instrument to be played by one side to gain concessions by the other side on negotiations in other areas.
- Fourth, the successful model established by the TFA has inspired the IF discussions at the WTO, discussions which are focused, open-ended, and inclusive. They enhance individual countries' implementation capacity and provide for relevant technical assistance. These elements are unique to the TFA, as they are absent from other WTO instruments, such as those for services. A prospective IF agreement at the WTO based on the TFA model would lead to the engagement of trading partners in a capacity-building effort with LDC members.
- Fifth, IF discussions at the WTO have engaged third-party investment stakeholders, with the objective of rendering the multilateral trading system more favourable to sustainable development. For instance, the proposed Committee on Investment Facilitation would provide a useful platform for

the sharing of best practices and stakeholder responsibilities, under the lens of investment facilitation for development.

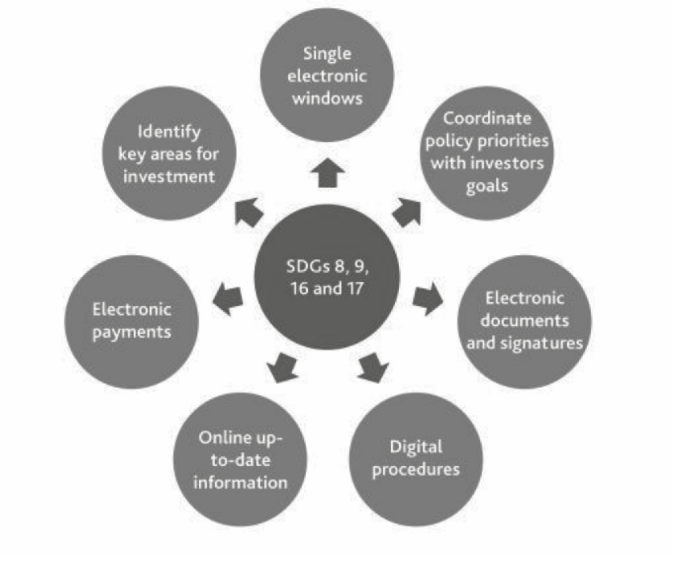
Moreover, reform of the WTO, particularly through the negotiation pillar's adoption of plurilateral initiatives, serves to advance global sustainable development. Sustainability, which is increasingly inseparable to the idea of development, is not usually associated with investment facilitation. However, research into this area is still ongoing and seems increasingly likely to confirm that the former can promote the latter. The possible outcomes that could result from promoting sustainable investments at IF negotiations appear to be significant. Aside from aligning these discussions' objectives with the UN's Sustainable Development Goals (SDGs), it could reshape the way investment is done in the future. The main question remains how this can be done.

Sauvant (2020) suggests that G20 countries would benefit greatly from adopting IF guiding principles for sustainable development. For instance, such guiding principles would serve to orient investment facilitation in the promotion of sustainable FDI, thus facilitating the entire investment lifecycle. Additionally, the principles would enhance multistakeholder engagement and consultations, thereby ensuring the sharing of responsibilities in the face of global challenges such as climate change. Furthermore, through their encouragement of cooperative activities, such guiding principles would enable the adoption of a whole-of-government approach to sustainable investment, by focusing national efforts within a multilateral framework, thus coupling the issue of capacity building with that of flexibility (SAUVANT, 2020).

The establishment of common guiding principles would therefore provide an effective framework for the IF negotiations at the WTO. Aside from fostering sustainability, these principles would also help member states address transnational governance gaps

and to overcome red tape inefficiencies. Ultimately, adopting such principles would allow member states to advance the SDG agenda and to promote sustainable development, rendering noteworthy the correlation between the provisions of the proposed IF text and the SDGs. The following figure represents the link between the key proposed IF provisions and the relevant SDG.

Graph 10: Links between key investment facilitation proposals and SDG



Source: (SIQUEIRA, 2018)

However, given that discussions are ongoing, it remains important to reflect on future developments, and how these could shift the relationship between investment facilitation and the SDG framework. Considering the progress that has been made in sustainable investment, delegates should therefore reflect on five primary concepts to further develop the IF framework, concepts which according to Sauvant (2020) would contribute to keeping investment facilitation and SDG closely related:

- The scope of the discussions should avoid contentious issues such as market access, investment protection, and ISDS, and therefore these elements should remain outside the text.
- In terms of development provisions, members should strive to promote that host countries receive sustainable investments.
- The balance of obligations between home and host countries, as well as enterprises, should consider the respective responsibilities on sustainability.
- Delegates should aim to receive pragmatic experience and ground-level practical input from investment practitioners (investment promotion agencies, international investors, non-governmental organizations, etc.).
- Capacity building and technical assistance to LDCs should be considered when fulfilling the development-related agenda of sustainable investment.

In fact, capacity building and technical assistance appear to be the core of sustainable development, based on the Investment Facilitation Index Maps and their effective adoption at the national level (BERGER, 2019). In other words, it is necessary to measure the costs associated with the implementation of IF measures in a future agreement. The results of the Index make it clear that while a prospective scenario has only a marginal impact on many developed countries, developing countries face significantly more extensive policy reforms after entering into an international IF agreement. Ultimately, the conclusion indicates that a potential international IF agreement may, therefore, endorse and adopt the capacity-building commitments present in the Trade Facilitation Agreement, and therefore the implementation of IF measures by developing countries can be bolstered by the conditional support of other economies and organizations.

Scholars further argue that public-private collaboration may facilitate the provision of technical assistance to help implement measures that effectively support an economy's sustainable development perspectives (OMIC & STEPHENSON, 2019). This demand was raised by laying out what investment practitioners have identified to be the most important IF measures.

Therefore, there are significant links between investment and sustainable development, and investment facilitation would enable countries to meet both development and sustainability targets. For instance, the International Institute for Sustainable Development observes that there are more and more asset managers working under a sustainability mandate. Indeed, through the guidance of the SDGs, investors now have a clear idea of what environmental, social, and governance efforts are required globally.

To sum up, WTO delegates should consider aligning investment facilitation with the 2030 Sustainable Development Agenda, as it ensures that future investments comply with the SDGs set by the United Nations. The guiding principles proposed by scholars to structure future discussions, which are closely linked to investment facilitation, can also contribute to advancing the SDG agenda, most notably when it comes to SDGs 8, 9, 16, and 17 (i.e., through the enhancing of digital procedures, or the coordination of policy with investors' needs). Moreover, an inclusive investment facilitation agenda could promote capacity-building mechanisms in LDCs, as well as enhance public-private partnerships. The conclusion of such a plurilateral agreement, thus, would benefit the modernization of the WTO and global sustainability efforts.

6.9. Taking the Lead: Brazil and the Ongoing IF Initiative

We thought about creating structures that I could facilitate for the Brazilian investor abroad, and then came the idea of the focal point (ombudsman) and also something that I could implement in Brazil to facilitate our investment capture.
(Pedro Mendonça, 2020)

Foreign investments are a matter of interest to several countries in the WTO context. While some issues related to foreign investments can generate controversy and disputes between countries, recently the alternative of investment facilitation has been increasingly seen as a harmonious alternative to strengthen these flows. This chapter presents the primary perspectives involved in the construction of the idea of investment facilitation, analyses Brazilian participation in the process, and considers other WTO members' stances. The chapter also considers the expert interviews conducted, presenting the questions related to the topic addressed.

Brazil can be considered a leading actor in the investment facilitation process at the WTO, which feeds into the primary thesis of this leadership position contributing to reshaping the WTO. Three primary pieces of evidence validate the idea that Brazil has taken on a leadership position in IF negotiations: the country's decision to begin actively negotiating bilateral IF agreements in the 2000s; its lead role in conceiving, launching, and actively engaging in IF negotiations at the WTO after 2016; and Brazil's adoption of the idea of multilateralizing its IF model. With these in mind, the aim of this chapter is to contextualize Brazilian leadership in IF issues.

In fact, Brazil's position has contributed to IF negotiations – and JSI-type negotiations – and is one of the main possibilities of WTO revision and reform, a conclusion that can be reached due to

the fact that Brazil has accepted to negotiate investment-related treaties, embraced the idea of multilateralizing its IF model, launched the first IF proposal at the WTO in 2018, participated actively in IF discussions, gathered support from domestic governmental actors and WTO members, and has been acknowledged as one of the leading players in the negotiations by other countries.

In general, this chapter's analysis indicates that CFIAs were important as an alternative to provide a starting point for more general IF negotiations. Brazilian diplomacy has actively contributed to the evolution of IF discussions among WTO members, with members who had similar positions on this topic seeking to build the bases for this initiative to become relevant within the WTO.

6.10. The Partner Down South: Brazil's Contributions to Investment Facilitation

> *So, I think Brazil was positioned in the negotiation because we have a team that has been thinking about it in a more systemic way.*
> (Hanna Welgacz, 2020)

On 13 December 2017, Brazil and 69 other countries signed the Joint Ministerial Statement on Investment Facilitation for Development, on the last day of the Eleventh Ministerial Conference (MC11) of the WTO, in Buenos Aires, Argentina, following a great effort to establish an Investment Facilitation Agreement (IFA) within the scopes of the Organization.

The central idea of the Joint Ministerial Statement dates back nearly 70 years and was presented in the signature – on 24 March 1948 – of the Havana Charter for an International Trade Organization (ITO) by 53 nations, including Brazil. One of the purposes of the ITO was to encourage the international flow of capital for productive investment, as seen in article 11, paragraph

1 of the Charter, which stated that no member country should take unreasonable action within its territory injurious to the rights or interests of nationals of other members in the enterprise, skills, capital, arts, or technology which they have supplied. Even more ambitiously, the very next paragraph (2c) declared that the ITO would formulate and promote the adoption of a general agreement or statement of principles regarding the conduct, practices, and treatment of foreign investment. However, due to a variety of reasons no state ratified the treaty, which is why neither such an agreement nor statement or principles came into force.

A long period with little progress on the matter then began. There were, nonetheless, some remarkable exceptions, such as the General Agreement on Trade in Services (GATS), which had some provisions related to the treatment of foreign nationals or companies within the territory of its signatories. Further exceptions appeared in the Agreement on Trade-Related Investment Measures (TRIMs), designed primarily to prevent discriminatory treatment of imported and exported goods against companies in a member's territory. Both agreements derived from the Uruguay Round negotiations, which resulted in the 1995 establishment of the WTO.

Another noticeable exception for this extended period of low IF interest was the result of a series of bilateral negotiations carried out in the 2010s by the Brazilian government. The so-called Cooperation and Facilitation Investment Agreements (CFIAs) constitute a specific model of international investment agreements (IIAs), intended to improve institutional governance, prevent controversies, and promote cooperation (through IF) between parties. The main regulatory features of the CFIAs include the well-known WTO membership principles of national treatment and most favoured nation, as well as Corporate Social Responsibility (CSR) clauses. In particular, the CFIA model focuses on cooperation instead of litigation, and included a state-state dispute settlement mechanism

in place of the investor-state one. These features make the Brazilian CFIA model, in comparison to other IIAs, much more adaptable to the needs presented by developing and least developed countries, as will be demonstrated later.

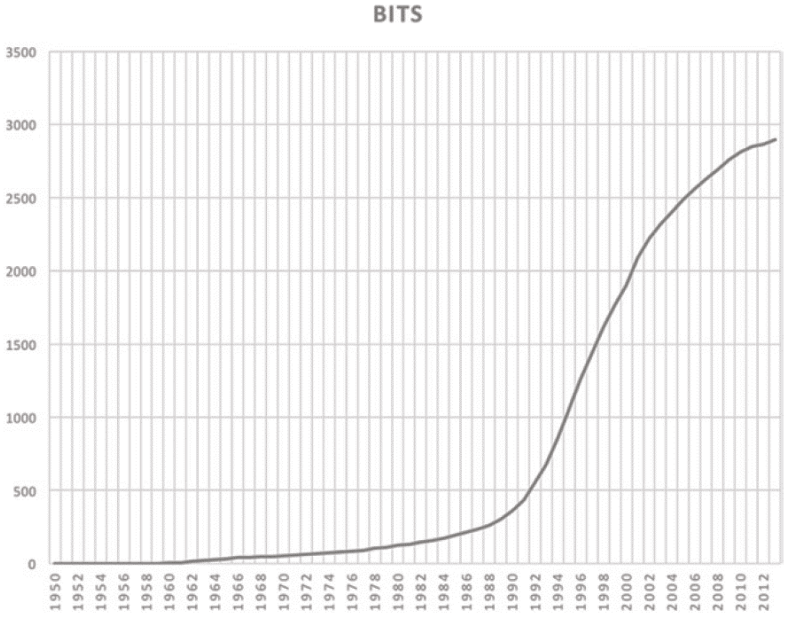
The construction process of the CFIAs derives from Brazil's decision to begin negotiating innovative bilateral investment agreements in the 2000s. Historical analysis of this decision contributes to understanding the evolution and causes of Brazil's leadership in IF negotiations, as well as its contribution to WTO reform.

Beginning in the late 1980s, bilateral investment treaties (henceforth, BITs) were conceived to resolve disagreements between capital-exporting and capital-importing countries. Theoretically, this meant granting specific protection clauses to foreign investors within recipient countries; in practice, BITs permitted mechanisms of indirect expropriation, and, crucially, the solution of investor-state disputes. In the case of Brazil, however, as reminded by Biasutti and Panzini (2016), BITs were found to conflict with the Federal Constitution. Therefore, even though the country signed 14 such treaties throughout the 1990s, it never effectively ratified them (BIASUTTI & PANZINI, 2016). Remarkably, this did not prevent Brazil from becoming the fifth-largest recipient of foreign direct investment (FDI) in that decade.

BITs proved relatively attractive to other developing countries as well. According to the United Nations Conference on Trade and Development (UNCTAD), the number of BITs has soared in recent decades, reaching 2,897 in 2013, of which 2,339 are still in force[5]. This is illustrated below in Graph 11.

5 Data available at: <https://investmentpolicy.unctad.org/international-investment-agreements>.

Graph 11: Cumulative BITs signed at the WTO



Source: UNCTAD; Maggetti & Moraes, 2018

However, over time, the significant volume of signed treaties led to an excessive number of cases in investor-state dispute settlements (ISDS). Today, UNCTAD counts 1,023 known ISDS cases, of which 343 remain pending[6]. Furthermore, many ISDS cases are aimed at emerging economies, such as Argentina or Mexico, and are issued from richer countries such as the United States or the Netherlands. On top of the high volume of ISDS cases, which provoke excessive litigation and administrative resource drain, BITs were subject to numerous other criticisms, such as unreasonable limitations on recipient states' regulatory freedom and policy headspace, unequal

6 Data available at: <https://investmentpolicy.unctad.org/investment-dispute-settlement>.

or unfair treatment of national investors in contrast to foreign investors, and lack of transparency.

Considering the limitations generated by traditional BITs, actors have sought alternative solutions that would not compromise a state's ability to respond to its population's basic needs. The focus thus began to shift away from investment protection and investor-state disputes, as such notions failed to generate consensus among nations. Therefore, BITs started to become less attractive among developing countries, while their more developed counterparts had already given up on these sorts of treaties decades ago.

Alongside international organizations, modern benchmarking studies, and the private sector, Brazil adopted the Cooperation and Facilitation Investment Agreement (CFIA) in 2015 as a new model of bilateral investment treaty. Brazil's CFIA innovation stemmed as a response to certain precise needs of this time, such as promoting foreign investments while preventing excess litigation and without compromising the recipient nation's development strategy and regulatory capacity. Most importantly, the treaty's primary focus is on investment facilitation, which, as reminded by Carlo Pettinato (2020), includes "regulatory disciplines aiming at eliminating obstacles and barriers to foreign direct investment". According to Pettinato, this is desired by both the host state and the investor, which translates to a win-win situation for both host and home countries of FDI (PETTINATO, 2020).

Brazil's CFIA thereby embodies a pragmatic approach to bilateral investment agreements. As approved by Brazil's Council of Ministers of the Chamber of Foreign Trade (CAMEX) in 2015, CFIAs are set up to achieve the three primary objectives of investment facilitation, investment cooperation through institutional governance and thematic agendas, and risk mitigation, and hence avoid investment protection and unfair treatment.

The initial CFIA was conceived by considering the private sector's preferences and expectations with regards to foreign investment. It provides guarantees of fair treatment, such as the principles of most favoured nation (MFN) and equal treatment for national investors, specific criteria for expropriation, mandatory clearing, and compensation in cases of conflict, as well as capital movement. In addition, the CFIA enhances institutional cooperation between partner governments by establishing the Joint Agreement Committee, for example, along with ombudsmen for each partner. These measures promote continued dialogue between relevant authorities and provide practical guidance to investors. Specifically, the ombudsperson concept is inspired by the Republic of Korea's successful Office of Foreign Investment ombudsman, established in 1998. Brazil adjusted the Korean model to fit its federative system, innovating by introducing the provision as an element of its bilateral negotiations (DE OLIVEIRA, 2020). In Brazil, the ombudsperson function is handled by CAMEX, the country's lead agency in matters of foreign trade and investment policymaking.

Each partner government's ombudsperson can go a long way to improve the investment experience in a few ways: namely, serving as communication channels, answering questions, and solving problems; increasing access to applicable information on bureaucratic procedures; or, more generally, by maintaining a healthy investment environment. Over the course of their activity, the ombudsperson can thereby identify legislations and policies to improve and communicate its recommendations to the appropriate governmental body. Meanwhile, the Joint Agreement Committee is comprised of representatives from both partner governments and serves as a monitoring body for the effective implementation of the CFIA, through enhancement of mutual communication and transparency, and in turn conflict prevention through amicable dispute settlements. Ultimately, through maintaining dialogue

between parties, Committee oversight can identify mutual difficulties, thereby pursuing an agenda of common interest towards a more conducive business environment.

Since the 2015 conception, CFIAs have been signed between Brazil and several other countries. Beginning in 2016, initial CFIAs were concluded with Angola, Chile, Colombia, Peru, Malawi, Mexico, and Mozambique, with additional CFIAs with Ecuador, Ethiopia, Guyana, Morocco, Suriname, and the United Arab Emirates coming before 2020. As of 2020, Brazil is negotiating CFIAs with Australia, Nigeria, Kuwait, Qatar, Saudi Arabia, and Oman. Complementing these CFIAs is the 2017 Cooperation and Investment Facilitation Protocol (PCFI) with Brazil's co-founding Mercosur partners of Argentina, Paraguay, and Uruguay. In fact, Brazil's CFIA model has proven to be so attractive that it served as a conceptual framework within Mercosur's recent FTA with the European Free Trade Association, as well as Mercosur's current negotiations with Canada, South Korea, and Singapore. Brazil's CFIA model was generally well received across the WTO, and thus serves a promising basis for further discussions about a multilateral instrument on investment facilitation.

Brazil's CFIA set an innovative model for bilateral IF agreements because it responded to and solved the inadequacies of traditional BITs. The CFIA reduces investors' risk exposure and prevents the configuration of situations that may lead to ISDS, through measures such as non-discrimination guarantees. And thanks to their institutional core, CFIAs also encourage dynamism among partner authorities, as the agreements can be expanded gradually across areas of common interest, such as environmental regulation or foreign exchange.

CFIAs also respond to strategic needs that are specific to Brazil's position as an emerging actor, as throughout the 1990s Brazil

demonstrated a clear hesitancy towards BITs. As reminded by Perrone and César (2015), due to concerns about national sovereignty such as those mentioned previously, Brazil did not ratify a single of its 14 BITs before the creation of the CFIA. Nonetheless, the country still managed to become the fifth-greatest receiver of FDI in the world (PERRONE & CÉSAR, 2015). Therefore, when the Brazilian Secretary of Foreign Trade declared in 2016 that Brazil aimed to become "the most active country in concluding investment facilitation"[7], the shift towards CFIAs were seen as part of a greater change in the country's IF policy. Overall, one observes that Brazil's IF rationale, as embodied by the CFIA, benefits the country's domestic policy as well as its foreign policy. Considering this, the following section will now examine the different explanations proposed by scholars to further our understanding of the country's underlying motivations.

By avoiding issues such as national treatment, market access, fair and equitable treatment, and investor-state disputes, Ana Novik (2020) concludes that investment facilitation is a different and complementary approach to investment. In turn, Felipe Hees (2020) goes even further, as he believes that "the essence of investment facilitation is almost the opposite of that of traditional BITs", as it really "tries everything to avoid controversies, to simplify, to eliminate noise, to facilitate, to oil investor-state communication, to not litigate". Overall, the focus on investment facilitation makes the CFIA Brazil's technical basis for the country's 2017 proposals for an IF framework at the WTO, and Brazil's CFIA expertise contributed to the country's leadership position within the multilateral IF negotiations, as the following section illustrates (HEES, 2020).

First off, the move towards CFIAs underscores Brazil's ambition to reach global cooperation and sustainable development targets,

7 Daniel Godinho, Brazilian Secretary of Foreign Trade, 'Statement delivered at the High Level International Investment Agreement Conference' (World Investment Forum, Nairobi, Kenya, 2016). Cited in Muniz et al. (2017).

embodied in the UN's Agenda 2030. This understanding corresponds to the arguments of Johnson, Sachs, and Lobel (2019) that the Brazilian government has developed a new model of investment agreement based on a positive approach that seeks to foster institutional cooperation and the facilitation of mutual investment flows between the parties (JOHNSON, 2019). For instance, CFIAs enable both parties to promote corporate social responsibility (CSR) and environmental standards among investors, thereby achieving the sustainable development of recipient communities. The CFIA between Brazil and Malawi can be taken as an example of encouraging sustainable development, as article 9 of the agreement encompasses CSR, with two sub-articles and 13 paragraphs about social and environmental progress. In this sense, Brazil's approach is coherent with the UNCTAD recommendation on "using investment facilitation efforts to channel investment towards sustainable development" (ZHANG, 2018).

Secondly, Vera Thorstensen (2020) argues that Brazil's shift towards CFIAs is coherent with its cautious approach to negotiations. Indeed, the country's new model for bilateral investment treaties puts the state back on control of investment arbitration policies, a place it had lost to foreign investors since the 1970s (PERRONE & CÉSAR, 2015). In turn, as Maggetti and Moraes (2018) demonstrate, Brazil's cautious approach can also be understood through the country being a late adopter of BITs, as Brazil stood out for a long time as the only country that had not ratified its BITs, even though most other players in the international investment regime had. Thus, CFIA emerged from lessons learned, and embodies policy solutions that proved to have worked in the past, while rejecting those that didn't, such as investment protection and investor-state dispute solution (MAGGETTI & MORAES, 2018).

While a traditional BIT has as its central aspect the solution of investor-state disputes, the Brazilian proposal favours mechanisms

for preventing disputes based on bilateral dialogues and consultations before the installation of an arbitration procedure, thereby avoiding excessive litigation related to ISDS cases. It also avoids criticism from partner countries which have proven unwilling to discuss ISDS issues within the WTO's negotiation pillar. A CFIA also includes instruments such as the direct and permanent implementation of focal points, in addition to extensive debates within the scope of the Joint Committee, responsible for the preliminary examination of specific issues demanded by the signatories. As a benefit of this approach, the established Committee encourages long-term relationship building between Brazil and its signatory partners. This is the case, for example, in Brazil's 2015 CFIA with Mexico, which specifies that investments were to be made with the "purpose of establishing a long-term economic relationship"[8]. The Brazilian government also engages several of its agencies in the joint process, such as the Ministry of Development, Industry and Foreign Trade, the Ministry of Foreign Affairs, the Ministry of Finance, CAMEX, and the Brazilian Central Bank; this multiplicity of cooperating actors works to improve the coherence of Brazil's development strategy.

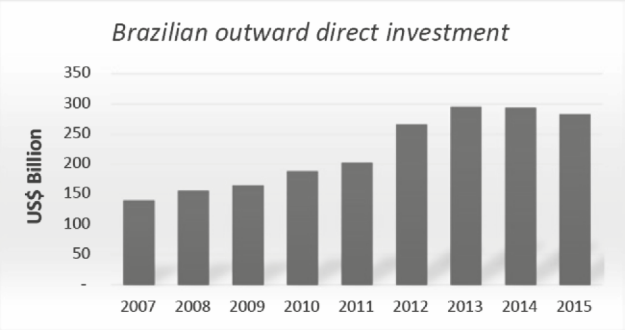
Willy Alfaro (2020) points out in his interview that developing countries are far more dependent on foreign investment for their economic development in terms of added capital and know-how. For this reason, he argues, it is in those countries' interests to provide "warranties for foreign capital that come into their markets, without having to commit to strict and stronger rules such as dispute investment resolution systems" (ALFARO, 2020). Therefore, Brazil's promotion of CFIAs can be explained by several economic factors related to the country's status as an emerging financial power.

8 *Brazil–Mexico Agreement on Cooperation and Facilitation of Investments*, signed on 26 May 2015. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3665/brazil---mexico-bit-2015->.

For example, Paulo Elias Martins (2020) remarks that investment facilitation works to counterbalance the country's reliance on foreign savings. Indeed, he claims, "Brazil, as a country with low savings, will always depend heavily on investments and will always have foreign investments as an important component in its growth and economic development model." Additionally, considering that historically the country's discourse to foreign investors has focused on quantitative aspects of the Brazilian economy, Martins reminds us that the shift towards investment facilitation provides a qualitative direction to the country's attractiveness among foreign investors (MARTINS, 2020).

On the other hand, Campello and Lemos (2015) observe that, domestically, the Brazilian position has evolved from refusing to ratify BITs in the past to actively seeking to conclude new investment treaties in the shape of CFIAs. They claim that this change was due to the increase of Brazilian FDI abroad and the evolution of Brazilian policymakers. The growth of Brazilian multinationals also represents new players in the investment system; in 2013, the stock of foreign investments by Brazilian companies reached $300 billion, as demonstrated by Graph 12 below. Therefore, Brazil may now consider the interests of its companies as national interests. These companies even design and finance business strategies on some occasions (CAMPELLO & LEMOS, 2015). In the words of Felipe Hees (2020), "in 2010 we started to notice that there was a Brazilian investment going abroad – which is the genesis of our CFIA" treaties.

Graph 12: Growth of Brazilian FDI outward flows (billion US$)



Source: Central Bank of Brazil; Maggetti and Moraes, 2018

Henrique Moraes (2020) credits Brazil's leadership in this positive style of bilateral investment treaties to "the interest of Brazilian investors in having a legal framework to safeguard their investments, and the good performance of the unique solution crafted by Brazil to address this demand." Hence, CFIA enables cooperation and IF agendas in areas with the potential to foster a more conducive business environment, and such agendas may deal with topics of mutual interest to the parties. They improve investment conditions and overcome occasional difficulties for investors, always in strict convergence with respective national development strategies, all the while ensuring that "the adversarial rationale that inspires the BITs" is avoided. In sum, Moraes argues, Brazil's "position reflects both a domestic change – driven by an increase in Brazilian outward investments – as well as a change in perception with respect to BITs in the developed and developing world" (MORAES, 2020).

This view is shared by Bertha Gadelha (2020), who believes that IF agreements provide the best regulatory model to boost foreign investments, as they set forth a series of bilateral or multilateral rules and guidelines to bring more legal certainty, predictability and

transparency for foreign investors. According to her, this is especially true in a post-pandemic context, where one seeks to reignite the flow of financial resources between countries. This also makes the CFIA model especially appealing in a multilateral context, such as the WTO, where countries look out for win-win agreements to plan their exit from the crisis (GADELHA, 2020).

According to Ana Novik (2020), Brazil's shift towards investment facilitation, embodied in its CFIA treaty model, goes hand-in-hand with the general increase in South-South investment flows after the 2008 crisis. In such a context, the incentives became high for countries to pursue bilateral – and even multilateral – agreements that promoted capital flow. Therefore, Samo Gonçalves (2020) believes that the agreement being negotiated in the WTO context is complementary to Brazil's bilateral CFIA treaties. Furthermore, remarks Karl Sauvant (2020), Brazil's more general pursuit of a multilateral framework on investment facilitation at the WTO works to legitimate the value of its bilateral treaties – namely, the CFIA (SAUVANT, 2020).

In fact, as reminded by Pedro Cavalcante (2020), CFIA allowed Brazil to push further its specific investment interests in the multilateral investment regime. Thanks to its principal focus on investment facilitation, the country's CFIA model enjoys the benefit of being less controversial for member countries within the WTO. "With CFIA," he claims, "Brazil started to see that this investment facilitation approach could be a way to break a certain gridlock that it had in terms of investments in the multilateral area" (CAVALCANTE, 2020).

For Tatiana Prazeres (2020), Brazil's experience with CFIA fuelled the country's technical expertise and capacity in the matter of investment facilitation. It also contributed to the country's role of leadership across multilateral discussions on that subject

(PRAZERES, 2020). This view is also shared by Felipe Hees (2020), for whom Brazil's expertise with CFIA was a major determining factor of the country's contribution to the discussions. Hees claims that Brazil's bilateral treaties and a multilateral framework on investment facilitation would treat "the same subject", the only challenge being "how to adapt our bilateral model to what could be a multilateral matrix" (HEES, 2020). In the words of Gonçalves (2020), "the objective was to bring many of the CFIA elements for multilateral negotiation due to its focus on cooperation instead of litigation."

Furthermore, according to Renato Rezende (2020), "there is no empirical evidence that a classic investment protection agreement increases the flow of investments from signatory countries." On the other hand, he continues, "there is very significant evidence that improving the business environment brings a significant increase in the flow of capital." Therefore, he claims that Brazil's current role as a proponent of investment facilitation at the WTO is mainly due to the genesis of CFIA and its rationale. Indeed, Ambassador Alexandre Parola (2020) observes that Brazil formulated its model of bilateral investment agreement internally. However, over time, the country's foreign ministry realised that it presented a plurilateral potential as well. The increased internationalization of firms within the country since the 1990s is another factor that has pushed the country towards investment facilitation.

Moreover, CFIAs are as much about attracting investment as they are about facilitating investment flows from Brazil. As reminded by Cavalcante, beginning in 2012 Brazilian investors claimed that they didn't feel the need for further investment protection, as they tended to hire local workers in the recipient country, which were already under the aegis of local law. Therefore, the focus was shifted to reducing administrative complexity, and the CFIA was the result of such necessities. Under a multilateral logic, he continues, the CFIA supports Brazil's idea that "all countries, including underdeveloped

countries, stand to gain by simplifying procedures, standardizing, digitizing procedures" (CAVALCANTE, 2020).

Brazil's push to facilitate the administrative institutional aspects of investment is relevant also for the country's African partners, as Tatiana Prazeres (2020) observes. Indeed, she recounts, "as Brazil became an important exporter of capital, in addition to receiving investment, it started to invest abroad in countries whose institutional structure was not exactly strong, for example, in Africa, and in several countries in Latin America as well" (PRAZERES, 2020). Therefore, the development of partner countries' investment-related institutions became a specific interest for Brazilian investment policy. This contributes to explain the CFIA's institutional core, as well as Brazil's push for a one-stop investment portal within its multilateral proposal.

Internationally, Brazilian diplomacy has noted that countries usually seek to reconcile market liberalisation and public policy space, in order to protect regulatory autonomy, as generally states seek to keep their finance, national security, public order, environment, labour, human rights, and health policies under national control. Brazil's new model for bilateral investment treaties could thus serve as a promising basis for reforming the WTO, as argued by Moraes and Hees (2018). For example, its institutional core, embodied in the national focal points, proposes a less controversial alternative to the reform of investor-state disputes. In short, with the CFIA, Brazil has demonstrated that innovation is still possible within the current international investment regime (MORAES & HEES, 2018).

Crucially, as argued by Thaís Mesquita (2020), Brazil's experience with CFIAs within the WTO has placed the country among the principal states working to positively reshape the organisation. Additionally, it would set a successful precedent for future joint initiatives within the negotiation pillar (MESQUITA, 2020). Novik

agrees with this perspective, as she admits that an IF agreement would allow the system to have more confidence in plurilateral agreements and thus impact the WTO's broader debate on reform (NOVIK, 2020).

Moreover, as reminded by Siqueira (2018), national focal points promote capacity building, which is one of the five key issues outlined in discussions towards an IF framework at the WTO (SAUVANT, 2019). Capacity building also works to further progress as outlined by the 16th SDG of the UN's Agenda 2030 (SIQUEIRA, 2018).

The CFIA is a dynamic instrument of cooperation, investment facilitation, and risk mitigation, and this constitutes one of its main innovations as a bilateral IF treaty. However, there is always room for improvement. Some scholars have pointed out such possibilities of potential policy amelioration, which will be reviewed in this section, as its improvement can also contribute to enhance the IF discussions within the WTO.

For example, Morosini and Badin (2016) have suggested improving regulation when it comes to the CFIA's institutional core; indeed, closer oversight of the national focal points as instruments of information exchange and conflict prevention would certainly enhance their effectiveness and ensure the unfolding of the Agreement's full potential in regards to capacity building (MOROSINI & BADIN, 2016). In fact, a lack of transparency has been an issue raised by partners such as the EU within plurilateral discussions for an IF agreement at the WTO.

On the other hand, Badin et al. (2017) consider the implications of the inclusion of the MFN clause within CFIA. For instance, by analysing the language of the CFIA between Brazil and Chile, as well as that of Chile's other BITs with third parties, these scholars believe that CFIAs with other countries risk importing investment protection clauses from those countries' agreements with third

parties by way of the MFN clause. Therefore, the guarantees CFIA provide in terms of investment protection can become unclear and subject to interpretation. According to these scholars, providing a better-defined interpretation of the Agreement's fair treatment clauses could therefore enhance the overall reception of Brazil's new model treaty within the international investment regime (BADIN, 2017).

As mentioned by Singh (2017), federal states face different challenges when it comes to the effective implementation of legally binding IF agreements such as CFIAs. Using the example of India, Singh points out that most of the administrative burden associated with the treaty are faced at the local and subnational levels. This is especially relevant for the CFIA's focal point features, which might not be able to extend their competence to local authorities without facing juridical obstacles. For this reason, he argues, discussions should focus on bottom-up rather than top-down approaches to investment facilitation in complex federative systems such as India's (SINGH, 2017). This concern is shared by Ana Novik (2020), who believes that capacity-building exigences might dissuade many developing countries who do not want to assume more resource-draining obligations. Therefore, capacity-building discussions might be associated with issues such as foreign aid, or other resource-related issues.

Moreover, as Bernasconi-Osterwalder (2016) reminds us, one must always consider that conflicts related to investment go much further than the formal relationship established by BITs. In the 1990s, Brazil had already demonstrated this by being the fifth-largest recipient of FDI, even if it had not ratified a single BIT. Hence, to attract more investors, a country can also improve the quality of its infrastructure, its labour costs and productivity, its taxation policy, and its business environment (BERNASCONI-OSTERWALDER, 2016). This is what Brazil did, for example, when it reduced its

average time required to start a business from 82 days in 2017 to 20 in 2018[9]. However, other areas can still be improved, as the country still ranks poorly in the World Bank's Doing Business database. Such measures include, but are not limited to, reducing the average time required to request and obtain construction approval permits and construction execution permits, or the time it takes to prepare, file, and pay (or withhold) the corporate income tax.

6.11. Cause and Effect: Exploring Brazil's IF push Within the WTO

> *Attracting or encouraging foreign investment is related to the need to raise additional capital for infrastructure and other needed investments domestically.*
> (Manuel A. J. Teehankee, 2020)

To further understand the motivations of Brazil's active engagement in post-2016 IF negotiations at the WTO, and to analyse the country's push for a multilateral evolution of what was previously its bilateral treaty model for investment facilitation (the CFIA), interviews with experts were conducted, and are proposed as the basis of policy analysis. Firstly, this section will seek to elaborate on the turning point of Brazil, from a defensive position to an active role in international regimes and laws regarding investments. As has been established previously, the launching of IF talks at the WTO dates back to 2017, therefore necessitating an expansion on the reasons why Brazil has engaged in multilateralizing its IF model since 2016. Certainly, both domestic and international factors played into this shift.

In particular, the interviewees have attempted to answer the following question: "How would you explain Brazil's lead role

9 Data available at: <https://data.worldbank.org/indicator/IC.REG.DURS?end=2019&locations=BR&start=2003&view=chart>.

in conceiving, launching, and actively engaging in investment facilitation negotiations in the WTO after 2016?" Overall, the responses can be categorized into two spheres. On the one hand, Brazil was able to contribute to technical discussions thanks to its previous experience in bilateral IF treaties. On the other hand, push for greater investment flows reflect a domestic political shift and are coherent with its ambition to join the OECD. Nevertheless, some interviewees expressed doubts over whether the country will successfully steer the discussions away from controversial topics, such as investment protection. It also remains difficult to predict how Brazil's leadership will be able to conciliate the systemic rivalry between China and the USA, a rivalry that impacts all WTO issues nowadays.

First of all, Felipe Hees (2020) remembers that the multilateralizing process of investment facilitation emerged in 2016. China and Russia, rather than Brazil, were the first countries to launch this discussion. China initially took this theme to the G20 before it shifted to the WTO. India then proposed service facilitation, though this call was largely informal. Russia started the dialogue in 2017, before China mobilized like-minded countries in the Friends of Investment Facilitation for Development (FIFD) group. Amid this Russo-Chinese proposal, Brazil decided to launch its IF proposal, says Hees (2020). This issue attracted developing countries' attention, as Brazil had history in this matter, based on CFIAs that had been negotiated. In Hees' words:

> What Brazil did was, at the moment when there was this interest that starts to gather developing countries and creates friends, then Brazil decides "We have something to say on this subject, based on our ballast of ACFIs that have already had been negotiated. So, it is a little given that we are interested. Given that the issue was launched, we are volunteering to participate and we have something to say" [...]

This historical perspective on the developments of the discussion is shared by a member of the WTO staff (2020), who finds that Brazil had the intellectual idea of investment facilitation, which it proposed along with Argentina's manoeuvre, representing the chairperson of the IF discussions at WTO, and the Beijing "muscle", symbolized by the Chinese market size.

Initially, Russia wanted to reach a traditional investment agreement based on bilateral investment treaties with ISDS provisions. In preparation of the 11th WTO Ministerial Conference in Buenos Aires, Brazil and other developing countries – around 20 members – were engaged in launching the IF plurilateral discussions, when the European Union decided to join the initiative. This produced a spill over effect, with several other members also signing the Joint Ministerial Statement on Investment Facilitation for Development. It can be said that Brazil, Argentina, Chile, and China originated the open plurilateral approach at the WTO, even though this was not admitted publicly at the WTO meetings. For instance, the Chinese delegation supported the process, although it never defended the idea of open plurilateral agreements.

With regards to Brazil's IF expertise, Tatiana Prazeres (2020) and Henrique Moraes (2020) both argue that the country's leadership is due to its role as a pioneer in the CFIA model and its negotiating experience in both Africa and South America, as well as the great technical capacity that Brazil had at the time it proposed this initiative at the WTO. Moraes emphasizes: "I think it owes significantly to our experience with the investment agreements devised by Brazil, in which investment facilitation plays a central role."

Prazeres (2020), meanwhile, thinks that Brazil had two major initial challenges – convincing members to embark on a plurilateral process, and insisting with its interlocutors that this initiative was not the same investment discussion from before. She sees the draft

agreement made by Brazil as an important tool for defining the scope of the discussions and to facilitate the negotiations. In particular, she remarks: "I think that Brazil contributed to opening this path that was not evident, that was not pre-defined."

In addition, Samo Gonçalves (2020) believes that the WTO-negotiated agreement is complementary to the CFIA that aimed to protect investments of Brazilian multinationals abroad. Hees (2020) similarly proposes that Brazil's starting role was enhanced by the country's expertise with CFIAs, thereby directly contributing to the discussion itself. In sum, the latter diplomat notes that Brazil has embraced this initiative due to being in favour of multilateralism, having expertise in the subject, and because investment facilitation is a topic on Brazil's negotiating agenda. However, he remarks that the biggest challenge has been to translate the Brazilian model of bilateral trading model into a multilateral matrix, and thus the draft agreement had both the objective of making a relevant multilateral agreement on the matter and formulating it positively. Brazil also had in mind the need to show to other countries, such as India, that his initiative was not investment protection in disguise, especially given the fact that Brazil has always defended multilateral negotiation in its foreign policy.

Brazilian Ambassador to the WTO Alexandre Parola (2020) analysed this process in depth in his responses. The Ambassador argues that to face the country's reticence towards traditional investment agreement models, Brazil had to advance an IF model as a first step towards directing the nature of the discussions. Parola thus believes that Brazil obtained a lead role in the discussions thanks to its ambition to stray clear of "toxic" topics such as ISDS mechanisms, investment protection, and market access. This is because of the nature of the negotiations, as the country wants to reach an IF agreement, not an investment agreement, and these are two entirely different things, per Parola. Investment facilitation deals

with things such as, for example, the Single Electronic Window, the national focal point, and so on – this makes investment facilitation more analogous to trade facilitation.

In this vein, Pedro Mendonça (2020) notes that the IF initiative was done in such a way as to not hinder bilateral negotiations between Brazil and other countries, and by preparing something that could be analogous to the TFA, but with a far greater impact due to the volume of resources that revolve in investments. He believes that this initiative was beneficial for Brazil to carry out due to some characteristics themselves attracting more investors, such as clearer public administration deadlines, digitalized procedures, and the obligation to translate important laws to English or Spanish.

For Parola (2020), overall, Brazil's stake in the IF negotiations is twofold: on the one hand, the country understands that it needs investment to develop; on the other hand, this strategy is coherent with Brazil's desire to become a more open economy, fully integrated in the global system. Furthermore, Brazil has taken up a leadership position in the WTO negotiations, which enables it to participate in its normative construction process. It is an advantageous position, considering it is conceptually difficult to oppose investment facilitation.

For her part, Vera Thorstensen (2020) thinks that Brazil's leadership is aided by the fact that the topic is interesting for most countries and that Brazil has no obstacles to move this forward – after all, as she asks, "Who is against this discussion?" Similarly, Renato Rezende (2020) believes that Brazil's lead role stems from the win-win scenario that the IF initiative seeks to create. However, Thorstensen (2020) fears that the IF discussion is fated to falter because of US reticence. Indeed, Parola (2020) observes that countries such as the USA, which remain outside of the negotiations as of July 2020, do not need – or already have – most of the proposed items.

Hanna Welgacz (2020) credits Brazil's dominant role to the systematic thinking of the team behind the initiative, which has managed to understand the industrial development and economic development policies in Brazil and the importance of investment for these measures. Similarly, Gonçalves (2020) defends the notion that the WTO's IF proposal seeks to attract more investment to Brazil itself instead of helping its companies to invest abroad. In fact, Parola (2020) calculates that investment facilitation could raise global investments by 75 to 250 billion dollars in the coming years. As the fourth-greatest recipient of FDI, he claims, Brazil would stand to gain a big share of that. Furthermore, in the current global economic contraction, Brazil has continued to receive substantial amounts of foreign investment, in the process faring relatively better than many of its Latin American neighbours.

Thus, a member of the WTO Secretariat's personnel (2020) affirms that Brazil seems to be increasingly pragmatic within the Organization. It has embraced its leadership role in investment facilitation, the first open plurilateral agreement. Brazil was particularly supported by Argentina, which felt the necessity to present concrete outcomes to its society and to the world, since it was organizing MC11 in its capital. Indeed, experts on investments understood at the time that a multilateral agreement on the matter would be impossible to reach due to the impasse of the negotiations launched in Singapore's Ministerial Conference in 1997. Member states could not reach a common background on the negotiating text. Some countries even did not want to negotiate at all on investment issues. To reach any agreement in the investment issue, therefore, it would be necessary to dilute the aim of the text and to reduce the numbers of the signatories.

On the domestic front, Bertha Gadelha (2020) has stated that "the decision of actively launching and engaging in investment facilitation negotiations, not only in the WTO but in trade and

investments bilateral relations, after 2016, reflects political changes inside Brazil." Indeed, the country witnessed the end of 13 years of left-wing government, and the beginning of a centre-right administration based upon the premises of being more liberal in economic affairs to attract more FDI to Brazil. A WTO staff member (2020) similarly concurs that the Brazilian government in 2017, led by President Michel Temer, represented a significant political change from the Workers' Party ruling (2003-2016), primarily as it adjusted foreign policy narrative and guidelines. The changing of administrations contributed to shifting the Brazilian position towards the adoption of plurilateral negotiations at the WTO, through the abandonment of the defence of a big coalition of developing countries – such as the G20 in agriculture – and the Doha Development Round conclusion. The Argentinean government, led by President Mauricio Macri, was aligned with the ideas of its Brazilian neighbour, and this alignment led to the countries cooperating to pragmatically launch a plurilateral framework.

According to Gadelha (2020), "this economic view favouring liberalization has endured since 2016 and it has been pursued by the new ruling government in Brazil, President Jair Bolsonaro's administration, since 2019." For instance, she observes that

> Brazil has established a national strategic program, called Brazilian Investments Partnerships Program (PPI), aimed to bridge, or at least decrease, the infrastructure gap while organizing in a single portfolio the top priority investment needs for the country's development.

Finally, Ambassador Alexandre Parola (2020) believes that there is a lot of potential for a substantive delivery by MC12 when it comes to investment facilitation. However, what matters most for him is that the main pillars, as outlined by Brazil in its proposals, remain solid and ambitious. He argues that this strategy is achievable, and that is what has guided Brazil so far.

Most experts agree that the 2017 launching of IF discussions at the WTO marked a shift in Brazil's position within the international investment regime, towards a positive role. According to the experts, this shift can be understood from the following components: Brazil was able to contribute to technical discussions thanks to its previous experience with the CFIA and the country's bilateral IF agreements; Brazil's technical capacity on the topic of investment facilitation allowed the country to make pragmatic proposals that provide systemic win-win scenarios for partner countries; the country's proposal was better received by major players such as the EU, which allowed it to delineate the terms of the negotiations; and Brazil's push for greater investment flows reflect a domestic political shift in 2016, and is coherent with its ambition to join the OECD. Nonetheless, some interviewees expressed doubts over whether Brazil would be able to convince some countries to join a plurilateral discussion (by insisting that negotiations will not include controversial topics from the past such as investment protection), as well as whether the discussions will be able to accommodate the systemic rivalry between China and the USA, as the latter has been absent from the negotiations.

With the aim of further understanding the change of Brazil from a timid position to a proposing attitude in international regimes and laws regarding investments, this section shall deeply explore the varied reasons that encouraged Brazil in multilateralizing its IF model in the WTO after 2016. The interviewees answered the following question: "Why do you think Brazil has embraced the idea of multilateralizing its investment facilitation model?"

In sum, insights provided by the experts can be categorized in both domestic and international terms. On the one hand, Brazil elaborated a development strategy that focused on FDI while attempting to preserve the integrity of its bilateral agreements. On the other hand, the country aimed to display a show of preference for

increased international cooperation, through the means of proposing win-win agreements concerning investment while reinvigorating the negotiating pillar of the WTO.

Different perspectives help to analyse the construction of the leading role of Brazil in the 2017 IF talks at the WTO. Most interviewees agreed on Brazil's lead role in multilateralizing its IF model, as well as believed that, domestically, this lead role can be explained by the expertise of civil servants in negotiating CFIAs, a pragmatic foreign policy, the push for economic development though cutting bureaucratic red tape, and the promotion of Brazilian investments abroad, given the lack of alternative for negotiations. The experts also share the opinion that, internationally, Brazil guided the IF debate alongside Russia, China, and Argentina, based on the successful experience of the TFA, with the purpose of pursuing win-win scenarios and the advancement of investment interests through cooperation. Indirectly, Brazil and this informal coalition of developing countries launched the reform process of the negotiation pillar of the WTO.

Domestically, Pedro Mendonça (2020) finds that the Ministry of Foreign Affairs did the internal work necessary to convince the other negotiating bodies that launching investment facilitation at the WTO would be a good idea that would not hinder bilateral negotiations in course. Mendonça analyses that the cost to Brazil in multilateralizing its IF model in the WTO was low, while potential benefits were high. Whether as a multilateral or plurilateral obligation, investment facilitation would nonetheless enable the application of the CFIA, and an international obligation would be a very large productivity gain for Brazil's institutional arrangements. In addition, Welgacz (2020) remarks that this initiative from Brazil assists in the internal development of Brazil itself, since it would be able to attract more investors and promote the development of its economy and society in a more sustainable way.

Concerning specific details of the country's international investment policy, Bertha Gadelha (2020) argues that

> Brazil has engaged in fostering two different types of investment facilitation agreements: one focused on improving regulatory issues to attract new investors and another one on smoothing taxation on new investments, which is dubbed "Double Taxation Agreements" (DTA).

In her analysis, both are effective in improving the conditions of an economy to become more appealing to new investments, but she considers that "DTAs are a more tangible bilateral instrument, since they avoid companies and private individuals with international revenues to be double-taxed: in the local source where the revenue is generated and in its headquarters." These provisions, which are negotiated bilaterally, also provide increased transparency in fighting tax evasion and promote more tax and legal certainty, which boosts longer-term investments and trade ties. According to Gadelha, Brazil's aim is to establish a mixed model insofar as it could deploy more of this strategic instrument for attracting FDI, one that could pass in the WTO.

Internationally, Ambassador Alexandre Parola (2020) believes that Brazil's IF model is beneficial for developing countries, and as a result the country seeks to provide plurilateral, ideally multilateral, coverage for this issue. Similarly, an interviewed senior permanent representative from a developing country (2020) recalls that Brazilian delegates decided to take a multilateral approach to the WTO, because it is the job of delegates posted to the WTO, which means delegates may support negotiations and offer new ideas and experiences.

In turn, Renato Rezende (2020) emphasizes that Brazil has abandoned the original idea of investment as demand from developed countries. He notes that Brazil has worked with a model that resembles the CFIA, a model inspired hugely by the WTO's existing Trade Facilitation Agreement. He states that the negotiation

text has become less ambitious than the first proposal, but it is a streamlined text that largely preserves the basic contents of the Brazilian approach in order to "multilateralize" minimum rules for the general benefit of all countries. Paulo Elias (2020) notes that the changes in Brazil's approach started by accepting specific agreements, starting with the Bali agreement and the others, thus recognizing that it was no longer possible to have wider packages. More recently, Brazil has agreed to participate in the joint initiatives stemming from MC11, which follow the same lines but are more plurilaterally focused. Elias believes that Brazil and other countries have come to realize in recent years that it was necessary to accept specific implementation gains, rather than the broad and all-inclusive formats of years past.

Samo Gonçalves (2020) believes that through negotiation of the CFIA, Brazil has developed expertise in the area. The objective was to adapt many of these agreement's elements for multilateral negotiation, due to its focus on cooperation instead of litigation. Conversely, Henrique Moraes (2020) does not see Brazil's position at the WTO as an attempt to multilateralize its experience. To him, Brazil trusts that investment facilitation allows a solution to address a number of investors' concerns without encroaching upon the states' struggle for maintaining policy space.

Moraes and Hees (2018) remark that Brazilian diplomats have transformed the agenda at WTO from controversial topics to uncontroversial ones such as transparency, development, and capacity building, with a focus on cooperative and facilitative instruments rather than addressing market access, fair and equitable treatment, and ISDS. They argue that the Brazilian way provides an alternative within the investment treaties realm. More precisely, scholars Perrona and Cesar (2015) analyse that the Brazilian approach is not a new model, but rather an alternative policy to the agreements advanced by the US or EU, one that focuses on the

matter of economic development. The model also avoids arousing suspicion from developing members, many of which considered prior negotiations in Singapore 1996 and G20 as attempts by developed countries to advance an agenda that would benefit their own interests by disregarding developmental needs.

Moreover, according to Joe Zhang (2018), the approach taken by Brazil in its draft is in large part based on UNCTAD's recommendation. The 2017 Global Action Menu for Investment Facilitation published by UNCTAD recommends using IF efforts to channel investment towards sustainable development. The menu defines investment facilitation as policy measures that make it easier for investors to establish, expand, and operate in host countries. It does not require new laws or regulations be put into place, but rather demands enhancing regulatory transparency and predictability of the host state's investment environment (Action Lines 1 and 2 of the Menu, proposed for investment policymakers). Other improvements could be in the realms of streamlining and speeding up administrative procedures (Action Line 3).

Taken together, these results suggest that Brazil has had several reasons to multilateralize its IF policy, which can be filtered into categories based on the diverse explanations offered by the experts. Firstly, this shift towards multilateral investment facilitation can be explained by domestic reasons specific to Brazil, as the country has realised that a multilateral IF policy agenda could be complementary – rather than harmful – to its bilateral efforts, while increasing FDI has always played into its development strategy, without compromising its policy space. With these factors in mind, the country therefore had high incentive to advance this multilateral initiative.

Secondly, Brazil's shift towards multilateralism can be explained by the international momentum regarding investment facilitation, specifically in a few spheres. The country has often showed preference

for increased international cooperation, and investment facilitation improves cooperation through a pragmatic, specific win-win scenario. The Russian and Chinese proposals generated attention on the issue, and Brazil decided its historical experience with investment facilitation meant it had something to contribute to the debate. Several international organizations such as UNCTAD recommended investment facilitation as a possible solution for sustainable development. Finally, contributing to the IF discussions allowed Brazil to take part in reforming the negotiation pillar of the WTO.

6.12. The Rest of the Table: Key Countries' Positions on the Issue

> *It was not Brazil that decided to be the first to launch this discussion. This discussion was launched by Russia and China, as the two countries decided to multilateralize.*
> (Felipe Hees, 2020)

Along with Brazil, we can highlight the participation of other countries at the WTO's chessboard. In this sense, one can discuss other countries' perceptions and actions towards the governance of investment facilitation negotiations. Hence, this section addresses the position and participation of other WTO members, such as the US, China, European Union, India, Russia, Australia, Argentina, Canada, South Africa, and Switzerland.

The recent position of the *United States of America* (USA) across the multilateral system has been one of disengagement and conflict, and IF negotiations have been no exception. On the one hand, the USA displays no interest in an IF agreement because it claims to have no need for it, as the world's most important recipient and emitter of foreign investment. On the other hand, the USA opposes IF talks just as it opposes China's positions across a wide range of

WTO issues, as China is a major proponent of investment facilitation within the organization.

However, the US' position does not seem to be irreconcilable with Brazil's approach, which is founded on its CFIA model. Indeed, if the USA's core concern is that "the WTO is losing its essential focus on negotiation and becoming a litigation-centred organization", as declared by US Trade Representative (USTR) Robert Lighthizer at the 11th Ministerial Conference[10], then Brazil's ambition to steer the organization away from excess litigation through a focus on conflict prevention might accommodate Washington's view. Considering this, US' scepticism about IF discussions could be interpreted rather as a symptom of its rivalry with China, rather than an opposition of Brazil's proposals – and leadership role – within the discussions.

Still, records show that the USA has sent representatives to numerous formal discussions at the WTO, in contrast to countries such as India or South Africa (ITAMARATY, 2018). Perhaps, as Ana Novik (2020) claims, the US' display of little interest in these discussions is designed to avoid giving elements of leverage to other countries. Indeed, she affirms, "[...] in multilateral negotiations, if you show too much interest in something then probably you need to pay in another area" (NOVIK, 2020). In light of this, timid participation within IF discussions can be explained by the country's unwillingness to make concessions in parallel negotiations on topics such as e-commerce.

Over the last decade, *China* has shifted its policy stance on international investment issues as it transitioned from a net recipient of FDI to a net investor itself. In fact, China is now the world's leading source of FDI, behind only the United States. According to the World Bank, between 2006 and 2016 the country's net outward

10 Opening Plenary Statement of USTR Robert Lighthizer at the 11th WTO Ministerial Conference in Buenos Aires, 2017. Available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr>.

FDI flows multiplied by nearly tenfold, from $24 billion to $216 billion[11]. Moreover, China's ambitious Belt and Road Initiative is estimated to add $1 trillion in outward investment over 10 years, starting in 2017 (OECD, 2018), and, as Chen et al. (2020) analyse, Chinese investment flows are sensitive to facilitation. In fact, they calculate that for each percent increase in investment facilitation in the recipient country, FDI from China increases in average by 2.2% (CHEN ET AL., 2020).

As outlined by Sauvant (2016), the orientation of China's 129 BITs and 19 other international investment agreements has recently shifted from promoting inward investment to protecting outwards investment (SAUVANT, 2016). As a result, the country's push for a multilateral IF framework within the WTO is hardly surprising. China launched the informal Friends of Investment Facilitation for Development (FIFD) group in 2017, joining 17 similarly-minded member countries[12]. China was also among the initial signatories of the Joint Ministerial Statement on Investment Facilitation for Development at the 12th Ministerial Conference of the WTO, which stated that "closer international cooperation at the global level" was required to facilitate cross-border capital flows.

The Chinese position has sometimes been at odds with Brazil's leadership within the negotiations. Indeed, under its Belt and Road strategy, Chinese investment is often based on market access and acquisition (CHEN ET AL., 2020). Unfortunately, this means that China tends to back the controversial inclusion of market access instruments within the IF framework negotiations at the WTO, even if these issues do not necessarily figure in the country's

11 Data available at: <https://data.worldbank.org/indicator/BM.KLT.DINV.CD.WD?end=2016&locations=CN&start=2006>.

12 The members are Argentina; Brazil; Chile; China; Colombia; Gambia; Guatemala; Hong Kong, China; Kazakhstan; Liberia; Mauritania; Mexico; Nigeria; Pakistan; Qatar; South Korea; and Uruguay.

communications[13]. For this reason, the Chinese approach is distinct from Brazil's cautious ambition to stay clear of controversial topics, such as market access, that hinder consensus-building and go against the spirit of the WTO's 11th Ministerial Declaration.

More recently, along with Russia and Turkey, China has touched upon the previously elaborated notion of temporary application for business visas within potential IF provisions. However, there has been no consensus on this subject, and indeed, constraints affecting business travellers could contradict principles related to the good receptivity of foreign nationals and the effectiveness sought by leading companies. The question remains as to how to approach the issue properly, including deciding whether future international guidelines and rules regarding business visas should be binding or not, and which forum would be most suitable for such discussions.

Finally, records show that China has displayed an ambiguous position relative to the plurilateral nature of the talks, perhaps due to Brazil's leading role in the discussions, which leave less manoeuvring space for China's ambitions. In fact, according to Felipe Hees (2020), Brazil's leadership in the discussion might have discouraged Chinese ambitions to lead. Hees believes that China sees investment facilitation as both an opportunity to assert leadership on issues such as transparency as well as a pressure, given the barriers imposed on Chinese investors (HEES, 2020).

Following the 10th WTO Ministerial Conference in Nairobi, member countries were split between those still committed to the Doha Development Agenda, and those believing that "new approaches are necessary to achieve meaningful outcomes in multilateral negotiations."[14] In this post-Nairobi order, *India* (along

13 Communication from China, "Possible elements of investment facilitation", 21 April 2017 (JOB/GC/123).

14 As stated by the *Nairobi Ministerial Declaration*, adopted on 19 December 2015.

with, for example, South Africa) has demanded the resolution of classic Doha themes such as the three pillars of agriculture – market access, domestic support, export competition – before raising any new issues, such as investment facilitation, into discussions. India stands firm behind the idea that IF rules go beyond the WTO's current mandate (SINGH, 2017), and the country is therefore unwilling to partake in discussions about a multilateral framework for investment facilitation. Additionally, India wishes to remain faithful to the negotiation pillar and the single-undertaking principle, which stipulates that negotiations must be launched multilaterally and would need to be agreed on by all members of the organization. For this reason, the country is unwilling to endorse plurilateral initiatives such as investment facilitation (NOVIK, 2020).

Therefore, India's position is categorically opposed to Brazil's pragmatic approach to the discussions. Brazil recognises that it is currently difficult to further advance Doha Round negotiations, and therefore instead seeks to negotiate plurilateral themes that present specific interests and concrete results for the country (ITAMARATY, 2018). Through its backing of plurilateral IF negotiations, Brazil seeks to instil fresh air and dynamism within the WTO's negotiation pillar.

While it initially assumed a role of mediator between interested parties, the *European Union* (EU) eventually provided a formal endorsement of the IF talks within the WTO by signing the Joint Ministerial Statement on Investment Facilitation for Development. Regarding the Brazilian proposal, records show that the EU finds it too focused on institutional elements, and lacking depth when it comes to transparency promotion (ITAMARATY, 2018). Nevertheless, the EU's position seems to generally agree with Brazil's ambition to distinguish investment facilitation from investment protection. Moreover, the bloc does not appear to oppose the plurilateral nature of the discussion, coining it "flexible multilateralism". The EU's endorsement of these WTO discussions appears to be coherent

with the bloc's other initiatives across international organizations, aiming to steer the international investment regime towards greater multilateralism, for instance, through the creation of a multilateral investment court to reform the ISDS system (HALLAK, 2020).

Canada has shown significant interest in the IF idea, with the country also having signed the Joint Ministerial Statement on Investment Facilitation for Development. The country is a close partner of the EU in matters of investment and is also a proponent of the bloc's multilateral investment court, for example. It has therefore assisted early negotiations, for instance, by hosting informal discussions (ITAMARATY, 2017).

Argentina was among the first countries to propose formal discussions on a possible WTO instrument on investment facilitation, having circulated its proposal with Brazil in April 2017[15]. As one of the 17 members of the informal group FIFD, it has also signed the Joint Ministerial Statement on Investment Facilitation for Development. Certainly, Argentina is Brazil's most like-minded partner when it comes to IF talks at the WTO.

Russia was the first country to propose elements of the contemporary IF discussion, with the Russian delegation circulating its proposals in late March 2017[16], and signing the Joint Ministerial Statement on Investment Facilitation for Development at the WTO's 12th Ministerial Conference. Russia critically stands with Brazil among the BRICS countries in a desire to discuss new matters at the WTO, such as investment facilitation (unlike India or South Africa). However, like China, Russia seems to back discussions on issues – such as market access – which are deemed too contentious by countries such as Brazil or Argentina.

15 Communication from Argentina and Brazil, "Possible elements of a WTO instrument on investment facilitation", 24 April 2017 (JOB/GC/124).

16 Communication from the Russian Federation, "Investment Policy Discussion Group", 30 March 2017 (JOB/GC/120).

In terms of the Russian position on Brazil's proposals, records show that Russia agrees with Brazil's suggestion to create electronic single-entry windows (SEWs) for foreign investors (ITAMARATY, 2017). These records also suggest that although Russia cautiously endorses the plurilateral nature of the discussions, the country expects the proposal to convert into a multilateral approach as soon as possible (ITAMARATY, 2018). Furthermore, in contrast to Brazilian proposals, Russia's proposals have included intellectual property under the scope of investment facilitation.

For its part, *Australia* has taken part in IF discussions through its membership in the informal MIKTA group[17]. The group has organized seminars and participated in early informal discussions (ITAMARATY, 2017). Furthermore, Australia has signed the Joint Ministerial Statement on Investment Facilitation for Development. Along with MIKTA, Australia shares Brazil's ambition to steer discussions away from investment protection.

In turn, *Switzerland* is an important participant in the international investment regime, as both a hub for European investors and, alongside Canada, the EU's main partner for FDI flows (EUROSTAT, 2019). The country has signed the Joint Ministerial Statement on Investment Facilitation for Development, and records show that its position has mirrored the EU's on investment facilitation at the WTO (ITAMARATY, 2018). Switzerland has been supportive of Brazil's focus on facilitation to move the WTO's negotiation pillar forward and has also provided guidance due to the country's first-hand experience with SEWs for foreign investors.

South Africa is a strong partner across investment matters, primarily due to the country's BRICS membership. While the country was initially supportive of Brazil's IF proposal, it appears that the plurilateral turn taken by the discussions – as well as the

17 MIKTA is comprised of Mexico; Indonesia; the Republic of Korea; Turkey; and Australia.

more contentious ambitions of other members such as China or Russia – have contributed to South Africa's disengagement from the discussions (ITAMARATY, 2017). It now holds a position similar to India's, namely, for the negotiation of traditional Doha Round themes such as agriculture or development before any discussion of new matters.

6.13. The Process from Start to Finish: Concluding Remarks

Because everyone came with that negative baggage from an unsuccessful experience from the past.
(Tatiana Prazeres, 2020)

The discussion presented in the chapter highlights the process by which investment facilitation has gained strength in the discussion among WTO members. In particular, the chapter has outlined the diplomatic development of investment facilitation within the WTO since its emergence in 2016 and – more formally – 2017. The chapter has also sought to underline how Brazil's leading role has consisted of delineating the discussions through defining what it means to focus exclusively on facilitation.

Research indicates that over the course of the discussions, WTO members came to agree to focus the discussions only on the specific facilitation of investments. Namely, this idea of facilitation does not include controversial issues such as market access, investment protection, or ISDS provisions. Furthermore, members agreed on the benefits seen with the successful experience of the TFA and the Brazilian CFIAs, both of which take the needs of developing countries into account. This study has also shown that Brazil's designation of the CFIA model as its core investment strategy stems from domestic shifts, such as the country's increasing need for FDI to satisfy its developmental needs, or the country's preference for

increased liberalization since the 2016 waning of more protectionist and pro-DDA left-wing policies.

This chapter has thus reviewed and outlined the CFIA in detail, which has been shown to be Brazil's principal model of bilateral negotiation concerning investment facilitation. Overall, the analysis has portrayed that, since the establishment of the first CFIAs in 2015, Brazil's diplomatic posture on the issue of investments has become increasingly pragmatic, seeking to establish win-win relationships with its main partners. In contrast with the country's late entry into the practice of negotiating BITs (which have faded in popularity with developed countries), Brazil has managed to propose an alternative way of discussing developing matters. Brazil's new way enjoys the advantage of greater support among all nations, by avoiding contentious topics and seeking concrete gains and pragmatic improvements to bilateral cooperation.

Along with its pragmatic diplomatic stance, Brazil's bilateral model – embodied by the CFIA – has provided a solid basis for multilateralizing the theme of investment facilitation. Due to its previous experience with BITs that focus on investment facilitation, Brazil has been able to contribute to technical discussions, thereby enhancing its role towards one of leadership and predominance among WTO members. Namely, as confirmed through expert interviews throughout this analysis, Brazil's pragmatic proposals have provided systemic win-win scenarios for partner countries, thus establishing this country's consensus-building reputation.

These positive developments notwithstanding, there also remain potential difficulties ahead for Brazil's diplomatic efforts within the WTO. These include, for instance, the prospect of convincing sceptic countries to join a plurilateral discussion, or the fact that negotiations will not include controversial topics from the past such as investment protection. Lastly, it remains to be seen how

the discussions will be able to accommodate the systemic rivalry between China and the USA, given the latter has been largely absent from the negotiations.

Still, from Brazil's perspective, the incentives to actively pursue an IF accord in the WTO remain significant. In fact, such an accomplishment would not harm its bilateral efforts, and would even work in complement to them, as some experts have argued. Hence, with the objective of furthering the current international momentum on investment facilitation, Brazil's position has often showed preference for promoting beneficial international cooperation scenarios, while simultaneously aiming to contribute to IF discussions, which has allowed Brazil to partake in the reform of the WTO negotiation pillar.

Brazil's conciliatory efforts have benefited the overall discussions on the world stage. On the one hand, member countries have turned to Brazil in order to avoid giving headway to more suspicious or uncertain countries such as China or Russia, whose positions on contentious issues such as investment protection or market access have demonstrated a degree of ambiguity. On the other hand, members have largely trusted Brazil on technical matters, thanks not only to the country's previous experience with CFIAs, but also to its positive historical record of favouring multilateral cooperation – without sacrificing the need for pragmatism and concrete results – within an increasingly dysfunctional WTO.

Ultimately, this chapter has shed light on factors which confirm some initial hypotheses, namely, that investment facilitation promotes the revival of the multilateral trade system. In order to provide a clearer view of the insights provided through the expert interviews, this section shall now summarize the primary points, in the process acknowledging the crucial need for increased investment flows globally to satisfy modern sustainable development needs.

Firstly, inquiry on the nature of IF talks has revealed that both developed and developing countries have a vested interest in advancing the discussions, especially given that investment facilitation does not touch upon contentious areas that could provoke deadlocks among negotiating members. Moreover, an IF agreement would follow the precedent established by the Trade Facilitation Agreement. More crucially, however, is the assessment that nowadays developing countries are significant investors themselves, and thus seek to create win-win scenarios among nations, thereby promoting global prosperity.

The analysis has concluded that IF talks within the WTO, due to their plurilateral nature, encourage progress and provide momentum to an otherwise stagnant organization. In a context of declining multilateralism, members now seem to favour operating under the plurilateral structure that was the norm until the 1986 Uruguay Round. Although it has been rejected by members such as India, plurilateralism within the organization does have some advantages, highlighted in this chapter – it leads to openness and transparency, promotes flexibility, and does not require consensus among members to provide concrete results (WOLFF, 2022). Moreover, plurilateralism rewards all nations and builds confidence towards trying new things, all the while proving more responsive – and less conflictual – by design. In fact, interviewees affirm that this approach can render the WTO more efficient to face new challenges of international trade and investments such as nationalism or protectionism.

On the other hand, expert insights indicate that the IF model did not shape other so-called Joint Initiatives, such as e-commerce, domestic services regulation, or MSMEs, even though most experts did recognize their interconnectivity. In sum, these Joint Initiatives share a plurilateral nature, and thus encourage dynamic learning between all negotiations, thereby leading to cross-fertilization among them. Although each joint initiative has its own *modus*

operandi, the conclusion of one negotiation may encourage progress on the others, or at least some degree of knowledge-sharing on relevant procedures. Still, it may be misleading to draw parallels between different initiatives, as some have started earlier and are more advanced than investment facilitation, for instance. Overall, experts agree that these Joint Initiatives contribute to shaping the modernization of the WTO.

The positive aspects of plurilateral IF negotiations aside, this chapter has shown that there remain some obstacles in the current WTO context that must be overcome to obtain an agreement. For instance, some specialists stressed specific challenges within the international system, such as the dispute between the United States and China or the potential rise of nationalism in the post-COVID world. Experts have also mentioned structural barriers within the WTO, such as balancing the depth of the agreement's content with the need for more participating members to guarantee a significant coverage of the international investment market. In parallel, the lack of WTO mandate on investment-related issues raises concerns regarding the integration of the final agreement into the legal architecture of the WTO. This chapter has also observed that the lack of determination of some countries to produce concrete outcomes has come to slow down the pace of the negotiations, which is certainly due to the shifting priorities of some primary states. Furthermore, the current privation of development-oriented provisions, especially capacity-building clauses to tackle the different levels of development among members, has also emerged as a hurdle.

This chapter has also carefully considered the role of developing countries such as Brazil or China as prime members carrying the negotiations forward within the WTO. Overall, the interviews show that most experts agree that the main reasons behind this fact are related to the structure of the international financial system, the need for pro-development inward investments, and the rise of

outward investments in the South. Furthermore, the initiative stems from these developing countries' aspiration to maintain the WTO functioning, by exploring new themes following the DDA deadlock. Moreover, some have argued that while developed countries still support the traditional BIT approach, they are nevertheless starting to see the value of a multilateral solution, enshrined within the WTO framework. In short, the analysis has noted that a multilateral solution could provide the basis for cooperation that is crucially needed today to ensure the sustained prosperity of all countries through increased investment flows.

The role of China has been singled out as of particular interest with regards to investment facilitation at the WTO and has thus been analysed in detail, given China's systemic position within the WTO. According to the interviewed experts, Beijing has an interest in securing an IF agreement because it seeks to pursue an opportunity to modernize and preserve the rulemaking function of the WTO. It also seeks to develop a positive leadership position within the WTO, while keeping the investment discussion alive within the Organization to advance other investment-related agendas in the future. China's economic interests also involve securing stronger rules, promoting transparency, and reducing red tape with regards to global investment flows, as it is an increasingly present investor-state across the developing world – as well as one of the foremost recipients of global FDI.

Finally, this chapter has evaluated the current proposed framework for investment facilitation with regards to the United Nation's Agenda 2030 for Sustainable Development. In sum, if Brazil and other members seek an IF agreement at WTO, it is because the world's investment needs are huge. On the one hand, such an agreement would contribute to upgrading physical infrastructure and guaranteeing the development of science, technology, and innovation capacity, alongside other spheres. On the other hand, it

shall contribute towards satisfying countries' trillion-dollar financial requirements to transition to a low carbon economy, ultimately, in order to halt climate change, help members meet the stated SDGs, and finally – yet importantly – create employment, growth, and thus economic development.

7. THE GLOBAL CHEERLEADER: BRAZIL'S ACTIONS ON INVESTMENT FACILITATION

7.1. Introduction

> *Look, in the current circumstances, being very pragmatic, plurilateralism is the only negotiation model that has any prospect of advancing. Multilateralism has been in decline for some years, since 2008, and while it is down, imagining Uruguay Round multilateral agreements is out of the question.*
> (Felipe Hees, 2020)

This chapter discusses the chronology of negotiations for the IF agreement in the context of WTO meetings and dialogues. In particular, the importance of certain members is highlighted, especially Brazil, whose active participation in the process has proven it an important leader in the Organization. Moraes (2020) sums up Brazil's leadership role in conceptualizing, initiating, and actively participating in WTO investment facilitation talks after 2016 by saying "[...] it owes significantly to our experience (Brazilian

experience) with the investment agreements devised by Brazil, in which investment facilitation plays a central role [...]."

As highlighted throughout this thesis, the IF agreement represents an option for plurilateral advancement, alongside a potential multilateral option. Its construction includes the participation of members that join the initiative, which facilitates the negotiations to advance as there is no need for the principle of single undertaking among all WTO members.

The first part of this chapter deals with the chronology of IF agreement discussions. Section 6.2 highlights Brazil's participation in the IF meetings at the WTO. In section 6.3, the thesis takes into consideration the pandemic and its impact on discussions, while section 6.4 addresses investment facilitation's formal contribution to the WTO reform. The role of Brazil in the reshaping of the WTO via investment facilitation is commented upon in section 6.5. Section 6.6 presents prospects and challenges for WTO reform based on the results presented in the previous sections; in turn, section 6.7 is focused on analysing possible scenarios for WTO reform and investment facilitation for the future. Finally, section 6.8 is dedicated to making future considerations for Brazil's diplomatic activities in the context of WTO reform and IF initiatives.

7.2. Friends Before Enemies: Brazil and the IFD Meetings (2017-2019)

> *The IFD process was conceived as a bottom-up discussion to identify what IF means in terms of the potential elements to be included under an agreement, and the different options for levels of "depth" of commitment that those elements could have, keeping also in mind the practical elements/ challenges related to their implementation.*
> (Juan Carlos González, 2020)

In the beginning of 2017, the issue of investment facilitation started to be discussed openly in Geneva. Some members of the WTO, such as China, organized informal meetings to express their views and promote discussions, along with a dialogue co-conducted by the World Economic Forum (WEF) and the International Trade Institute (ITI). On all occasions, Brazil participated actively in the discussions, as the subject arouses interest among many delegations, especially if it does not include controversial topics such as investment protection and the ISDS mechanism.

In fact, there is a historical resistance to investment topics, as many delegates considered such topics to work only to the investors' or developed countries' advantage. The resistance is due to the belief that the focus might be on how to protect the investors rather than how to promote sustainable socioeconomic growth in the developing world. Furthermore, the legitimacy of some ISDS decisions had been tightly questioned by decisions that acquired a high public profile due to the involvement of public policy issues in the areas of health, security, and environment. Furthermore, there was the argument of inequality of rights and obligations between internal and international investors, as the first ones did not have access to the ISDS, often leading to the violation of constitutional

rules. Thus, it is evident that such contentious topics may never be included again in any discussion regarding investment facilitation at the WTO.

In March 2017, the MIKTA countries (Mexico, Indonesia, South Korea, Turkey, and Australia) organized a Workshop on Trade and Investment, which has been considered a turning point on the discussions, as it delivered the message that the WTO has a crucial role to play on investment facilitation. The Workshop also helped clarify the lines of separation between commercial and investment disciplines, which are increasingly overcome by the reality of global value chains. Finally, some presentations highlighted the share of service trade in FDI, equivalent to two-thirds of global flows, which makes the service sector crucial for any IF debate. A few weeks after the workshop's conclusion, the MITKA countries circulated a document (JOB/CG/121) which summarizes their conclusions.

In this same vein, Russia took the first written initiative by issuing, on 30 March 2017, the document JOB/CG/120, which recalled that most WTO member laws make no distinction between investments in service and non-service sectors. In this sense, it promoted the establishment of multilateral IF rules within the Organization to improve the investment climate in all sectors, as well as the efficiency of the economies involved. This communication, which was to be discussed at the General Council meeting on 10 May, also presented some first elements for discussion related, among others, to transparency, domestic regulation, and feedback mechanisms, and proposed the initiation of dialogues as a next step.

As discussions proceeded, further concerns were raised among the like-minded, pro-IF delegations. One was to not repeat the experience of the extinct Working Group on the Relationship between Trade and Investment (WGTI), created in 1996 by a decision of the WTO's First Ministerial Conference in Singapore and suspended in

2004 after eight years of discussions. The suspension was related to a decision taken on 1 August 2004 by the General Council (WT/L/579) which excluded the investment topic from the Doha Agenda. Worthy of note, on the other hand, is that such a topic, at that time, included the controversial issues of market access, investment protection, and ISDS.

Therefore, pro-IF members soon agreed not only to avoid referring to investments in the context of the "Singapore themes", but also to focus discussions only on the "facilitation" aspect of the subject, which does not include the controversial issues mentioned above.

The interest on this cause is justifiable, particularly to countries that are in the early stages of development. Due to economic policy elements related to low domestic savings as well as to resource constraints, these countries may benefit from the entrance of complementary capital to help them achieve their main development goals in areas such as infrastructure, industry, and know-how. In other words, the establishment of a consistent, balanced multilateral framework on investment facilitation right at the WTO, intended to assist its members on how to improve their domestic regulatory environment to attract investments aimed at socioeconomic betterment without constraining policy space, will be a net positive force.

Investors may also benefit from higher levels of transparency on regulations and procedures, and by a more refined knowledge of how to enter unexplored markets. This new situation may increase business confidence and reduce risk perceptions, which can, in turn, contribute to decreases in financing rates and even make entrepreneurs more capable of making risky decisions. Another probable outcome is to make financing available in situations it was previously not, owing to the end of concerns regarding, for

example, lengthy procedures. This scenario is undoubtedly a win-win for all parties.

Thus, bearing in mind the importance of foreign investment in fostering socioeconomic development, Brazil, China, and six other members of the WTO – namely Argentina, Colombia, Hong Kong, Mexico, Nigeria, and Pakistan, with the later addition of Chile and Kazakhstan through JOB/GC/122/Add.1 – united themselves through the Chinese initiative to create the informal group known as "Friends of Investment Facilitation for Development" (FIFD). On 21 April 2017, this group issued a Joint Communication (JOB/CG/122) to launch a WTO Informal Dialogue on investment facilitation open to all members of the Organization, to be discussed at the 10 May 2017 General Council meeting.

According to this Joint Communication, the dialogue's purpose was to create a space for discussions on how the WTO could play a decisive role in facilitating cross-border investments between its members. In this regard, the document stated three early possible elements to the debate, including improving regulatory transparency and predictability, streamlining and speeding up administrative procedures, and enhancing international cooperation and addressing the needs of developing members. Along with this Joint Communication, China issued on the same day the document JOB/GC/123, which included other critical elements for the discussions such as the efficiency of administrative procedures, visas, capacity-building for developing members, reduction of procedures' costs, and outward investment.

Shortly after that, on 24 April, after having finished informal consultations with other members, Brazil circulated in co-sponsorship with Argentina the document "Possible Elements of a WTO Instrument on Investment Facilitation" (JOB/GC/124), which consisted of two parts. The first one was an introduction that

emphasized a need to encompass regulations both in service and non-services sectors, avoided controversial issues such as investment protection, clarified the definition of investment facilitation, and highlighted the need for incremental implementation provisions along with Special and Differential Treatment (SDT) clauses, taking the TFA as an example.

The second part of the Communication (JOB/GC/124) comprised a list of 13 "Possible Elements of a WTO Instrument on Investment Facilitation", defined as including the following: (1) *scope* – includes all measures intended to facilitate investment "for production of goods" or "the supply of services", including FDI and excluding investment protection, dispute settlement, government procurement, and public concessions; (2) *transparency* – members' existing investment-related regulations, as well as new proposals, should be shared with investors to be unambiguous and clear. Members should also notify them to the WTO; (3) *formalities and documentation requirements* – requirements should be appropriate and not act as impediments. Members should review them as much as possible, taking the minimization of costs for applicants into account; (4) *acceptance of copies* – members should commit to accepting paper or electronic copies, where applicable; (5) *processing of applications* – members should agree on key principles to create a more stable and predictable environment regarding the processing of applications; (6) *single electronic window* – to simplify procedures, members will need a SEW capable of receiving both applications and required documents; (7) *national institutional agreements* – internally, members should establish a national focal point or ombudsperson, responsible for providing investors with assistance and useful information, and empowered to deal, when possible, with investor's grievances, without prejudice to competencies of existing agencies; (8) *cooperation among national focal points (ombudspersons)* – members should benefit from cooperation in areas such as the sharing of experiences, exchange of statistics,

and assistance for capacity building; (9) *Multilateral Institutional Arrangements* – the Communication proposed a Committee for Investment Facilitation, similar to the Trade Facilitation Committee (TFC), to help on the Agreement's implementation; (10) *corporate social responsibility* (CSR) – principles and standards regarding responsible business conduct are a must to address the possible impacts of investments in the lives of populations involved; (11) *implementation* – members should divide the Agreement into three categories, each with a specific deadline for its implementation; (12) *special and differential treatment* (SDT) – members should establish different provisions regarding the entry into force of the Agreement, and exempt LDCs from the implementation of all obligations; and (13) *technical assistance* – providing technical assistance to address capacity-building needs presented by members.

The Coordinator of the Informal Dialogue later included all 13 elements in the "Proposed Agenda for Future Work", which served to conduct the Dialogue's discussions. This Agenda consisted of the three topics proposed by the FIFDs in their Joint Statement (JOB/CG/122) and these 13 elements as sub points. It is clear, therefore, that the Brazilian-Argentine communication (JOB/GC/124) helped to provide a solid conceptual basis for the beginning of the dialogue, helping delegations to systematize key elements and progressively deepen the understanding of the theme, contributing to the achievement of meaningful discussions just ahead along with the recent communications circulated by Russia (JOB/GC/120) and China (JOB/GC/123).

Nonetheless, before attending the Dialogue meetings, members of the FIFD focused on the General Council's (CG) meeting of 10 May 2017, which had the "Trade and Investment Facilitation" theme on its agenda. Despite all preparations, which included the earlier mentioned documents, the discussions did not go as intended. A few members, especially developing and least-developed ones, raised the

controversial issue regarding the exclusion of "investments" from the Doha Agenda, and used this argument to suspend the meeting.

On 18 May, the President of the General Council proposed the item "Trade and Investment Facilitation" of the agenda to be replaced by "Communications on MIKTA Workshop and Informal Dialogue on Investment Facilitation", which was accepted by the members, who then resumed discussions. Brazil then stated that its intention with document JOB/GC/124 to provide inputs for informal discussions, as its cosponsors were cautious in proposing any discussion on terms favourable to developing countries, excluding any well-known sensitive issues such as investment protection or ISDS. Likewise, various other delegations expressed support for the topic and the dialogue, and the early resistance did not prevent FIFD and like-minded members from continuing discussions on the topic. Nonetheless, the need for outreach efforts towards resistant members to gain their trust and raise their awareness on the benefits of investment facilitation to developing countries was clear.

On 24 May 2017, at the Informal Dialogue's inaugural meeting, discussions continued smoothly with the presence of several delegations. The event included presentations by Professor Richard Baldwin from the Graduate Institute of Geneva, who demonstrated the links between trade, investment, and development, and James Zhan, Director of the Investment Department at UNCTAD, who outlined the importance of the concept, and a possible path to advance it.

On 2 June 2017, the debates proceeded on the "Dialogue Seminar on Sustainability Criteria for Investments", organized by the WEF and the International Center for Trade and Sustainable Development (ICTSD). The primary purpose of the event was to discuss relevant, sustainable development criteria identified in international investment instruments. It was an essential

opportunity for Brazil, already one of the leaders of the discussions, to demonstrate the importance given to sustainable development in the ACFI model, which, through CSR clauses, encourages companies operating abroad to do so with respect given to local communities, in accordance with ethical and sustainability principles. Moreover, the ACFIs prohibit states from lowering their environmental, labour, and human rights standards to obtain foreign investment.

The second IF Dialogue meeting, held on 28 June 2017, brought "improving regulatory transparency and predictability" to the discussion, according to item 1.2 of the recently released "Proposed Agenda for Future Work". Apart from the FIFDs' increased membership with the entry of Qatar and South Korea, the event featured an exchange of experiences of national practices. Brazil used the occasion to underline the centrality of the SEW for any consideration of investment facilitation at the WTO. Due to the integration of government procedures, the SEW allows investors to act with different agencies through a single-entry point, without any agency giving up competencies.

At this point, due to a feeling that the country was able to share a great deal of expertise regarding not only the CFIA model but also multilateral practice in forums and negotiations, as well as recognition of the nation's status as an influential, developing WTO member, Brazil was ready to initiate informal consultations regarding an initial draft of a possible IF agreement. Such a draft was based on the less sensitive elements of the cooperation focused CFIAs, as well as on the TFA, whose inaugural committee's session was held just a month previously, on 16 May. The main challenge was to adapt the country's bilateral CFIA model to a multilateral format.

Later, on 10 July 2017, Pakistan organized on behalf of the FIFD "What Investment can do for Trade Connectivity and Development – Investment Needs and Bottlenecks", a workshop whose main

objective was to convey a high-level political message regarding the importance of investment facilitation. The event included, among others, the participation of the WTO Director-General, the Pakistani Minister for Commerce, the Brazilian Secretary of Foreign Trade, ambassadors from various delegations, and representatives from various international organizations such as the OECD, UNCTAD, WEF, ICTSD, World Bank, ITC, and WAIPA. The presentation from UNCTAD stood out by correctly addressing the differences between "investment promotion" and "investment facilitation". While the first relates to the Investment Promotion Agency's (IPA) function to attract investments, the second deals with the procedural and regulatory improvements intended to capture external investments, including measures to facilitate the authorization process. Brazil, in turn, recalled the main characteristics of the CFIAs, highlighting elements that can contribute to the discussion related to a multilateral arrangement on the matter. In this regard, the country's representative listed the SEWs and the different implementation deadlines between members, and recalled the functions of the internal body responsible for the agreement's implementation, as a "focal point" for international investors and an internal regulatory body (the ombudsperson).

Eight days later, on the third Dialogue's meeting on 18 July, discussions progressed by focusing on "streamlining and speeding up administrative procedures", according to item 1.3 of the agenda. The occasion served for new exchanges of national experiences, including the challenges created by the amount of information gathered to implement the SEW. Another critical point of debate was related to the business visa facilitation issue, as some complain about excessive bureaucratic exigencies in some countries. Hereupon, Brazil argued that discussions on investment facilitation at the WTO should identify a minimum common framework, from which members could individually implement more advanced solutions. Finally, the

meeting showcased a clear interest from various delegations on the multilateral potential of investment facilitation within the WTO, including as a way of circumventing the difficulties that regional blocs have in advancing on such initiatives with other partners.

The fourth meeting, held on 25 September 2017, brought "enhancing international cooperation and addressing the needs of developing members" to the debate, according to the item 1.4 of the agenda. The World Bank contributed by listing concrete examples from some countries, such as publishing an e-inventory of incentives, dealing with red tape, implementing a system to identify complaints, and automation of e-visas. Above all, the World Bank explained which kinds of barriers to investments derive from regulations and procedures or constitute *de facto* barriers, which was very helpful for delegations to understand real issues faced by investors. UNCTAD's contribution, in turn, was to draw attention to the needs presented by some countries regarding lack of knowledge about the different regulations in place, as well as the importance of coordination between the distinct agencies, and capacity-building.

Brazil, who had at the time already informally consulted more than 40 members regarding the WTO IF agreement draft, was obtaining a very positive response from numerous delegations, who were able to help by providing comments and language suggestions. These consultations resulted in the first revision of the text, which was at that time about to become the new basis for new informal consultations ahead. This strategy showed its advantages by incentivizing the engagement of like-minded members, whose expressions of appreciation for the Brazilian effort to seek to incorporate comments and accommodate language suggestions were numerous. Furthermore, as an informal effort, it did not involve any expectations of the draft's approval from the perspective of MC11.

The fifth Dialogue meeting on 23 October 2017 focused on "other investment facilitation-related issues", according to item 1.5 of the agenda. Noteworthy is the approach taken by the UNCTAD representative regarding the mechanism designed to both promote dialogue and prevent disputes between governments and investors, namely an ombudsperson or National Focal Point. In this regard, UNCTAD highlighted that both South Korea and Brazil gave full empowerment to their Ombudsperson, which is considered a central element for them to play their roles accordingly, along with the inclusion of CSR provisions to balance obligations between investors and governments properly. Additionally, the participants began to address issues related to the preparation for the forthcoming MC11, such as having the coordinator, in the end, ensure all vital elements of the "Proposed Agenda for Future Work" were addressed, and proposing the last meeting to focus on the practical steps needed regarding MC11 in December.

From 2-3 November 2017, the Government of Nigeria and the Commission of the Economic Community of West African States (ECOWAS) co-hosted, with support from the FIFD, the "High-Level Trade and Investment Facilitation Forum for Development". The event brought up first-rate issues related to the African continent and promoted a sharing of experiences those countries already have regarding investment facilitation. Beyond that, participants raised the importance of investments to promote development along with the impactful role the WTO can play in the area. The attendance list included authorities such as the Director-General of the WTO and the European Commissioner, as well as numerous senior investment and trade decision-makers from more than 30 African countries, and key private sector representatives. As a result of the upper-level conversations held, several African members expressed political support for the discussion of the topic at the WTO, with some showing the intention to join the FIFDs, which was a significant

achievement due to the previous resistance demonstrated at the General Council meeting on 10 May. Another concrete outcome was Nigeria's circulation of the Abuja Statement on "Deepening Africa's Integration in the Global Economy through Trade and Investment Facilitation for Development" (WT/MIN(17)/4 - WT/GC/186) as a document of the WTO General Council and Eleventh Ministerial Conference.

The last meeting of the Dialogue, held on 10 November 2017, was, due to its political nature debates as well as to the presence of high-ranking officials from several African nations, unlike the previous dialogue meetings. Apart from the FIFDs' increased membership with the entry of Liberia, Nigeria, and Mauritania, discussions gave prominence to the identification of common objectives for MC11, the kind of ministerial guidance members were envisaging, and how to pursue said objectives. Several members, including Brazil, expressed their interest in ensuring, in Buenos Aires, a term that includes the cause on the WTO's post-MC11 agenda to continue pursuing the goal of a multilateral IF agreement under the auspices of the Organization. In the same way, multiple delegations re-emphasized the all-important need to continue approaching more delegations to address their concerns regarding the matter.

Following some coordination work, the FIFD members circulated on 27 November the "Draft Ministerial Decision on Investment Facilitation for Development" (JOB/CG/159). A second version followed on 5 December 2017 (WT/MIN(17)/12)[18], this time with Uruguay being part of the FIFDs. These communications highlighted the growing linkages between investment, trade, and development, as well as the central role investments would play in the achievement of the UN Agenda 2030 Sustainable Development Goals (SDGs), and

18 Even though Mauritania does not appear as co-sponsor of documents JOB/CG/159 and WT/MIN(17)/12, the country was already a member of the FIFD at the time.

the importance of increasing the participation of developing and least developed countries on the international investment flows. More importantly, they proposed to launch structured discussions at the WTO to develop a multilateral framework on investment facilitation. Such discussions would take topics such as transparency, predictability, speeding up of procedures, and cooperation into account, and not cover the contentious issues of market access, investment protection, and ISDS, following the Brazilian-Argentine Communication (JOB/GC/124) and the Informal Dialogue's talks. Finally, both documents called for the establishment of an IF group to carry out such structured discussions.

Later, on 11 December 2017, just one day after the begin of the WTO 11th Ministerial Conference (MC11) at Buenos Aires, and on behalf of Brazil and 64 other members including the European Union (EU), China took the lead and circulated the document "Joint Ministerial Statement on Investment Facilitation for Development" (WT/MIN(17)/48). This document, which derived from the last draft (WT/MIN(17)/12) by welcoming calls for structured discussions, included some new remarks highlighting the successful outcome of the High-Level Forum in Nigeria and the robust engagement in the Informal Dialogue meetings. In the end, it called for a dedicated minister-level meeting on investment facilitation at the ongoing MC11, led by a facilitator, and encouraged members to endorse the aforementioned draft (WT/MIN(17)/12), whose intention was, as stated before, to launch structured discussions at the WTO to develop a multilateral IF framework.

Those efforts notwithstanding, the general context of the MC11 did not allow a multilateral result on investment facilitation at that time. Under this circumstance, on 13 December, on the last day of MC11, 70 members – including Brazil – requested the circulation of another "Joint Ministerial Statement on Investment Facilitation for Development" (WT/MIN(17)/59). This document, which also drew

from the previous ones, guaranteed the launch not only of outreach activities but also of IF structured discussions at the WTO, whose organization was to be discussed on a meeting scheduled for the beginning of 2018.

In other words, the Joint Statement (WT/MIN(17)/59) enabled interested members to proceed with the talks, even if on a plurilateral basis, and bestowed legitimacy on them since the initiative was launched at a WTO Ministerial Conference. It allowed the establishment of a successful work process without the need for a consensus or the need to make participants abdicate the intention of a multilateral result soon. Above all, it served the purpose of inciting non-signatory members to take part in this critical work.

Also noteworthy is that paragraph 4 of the Joint Statement, which called for the start of structured discussions, listed only topics related to the "facilitation" aspect of investments as items to be addressed by them. All these topics, including the exclusion of market access, investment protection, and ISDS, derive from the Brazilian-Argentine Communication (JOB/GC/124). This result was in the definite interest of developing members, and it was one of the outcomes of the Brazilian action in defining the central goals of the debate since the beginning of the dialogue.

Another element of the Brazilian influence in the discussions was based in its informal consultations regarding a possible IF agreement's draft. These, which by the end of 2017 reached the mark of 45 members, gave rise on 31 January 2018 to the circulation to the entire WTO membership of the document (JOB/GC/169) entitled "Structured Discussions on Investment Facilitation", from which the structured discussions of 2018 primarily originated. The document's circulation gave direction and density to the debates, helping them to progress. It also contributed to consolidating the Brazilian vision in terms of investment facilitation and to build

more confidence among reticent members. Its focus was, as with previous documents, only on facilitation issues, as can be seen from its main topics: scope and general principles; institutional governance through transparency and national focal points for foreign investors; electronic governance through a SEW for the submission of documents and applications; procedures involving the reduction of red tape; regulatory environment; special and differential treatment for LDCs, which includes technical assistance and capacity building; CSR; and an institutional framework, through creation of the WTO Committee on Investment.

Brazil continued its engagement in all relevant discussions, which included topics varying from the definition of coordinators and frequency of meetings to the substantive debates themselves. Two years later, at the informal WTO ministerial meeting held in Shanghai on 5 November 2019, the results of all intensive work conducted since the beginning of 2017 came to the fore as 98 WTO members issued a second Joint Statement on Investment Facilitation for Development (WT/L/1072). In this Statement, the signatories committed to intensifying the work to develop a framework for facilitating FDI, targeting a concrete outcome on investment facilitation for development (IFD) at the 12th Ministerial Conference (MC12) in June 2020 in Nursultan. Participation in this Joint Initiative remained open to all WTO members, as in the previous one, since the initiative allows members to join at their own pace.

In December 2019, Brazil retook the lead and proposed the launch of WTO negotiations, which was accepted by members attending the structured discussions. By accepting, they committed to a concrete outcome on IFD at MC12, as well as to continue outreach efforts towards other WTO members, notably developing and least-developed members. The public announcement of the decision was made at the Ministerial Gathering in Davos in January 2020.

In fact, the Brazilian delegation expected that negotiations for a plurilateral investment facilitation agreement (IFA) would start in February and finish in May to be a deliverable outcome for MC12. It reached the mark of 100 interested WTO members on 28 February with Bahrain's accession and has remained open to more members since then. The conclusion of such negotiations might consolidate the role of Brazil in the search for investment facilitation for sustainable development.

However, all expectations of progress were delayed before long due to the outbreak of the coronavirus pandemic. In this regard, experts believe that COVID-19 will have a significant impact on the world economy as well as on flows of global investment, including an estimated 40% decrease in global FDI flows and a reduction of 13-32% in commercial transactions worldwide. The projected retraction of FDI will have adverse consequences on jobs, income, and technology transfer, indispensable factors for increasing productivity and economic development. The drop in FDI may also deprive economies of flows that serve to finance deficits in current transactions, which is common in developing economies. In the face of these challenges, IF negotiations become increasingly more relevant to achieve the SDGs.

7.3. Social Distancing: IFD Meetings in the COVID Context (2019-2021)

And I hope that the urgency of the current pandemic will stimulate collaboration and coordination.
(Gabrielle Marceau, 2020)

In the first quarter of 2020, several meetings were cancelled, and the COVID-19 pandemic forced a pause in the progress of the negotiations and IF meetings. More precisely, the meetings of 12-13 March, 21-23 April, 13-15 May, and 28-29 May were all cancelled

due to the pandemic. Despite the cancellations, negotiations finally resumed in June through the first open-ended informal virtual meeting. In this pandemic context, on June 5, June 24, July 10, and on July 24 negotiations begin to gain momentum again in the form of open-ended Informal Virtual Meetings. As such, member countries resumed discussions and were allowed delegations to share information and continue their thematic discussions on IF dialogues.

On June 5, 2020, Mr. Mathias Francke (Ambassador-Designate, Chile) coordinated an open-ended informal virtual meeting of the Structured Discussions on Investment Facilitation for Development. In terms of investment transparency, the text proposal emphasized the importance of making important information accessible online wherever possible, as emphasized by investors, international organisations, and scholars. In the second open-ended informal virtual conference, held on June 24, the thematic debate continued from previous sessions. The meeting addressed transparency issues such as: notification to WTO, enquiry points, and specific exceptions applicable to transparency requirements. Also on June 24, the informal meeting discussed streamlining and speeding up administrative procedures and requirements. More precisely, the scope of the discussion on administrative procedures covered the following topics: consistent, reasonable, objective, and impartial administration of measures; reduction and simplification of administrative procedures and documentation requirements; clear criteria for administrative procedures; authorization procedures; and treatment and rejection of incomplete applications.

The third open-ended informal virtual meeting was held on July 10, 2020, and the thematic debates continued where they had been put on hold at the previous meeting. When it comes to administrative processes and standards, the following topics were addressed in the discussion: fees and charges; periodic review of administrative procedures and requirements; the use of ICT/e-

government, including electronic applications; single window types of mechanisms; independence of Competent Authorities; and appeal and review. The informal dialogues also addressed the issue of temporary entry for investment persons and facilitation of movement of businesspersons for investment purposes.

On 24-25 September 2020, a negotiating meeting took place regarding structured discussions on IFD. The object of this meeting was twofold: to consolidate the informal thematic debates on the remaining parts of the informal consolidated text that were not finished before the summer break due to time constraints, and to begin talks on a multilateral mechanism for IFD. The Canadian delegation circulated an IFD proposal that included strong anti-corruption clauses in the WTO Agreement on Investment Facilitation for Development and signalled the emphasis that members place on their regulatory systems' ethical standards. More precisely, the topics were: Measures to Combat Corruption; Promoting Integrity among Public Officials; Application and Enforcement of Anticorruption Laws; and Participation of Private Sector and Society. A communication also circulated at the request of the Mexican delegation regarding the steps taken by a member to encourage the initiation of operations of FDI in the service and non-service sectors by an investor from another member, and about CSR.

On the 8th and 9th of October 2020, an open-ended negotiation meeting of the Structured Discussions on Investment Facilitation for Development was convened, which was coordinated by Mr. Mathias Francke. The meeting's aim was to continue discussions on a multilateral mechanism for IFD. Prior to the conference, two written communications were submitted: one containing general comments on the negotiations and highlighting areas of concern, and another including a general view of the negotiations as well as specific drafting recommendations to insulate the IF process from commitments in International Investment Agreements (IIAs).

On 23 November 2020, the negotiating meeting took place, and concentrated the discussion on possible elements in proposals submitted on firewall provisions in the Future Investment Facilitation Agreement (IFD Agreement). In particular, the issues to be addressed were: IFD Agreement as a complete set of rules on IF; IFD Agreement shall not grant rights relating to MA, establishment, the protection of investors/investments, nor relating to investor-state dispute settlement; IFD Agreement shall not apply to any dispute settlement proceeding (investor-state or state-state) under existing or future IIAs; IFD Agreement does not create new or modify/affect obligations under IIAs; no use of IFD Agreement for interpretation of IIAs; no use of IFD Agreement as a basis for a claim in disputes under IIAs; breach of IFD Agreement shall not be treated as a breach of IIAs; obligations in the IFD Agreement shall not constitute 'treatment' under any other treaty; obligations in other treaties shall be excluded for the purpose of assessing a breach of the MFN provision in the IFD Agreement; recourse only to WTO DSU for disputes concerning the interpretation and application of the IFD Agreement. The questions presented and proposals addressing the issues were brought by delegations from Mexico, South Korea, India, China, and the European Union.

Shortly thereafter, on 27 November 2020, an informal intersessional dialogue on the prospective IFD agreement's independence from foreign IIAs (so-called "firewall" provisions) was held. The meeting also aimed to resume work on section VI (cross-cutting issues) of the informal consolidated text (INF/IFD/RD/50/Rev.5), where it was left off at the previous meeting.

On 7-8 December, a negotiating meeting was held at the WTO, looking ahead to 2021. The main objectives of the meeting were to finish the discussion of the terms of the informal unified text (based on document INF/IFD/RD/50/Rev.6), taking up where the last meeting left off, and to chat about next steps. Regarding the

document, Brazil participated among other members on several proposes, such as: (i) the publication of measures and information; (ii) cross-border cooperation; (iii) technical assistance and capacity building; (iv) responsible business conduct; and (v) WTO Committee on investment facilitation. Brazil also revised proposals by members concerning a single portal for administrative procedures, domestic supplier database, and investment facilitator in the section about types of mechanisms, domestic coordination, and cross-border cooperation.

On 25 and 26 January 2021, an open-ended negotiating meeting on Investment Facilitation for Development was held at the WTO. The meeting aimed at continuing the negotiations on an IFD agreement, and one of the main goals was to do a first review of all the remaining sections and provisions of the future IFD Agreement. In particular, Chinese and Turkish delegations circulated a communication (INF/IFD/RD/65) regarding facilitation of the entry and temporary stay of businesspersons for investment purposes. Morocco also circulated a communication (INF/IFD/RD/64) presenting Morocco's views and proposals on the draft provisions of the IFA about: (i) scope and general principles; (ii) transparency of investment measures; (iii) streamlining and speeding up of administrative procedures and requirements; (iv) facilitation of movement of natural persons for investment purposes; (v) maintenance of public health, labour, environmental and safety standards; (vi) compliance with domestic laws and international obligations; (vii) combating corruption, money laundering and financing of terrorism; (viii) social and environmental responsibility; (ix) security exceptions; (x) financial exceptions; and (xi) special and differential treatment for developing and least-developed country members.

In turn, the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu circulated INF/IFD/RD/66 that addressed the following topics: (i) MFN exception – article 2; (ii)

appeal and review – article 17; (iii) investment facilitator – article 18; (iv) regulatory impact analysis – article 19.3 (v) cross-border cooperation – article 20; (vi) general exceptions – article 29; (vii) measures against corruption – article 27; (viii) dispute settlement in the context of anti-corruption measures; and (ix) dispute settlement – article 31. Furthermore, the Canadian delegation circulated a revised proposal for Article 27 "Measures against corruption" under Section VI "Cross-cutting issues" of the Informal Consolidated Text (INF/IFD/RD/67).

On 9 February, Morocco presented new elements contained in a proposal (INF/IFD/W/29), namely: (i) compliance with domestic laws and international obligations; (ii) maintenance of public health, labour, environmental and safety standards; and (iii) social and environmental responsibility. China and Turkey then proposed their joint proposal (document INF/IFD/RD/65) on facilitating the entry and temporary stay of businesspeople for investment purposes.

The negotiations based on the informal consolidated text (INF/IFD/RD/50/Rev.9) continued on March 8 in a negotiation meeting virtually held in the WTO. In sum, the meeting aimed at discussing the newly added provisions of the revised draft text. There was a debate on the 'firewall' provisions and about the concept of authorization. On the matter of cross-cutting issues, Canada sent out a communication emphasizing the value that many members place on the principle of Responsible Business Conduct (RBC). Indeed, Canada claims that having a strong RBC clause in a potential IFD Agreement will help to improve foreign investment's commitment to long-term development and sustainability.

Shortly thereafter, on March 22, the structured discussions on IFD continued in an open-ended intercessional meeting virtually held by the WTO. In general, the meeting addressed the following topics: responsible business conduct; general, security and financial

exceptions; single information portal and focal point(s); and "firewall" provisions. In particular, Switzerland sent out a communication proposing measures against corruption (INF/IFD/RD/72).

Resuming the discussion on the topics based on members' text contributions, on April 19-23 a negotiation meeting was held. One of the primary objectives was to debate the possible inclusion of an MFN treatment clause in the future IFD Agreement. Financial exceptions were also discussed. In sum, there was a debate on several topics of the IFD that has been already present in the last meetings, such as: responsible business conduct; measures against corruption; 'Firewall' provisions; and the concept of 'authorization'.

7.4. The Talks—Reform Pipeline: IF's Potential to Change the WTO

I think the format of these different groups and discussions in itself is an exploration on the reform of the negotiation function itself.
(ITC Expert, 2020)

To analyse the relationship between Brazilian diplomacy, IF initiatives, and the modernization of the WTO, this section is based on four questions directly related to this topic asked to the experts. Henceforth, the analysis shall focus on the prospects for change within the World Trade Organization. Indeed, as has been previously established, this organization currently faces both internal and external challenges that are increasingly compelling it towards reform. However, due to aforementioned factors, it is yet unclear on how and which aspects of the WTO may influence its upcoming reform. Thus, after exploring the insights provided by interviewed experts, this chapter aims at presenting potential scenarios based on our main thesis that Brazil contributes to the reform of the WTO, namely thanks to its leadership in the IF negotiations.

In fact, as discussed in this thesis, Brazil has assumed a proactive and leading role in the IF negotiations at the WTO. Furthermore, the discussion of an IF framework represents a significant instance of plurilateral negotiations. Since Brazil is a key stakeholder in these negotiations, it has a crucial role to support plurilateral arrangements in the WTO reform. Further investigations into this area are needed, but as several experts highlighted, the restructure of the WTO might encompass the consolidation of plurilateral agreement in the negotiation pillar.

First off, it matters to test the hypothesis of the Brazilian contribution to the reform of the World Trade Organization via its leadership in the IF negotiations. In order to achieve that, the author has asked questions on the relationship between Brazil, investment facilitation, and the WTO reform, questions posed to experts in the multilateral trade system field. The first question is the following: "How do you think the negotiation of an Investment Facilitation Agreement by WTO members could change the future of the organization?"

Overall, insights tend to agree that the IF discussions at the WTO are capable of changing the organization. On the one hand, these are plurilateral discussions and thus contribute to promoting such processes. On the other hand, the very nature of the discussions, the flow of investments, constitutes the engine to economic growth and trade, and thus contributes to the benefit of all nations. Regardless, some experts have lamented that the current prevailing uncertainty within the international context could hamper progress.

Chiefly, Brazilian WTO Ambassador Alexandre Parola (2020) argues that the negotiations on investment facilitation could change the future of the organization in two ways. First, the discussion contributes to gradually bringing the investment dimension to the WTO. Even though this is only about investment facilitation, and

not traditional investment issues, it still makes members more familiar with the idea of discussion investment at the WTO. Second, the plurilateral nature of the discussions contributes to increasing the potential scope of future plurilateral initiatives at the WTO.

With regards to the plurilateral nature of the discussions, Paulo Elias Martins (2020) underscores the importance of modernizing negotiation formats at the WTO due to the failure of the traditional method of negotiations. He believes that reaching an IF agreement, as well as other initiatives such as on e-commerce, contributes to consolidating a new negotiation model within the WTO, although some countries still oppose it. He notes that the traditional, broad negotiating format may hardly be feasible anymore for the WTO. Nevertheless, he estimates that there should be a single undertaking on an IFA due to the need for consensus among participating members.

Indeed, a Brazilian diplomat (2020) interviewed has proposed that an IFA by WTO members could signal a future for the organization in two main ways, one substantive and one structural. Substantively, the WTO can reassert itself as the premier economic international organization, dealing with the main pressing issues of the global economic order. Structurally, plurilateral discussions can reorganize the WTO as an umbrella organization with differing agreement networks, bypassing the overly rigid consensus rule. Moreover, this diplomat ponders whether Brazil's role in IF negotiations will give off an important signal that this country is an honest broker for positive change within the organization.

Echoing the diplomat's optimism about the WTO's role internationally, scholar Karl P. Sauvant (2020) stated that "if the negotiations are successful, it would send a signal that the WTO is useful, and that it is alive and kicking. And, for the negotiations to be successful, key countries (like Brazil) need to keep driving them

and stay on the ball for a sustained period of time, while building coalitions with other members."

Tatiana Prazeres (2020) believes that the negotiations for an IF agreement at the WTO have the power to transform the organization due to the nature of what is being discussed. She credits this prominent role of the initiative to its plurilateral status and its capacity to keep the organization active and relevant. Prazeres thus endorses a view similar to that of Pedro Mendonça (2020), who notes that Brazil is not unaware of the possibility of the WTO becoming an organization *à la carte*. Indeed, he recalls that the initial strategy was to go to the lowest common grounds of domestic regulation and avoid more contentious issues. He also remarks that there is a perception that this initiative will prosper if it follows a plurilateral approach.

In sum, Samo Gonçalves (2020) considers it important to remark that trade and investment are two indissociable elements. He thus observes that an investment agreement at the WTO will be able to fill an existing gap in the WTO's system of international trade. Crucially, thereby, he believes in the capacity of this initiative to reduce the frequency of future bilateral investment agreements, in which ISDS and investment protection clauses tend to lose space. Likewise, an interviewed former Permanent Representative of a developing country (2020) remarks that the future of the WTO passes through topics like facilitation and not big tariff agreements. Thus, he argues that the TFA shall henceforth tend to serve as model for new agreements.

In the post-COVID scenario, Renato Rezende (2020) sees investment as a force driving the economic world forward. Indeed, he defends investment facilitation as a means to make sure that investment is still seen as a prominent element of international trade due to the observed recent decrease in global investments. As such,

he trusts that the WTO may benefit from keeping this discussion alive, under terms and conditions that enable movement forward.

In her analysis, Bertha Gadelha (2020) assesses that the WTO has been severely affected by the US pressure on the Dispute Settlement Body (DSB). Thus, an IFA might be an interesting tool to boost investments in the post-pandemic scenario, thus reigniting economies and the natural flow of financial resources between countries, which could indeed play a major role in the restructuring of the WTO itself.

However, not all insights share the same sense of optimism. For instance, Felipe Hees (2020) believes that the future of the organization will not change. Indeed, he argues, the WTO is but a set of agreements under a much broader international trade complex. Thus, he sees the initiative as an attempt to contribute to a specific aspect of the latter, but not one able to change international trade or even evolve into a multilateral agreement, due to current circumstances.

Henrique Moraes (2020), following Hees, is also sceptical about whether this initiative will change the organization and whether that is the purpose of the initiative. Vera Thorstensen (2020), too, sheds light onto the WTO's anachronism with regards to the issues they are trying to tackle, and the organization's dissonance with the current economic order. She bemoans that the negotiations of an IFA by WTO members could not change the future of the organization, which is ever more quickly losing its international relevance.

It appears that most experts agree that the IF discussions at the WTO contain a degree of transformation potential for the organization, mainly due to the plurilateral status of the negotiations, as well as the considerable global relevance of investments with regards to economic growth. Considered by some as constitutive of a WTO *à la carte*, plurilateral negotiations seem indeed to provide the

solution for the failure of the single-undertaking concept, and also of a solid basis for a post-COVID-19 agenda within the organization. The WTO's negotiations would thence tend to focus more on the text about rules of conduct, good practices, and guidance, than in tariff bargaining. Still, more pessimistic opinions have lamented that the future of the organization is uncertain due to the hampering combination of the current negative international context with the WTO's anachronism with regards to contemporary challenges.

7.5. Problems on Paper: Considering IF's Formal Effect on WTO Reform

> *So there has to be reform. What reform, how to reform, is still an open question.*
> (Willy Alfaro, 2020)

This chapter shall now delve into the specific matter of WTO reform, which has been thoroughly developed in a previous chapter. With the objective of further verifying the hypothesis that Brazil contributes to the formal reform process of the WTO due to its leading role in the IF negotiations, select experts analysed whether the IF framework contributes to the aforementioned WTO reform. The author posed the following questions to experts: "To what extent has – or will – the investment facilitation initiative helps to reshape or *reform* the WTO?"

Thaís Mesquita (2020) chiefly reminds us that the debates and negotiations of the IFA are embedded in the larger context of the organization's reform movement. Regarding the negotiating pillar, the reform which is taking place is a flexibilization in the ways of advancing the negotiating agenda within the WTO. There are also reform debates taking place in the fundamental pillars of the commercial regime as, for example, the discussion on special

and differential treatment, development, and the discussion on market economies.

Thus, the negotiation of the IFA implicates the reform of the negotiating pillar. According to Mesquita (2020), 2013 marked the first major reform within the negotiating pillar, embodied by the TFA, which was not only a reform in the sense of reforming the rulebook by bringing the new agreement to it, but also reforming the S&DT model which was negotiated on that occasion. The traditional WTO model for S&DT was no longer used, where flexibilities were negotiated and then applied equally to all developing countries. She mentions that an important reform occurred then, as countries such as China, Brazil, and the United States assumed virtually the same commitments, which was unprecedented at the time.

Brazilian Ambassador Alexandre Parola (2020) thinks that investment facilitation is an important part of the reform of the WTO because it will be a successful plurilateral agreement. According to him, the future of the organization will mostly consist of plurilateral initiatives. However, with specific regard to the IF initiative, an interviewed former Ambassador to a developing country contributing to IF talks (2020) deplored the lack of ambassadors with sufficient energy to push this forward. Undoubtedly, as estimated by an interviewed Brazilian diplomat (2020), the main obstacles to reaching an IFA in the WTO consist of the revision of the consensus rule for reaching new plurilateral agreements.

Similarly, Willy Alfaro (2020) believes that this initiative may influence the WTO's reform process since it confronts the multilateral model of consensus that has been on deadlock for quite some time. It could, therefore, reform the negotiation pillar of the organization. Gabrielle Marceau (2020) trusts that this initiative will certainly contribute to pointing to new rules, new approaches, and ways to not only bring up a consensus, but an option open for all to enter

under the plurilateral model. Samo Gonçalves (2020) agrees with both Alfaro and Marceau: the success of any plurilateral initiatives will most likely have an impact on future WTO negotiations, including the organization's formal process of reform.

Indeed, as argued by Carlo Pettinato (2020), if this initiative is successful, it can show the relevance of the WTO as an efficient negotiating forum that is able to respond to trade-related challenges and shortcomings of our time. Simultaneously, it could also build a strong case for plurilateral agreements as an essential pillar of the multilateral trading system. Thaís Mesquita (2020), too, believes that if joint initiatives, such as the IFA, succeed, there is a very good chance of the WTO fully embracing this plurilateral path as the one for advancing its negotiating agenda. Of course, she realizes that this would not be the only way – there are several other formats of negotiation – and the IFA is but one of them. The multilateral agreement on fisheries, for example, would be another format. Still, this would advance the negotiating legitimacy of plurilateral processes and variable geometry, enabling partners to respect the different moments of the country's priorities, and allowing countries to enter the agreement whenever it suits them best.

Therefore, Thaís Mesquita (2020) concludes that plurilateral agreements or joint initiatives are symptomatic of a major reform of the organization. More deeply, in her analysis, she identifies four types of "novel" flexibilities within the negotiating pillar:

- Firstly, there can be *flexibilities in substance*, which was the case of the TFA, in which stakeholders negotiated what commitments would be implemented and when this would occur, without differentiating between developing or developed countries. Mesquita (2020) highlights that the only difference is that only a developing country could choose which commitment to make.

- Secondly, she argues that it is possible to have *flexibility in composition*, that is, with regards to the format of the group, as, for example, in the Information Technology Agreement and the Government Procurement Agreement.
- A third type of flexibility, according to her, occurs when only one group assumes a commitment, but *all members benefit*.
- Finally, the new flexibility that comes with these joint initiatives, including as the negotiations on investment facilitation, is a *flexibility in the negotiating model*. This refers to the model of advancing the negotiating agenda in the WTO. Mesquita (2020) stresses that this will certainly have a consequence, because at some point it will have to be decided how this new agreement will be incorporated into the system, how countries are going to implement this agreement without disrespecting the MFN principle of national treatment, and others.

Mesquita (2020) thus asserts that the negotiations of the IFA, as well as e-commerce, MSMEs, and domestic regulations, among others, are attempts to shape the future of the WTO.

The appeal of investment facilitation is readily explained by Juan Carlos González (2020), who believes that it is to be seen as a complement to trade facilitation. Thus, investment facilitation provides a tool to economic actors and companies, with concrete and practical elements that facilitate the way they do business, grow and prosper and, therefore, increase the value of the WTO and the multilateral system to its different stakeholders. A WTO staff member (2020) concurs: an agreement on investment facilitation as a big step for the WTO since it is directly linked to trade and could demonstrate that the WTO can effectively respond to the current needs of the members and the private sector. Thereby, investment facilitation follows a different approach – which departs from the

traditional consensus requirement while participation in its process and access to its documents remain open and available to all members.

In sum, Manuel A. J. Teehankee (2020) sees a potential impact on bringing the trade regime and the investment policy regime closer to each other. He also thinks that the initiative can help demonstrate that trade is only a single aspect of development that should be accompanied by the promotion of industrial capacity, infrastructure, and other factors of production with a view to make a national economy more competitive. He draws a parallel between the role of investment as a mechanism to enhance one's trade competitiveness, capacity, and export promotion. The interviewed experts from the ITC (2020) have observed that the IF initiative contributes to maintaining the negotiation and rulemaking functions of the WTO. They note the different approaches that are emerging, such as plurilateral processes, smaller groups, and JSIs. All in all, these serve in a way as an exploration on the reform of the negotiation function itself.

However, Ana Novik (2020) provides more sceptical insights. According to her, the only positive outcome is that it could generate positive global momentum, possibly making multilateral negotiations achievable in the future again. She doubts whether investment facilitation can reshape the WTO since it will not address the main issues being faced, instead only dealing with plurilateral affairs. However, she admits that an IFA would allow the system to have more confidence in plurilateral agreements and thus impact on the WTO's broader and more needed reform. Henrique Moraes (2020) is also reluctant on the impact of the initiative. Chiefly, he thinks that before jumping to conclusions on this topic, it is necessary to analyse how the discussions will evolve and what will happen to the broader policymaking context at the WTO.

Furthermore, Felipe Hees (2020) does not believe that investment facilitation is going to advance the reform process of the WTO because of geopolitical reasons: a reform of the WTO depends on the United States and China reaching an understanding and solving their current conflictual relationship. Vera Thorstensen (2020) also notes that the only way to reshape the WTO is to confront the United States and their blocking position vis-à-vis the WTO. Moreover, she thinks that the WTO cannot escape its inevitable demise because since 1994 the organization has been outdated, and its negotiations irrelevant.

In conclusion, it can be argued that most experts agree that the IF initiative helps to reform the WTO, just as it reinvigorates future prospects for the organization, since it revitalizes the negotiating pillar and consolidates the legitimacy of plurilateral agreements. By creating a positive momentum, the success of plurilateral approach also empowers the WTO's rulemaking function. Not only does it help overcome the deadlock of Doha Round, but it also increases the value of the WTO, and responds to the needs of the members and private sector. Furthermore, by highlighting and reinforcing the deep interrelations existing between trade and investments, a plurilateral agreement on investment facilitation would thus serve to ease trade-related challenges. Nonetheless, some interviewees did express more critical stances regarding the ability of an IF framework to properly trigger progress on the WTO reform. Among the proposed reasons stands the trade tensions between the United States and China, or the American blockade of the organization's core functions and pillars, all of which only serve to accelerate the WTO's irrelevance and outdating.

7.6. Weighing Brazil's IF Reshape of the WTO

I think that for the moment I don't see any prospect of reform.
(Felipe Hees, 2020)

The analysis shall now turn its focus towards the specific position of Brazil within these diplomatic developments. Thus, with the purpose of assessing the hypothesis that the Brazilian role within the IF talks serves to reshape the WTO, the author has examined how Brazil contributes to WTO modernization. Thus, the following question was posed to experts in the field: "How might Brazil's role in the investment facilitation negotiations help to reshape the WTO?"

Overall, insights seem to concur with the hypothesis, by affirming that Brazil has played – and still plays, as of 2020 – a pivotal diplomatic role in these negotiations. Indeed, the country's own ambassador, Alexandre Parola (2020), believes that Brazil has contributed on one hand by bringing the topic of investment to the WTO, and on the other hand by increasing the scope of plurilateral initiatives within the organization.

As reminded by an interviewed Brazilian diplomat (2020), investment facilitation differs conceptually from more traditional approaches to investment rulemaking, because BITs are generally based upon restrictions on the receiving government and binding arbitration. This leads Tatiana Prazeres (2020) to note that Brazil has been an active actor and has managed to show leadership in this process of negotiating an open plurilateral agreement that may evolve to a multilateral agreement. She believes that Brazil thus plays a really important role in shaping the future of trade negotiations at the WTO, if it manages to exercise leadership so that the agreement is effectively materialized with a significant number of participants. In short, the country's soft law approach, which

emphasizes cooperation, bolsters Brazil's credibility as a pragmatic player contributing to the discussions.

Investment facilitation not only creates a new regulatory agenda for the WTO, but Bertha Gadelha (2020) also believes that Brazil avoids the risk of going into policy spaces that are traditionally occupied by other international organizations, such as the OECD. Furthermore, for Brazil, investments in the infrastructure and financial sectors, which promote private sector development, are seen as national priorities, while eligible public sector projects are also considered under the new Pro-Brasil economy recovery program. Thus, IF negotiations add further value to operations financed by investment banks and funds through the provision of concession fees amounts for financing interest rate subsidies, as well as project-related technical assistance. The combination of both external and internal incentives towards the defence of an IF agreement within the WTO will only reinforce Brazil's credibility in the eyes of its peers and other stakeholders.

Crucially, Thaís Mesquita (2020) credits that Brazil's impact on the WTO's reform process must be seen in light of the importance that joint initiatives, such as investment facilitation, have in reshaping this organization. She mentions that the fact that Brazil is leading at least one of them, namely investment facilitation, makes the country's role definitive, alongside other countries that have taken a lead in reshaping the WTO. A senior Ambassador of a developing country contributing to IF discussions (2020), when asked, argued that this reflects Brazil's diplomatic strategy within the WTO since MC11, when it recognized that issues such as e-commerce and SMEs had arisen, and thus new working mechanisms to work on post-DDA issues were needed.

On this matter, Pedro Mendonça (2020) and Tatiana Prazeres (2020) each argue that Brazil's intention was to open a new front

that could be non-adversarial, thus enabling new discussions in the WTO. Indeed, Brazilian diplomat Mendonça (2020) observed that

> sometimes the WTO may look like a trench war. Everyone has been in the same position for decades, standing still looking at each other's faces without moving. We wanted to do something that would break the other side, open a new front that could be non-adversarial, that would not be changing market access, while promoting a positive sum game, as much as possible.

Henrique Moraes (2020) thinks that a successful result in the investment facilitation would contribute to changing this "trench war" perspective of WTO negotiations. He believes that it could show that the WTO remains a forum where solutions can be conceived, and, most importantly, that it is possible to achieve results that do not pit home and host countries of investment against each other.

With regards to the technical aspect of an IFA, Samo Gonçalves (2020) understands that as Brazil is one of the major players of these negotiations, both in the plan of ideas and in the negotiating plan, the result of the agreement will refer, in an important measure, to the Brazilian model of bilateral IF agreements. This model, the CFIA, as elaborated upon in Chapter 6 of this work, focuses on three major pillars: mitigation of risk for investors, institutional governance and cooperation, and a facilitation agenda. Gonçalves (2020) then notes that Brazil's change of behaviour from pro-multilateral to pro-plurilateral may encourage other countries to follow the same route, thus promoting structural change in WTO negotiations.

However, certain experts remain sceptical about the potential of Brazil to reshape the WTO via investment facilitation. For one, Vera Thorstensen (2020) does not believe that an agreement is possible at all. In parallel, Felipe Hees (2020) believes that it is very pretentious to think that such an agreement has the potential to reshape the WTO, although he concedes that the success of the

initiative could show that the negotiating side of the WTO is alive. Hees (2020) understands that the plurilateral model is the only negotiation structure that has any prospect of advancing in the present moment due to the decline of multilateralism. He recalls that the plurilateral approach used to be the norm until the Uruguay Round, following which multilateralism took over. He believes that returning to plurilateralism is natural, as is the conversion into a multilateral model when a more opportune moment arrives.

In short, most interviewed experts agree that Brazil's role in the IF negotiations might contribute to WTO reform. Brazil's change of behaviour may also encourage other countries to adopt plurilateral agreements and its model of negotiating. Moreover, the Brazilian role contributes to launch new discussions and to maintain the WTO as a forum where one is able to conceive solutions. Generally, Brazil's pragmatic behaviour underlines that the negotiating side of the organization is still alive, and thus Brazilian delegates may continue to guarantee this country's leadership in the process and strive to successfully materialize the Agreement with a significant number of participants.

7.7. Final Report: Brazilian Performance on Investment & Reform

> *So one of the objectives was to show that no, of course it is possible to make a relevant agreement on the matter, to make this topic positive.*
> (Felipe Hees, 2020)

In this section, the discussion regarding Brazilian performance in relation to the issues of IF and reform in the WTO is extended to issues present in the current scenario. In general, some perspectives on the diplomatic performance of Brazil are presented, considering the current scenario and the situation the world faces due to the

pandemic crisis, and the greater probability of having a scenario in which IF will advance together with modernization of the WTO.

As argued throughout this thesis, IF initiatives can be seen as a win-win situation, in that they are desirable for the country as well as for other WTO members. In this sense, Brazil should, therefore, insist on keeping the approach of IFD, which shall reveal the resilience of the economic order during the COVID crisis. Moreover, this could test the permeability of the system. In particular, the Brazilian proposal, below, should be reaffirmed as essential to the future agreement of the negotiation process (WTO, 2019):

> **SUBSECTION I** - Special and Differential Treatment Provisions
>
> **Article 15 – General Principles**
>
> 1. The provisions contained in Articles 1 to 14 of this Agreement shall apply to developing and least-developed country Members in accordance with this Subsection.
> 2. Least-developed country Members shall not be required to implement the provisions of Sections III, IV and V of this Agreement. Least-developed country Members are nonetheless encouraged to implement these provisions to the extent compatible with their special economic situation and their development, trade and financial needs. Upon graduation from least-developed country status, the schedule of implementation of the provisions of this Agreement established under Article 16 shall apply to the graduated Member.
> 3. Where circumstances allow for the phased introduction of new requirements, procedures, standards and measures relevant to investment, Members shall consider the longer phase-in period for the applicability of such measures in

sectors of export interest to developing country Members, and in particular to least-developed country Members.

Article 16 – Schedule of Implementation for Developing and LDC Members

1. Provisions under Sections I and II of this Agreement shall be implemented upon entry into force of this Agreement.
2. Provisions under Sections IV and V of this Agreement shall be implemented within 4 (four) years after the entry into force of this Agreement; and
3. Provisions under Section III of this Agreement shall be implemented within 8 (eight) years after the entry into force of this Agreement.
4. Notwithstanding the implementation period specified above, developing country Members shall strive for early implementation of provisions and, should they not be in a position to do so, seek to implement such provisions in a progressive and scheduled manner in the transition to electronic procedures only.
5. Developing country Members in a position to fulfil the provisions under sections III, IV and V in a shorter timeframe shall notify the Committee referred to in article 6 the revised timeframes for the implementation of the provisions.

Article 17 – Technical Assistance

1. Developed country Members, and to the extent possible, developing country Members in a position to do so, shall provide technical assistance to developing country Members and in particular to least-developed country Members, upon request and on mutually agreed terms and conditions.

2. Technical assistance shall be aimed, inter alia, at developing and strengthening the capacities needed to fully implement the obligations arising under this Agreement.

Article 17 guarantees that developing countries receive technical and capacity-building assistance. As discussed before, Axel Berger (2019) has released research on IF measures implemented, or in the process of being implemented, by WTO members. This research reveals that least developed countries (LDCs) are the ones that least adopted IF policies due to the lack of knowledge or capacity to do so. It also shows that LDC are the countries that would most benefit from a multilateral IF agreement, since the WTO would provide them with the necessary technical assistance to implement measures that they are currently unable to adopt alone.

Brazilian delegates should use their best endeavours to attract more developing countries into the IF negotiations. It is important to note that the presence of specialists at IF negotiations is important, especially coming from the capital of developing countries and of lesser relative development. According to Anabel Gonzales (2020), this active participation would bring two benefits: the interests and needs of LDCs would be better reflected in the wording of the agreement, and its implementation would be faster and more effective, since the participation of these experts in the negotiations would increase their degree of engagement and commitment.

For promoting the 2030 agenda, Brazil should also maintain its suggestion about reducing red-tape inefficiencies: (i) Electronic documents; (ii) Transparency; (iii) National focal point; (iv) Notification; (v) Single electronic window; (vi) Processing of applications; and (vii) Regulatory environment. Furthermore, Corporate Social Responsibility is core to guarantee human welfare. The Brazilian IF proposal of CSR mentions the phrase "sustainable development" twice.

Brazil may also endorse provisions about the dissemination and use of relevant internationally-agreed instruments such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises and related due diligence guidance. These link up the future IF agreement with SDG-based texts and merge the objectives of the WTO with the spirit of the UN.

Brazilian diplomats ought to reaffirm the country's plan to create an IF committee at the WTO. This committee would enable countries to cooperate and coordinate periodically. Regular meetings may be established to encourage cooperation between members so that LDCs can learn from the best practices of developed members in the matter of investments. This spirit of cooperation should be central to the agreement, and members may choose to help countries that have difficulty implementing certain measures of the agreement. Furthermore, the Brazilian Mission may support anti-corruption provisions, enforcing penalties when necessary.

It is worthwhile to note that a few further topics should be on the table for WTO discussion (SAUVANT & STEPHENSON, 2020): i) establishing smart incentives inventory; ii) creating a special category of "Recognized Sustainable Investor"; iii) facilitating access to business visas (green channels); (iv) providing project evaluation assistance to evaluate large-scale investment project proposals; (v) adopting a "Silent Yes" mechanism for administrative approvals; (vi) fostering the creation of databases of local suppliers and supplier-development programs; (vii) creating mechanisms to facilitate coordination on investment policy and measures among government agencies, between national and subnational institutions, and between the government and the private sector (i.e., horizontal, vertical and public-private coordination); and (viii) fostering voluntary peer reviews of the implementation of a framework on IFD.

This analysis suggests that Brazilian delegates shall encourage negotiations without countries that are against the IF joint initiative. India, South Africa, and Indonesia do not participate because they stick to the failed Doha Development Round and the obsolete single-undertaking principle. The United States does not collaborate, either because the discussion was launched by China, because they have no interest in it, or because they see no need to multilateralize this topic. More research is needed to address these countries' positions.

7.8. The Modern Mess: Concluding Remarks

> *We need to see how the investment facilitation discussions will evolve and, more importantly, what will happen to the broader policymaking at the WTO.*
> (Henrique Moraes, 2020)

At the time of writing this thesis, there are some meetings scheduled between WTO members for the first half of 2021. Specifically, the following meetings are planned: (i) On April 30, an Intersessional meeting; (ii) From May 11 to 12, a negotiation meeting; (iii) On June 1, an Intersessional meeting; (iv) From June 15 to 16, a negotiation meeting; (v) On July 2, an Intersessional meeting; and at the end of the first semester, a negotiation meeting from July 12 to 13. As highlighted throughout this chapter, it appears that the discussions have already addressed several important aspects of the IFA, with the participation of several member countries of the WTO. It is expected that the negotiations will continue to evolve, and that Brazil will continue to contribute to the progress of discussions on the agreement.

FDI flows are important for countries' economic growth. Such flows can contribute to the development of economies and boost the world economy on a long-term path of prosperity. In this sense, IF initiatives have the potential to bolster this flow among

WTO members. More than that, as the interviews reported in this thesis demonstrate, most experts believes that, together with the IF initiatives, there is potential to trigger changes in the WTO, allowing modernization and contributing to its improvement as an international organization that drives global trade.

Based on the interviews, one could argue that there is evidence in favour of the argument of adopting plurilateralism as a valid path for modernization of the WTO. When observing the responses, it appears that this position agrees with a large number of experts interviewed. In addition, regarding the relationship between investment and trade, one important argument is that the IF can generate a favourable environment for the approximation of countries, boost negotiations, and contribute to overcome unresolved issues in the WTO.

Regarding Brazil, the country's diplomatic importance within the organization is almost a consensus. And for this reason, when speculating on possible reform and IF guidelines, the thesis addresses both themes, considering that the country would remain active, and favour pragmatically the investment initiatives and the modernization of the organization. Even when considering the challenges facing contemporary times, such as the ongoing pandemic, experts point to the fact that opportunities may arise as countries begin to accommodate the effects of the crisis. Since an economic recovery will be necessary, there may be an opportunity to strengthen negotiations on major changes to the WTO, as well as to strengthen IF initiatives. The possibility of advancing towards plurilateralism could benefit pragmatic approaches such as Brazil's, and could favour further dialogues within the WTO.

When making a joint analysis of the issues listed in questions 7, 8, 15, and 17, the chapter presented considerations as to what would be the most likely scenarios in the future with regard to the reform of the WTO and the enhancement of the IF negotiations. In general,

the possibility that the two questions will continue to advance is something believed by most specialists interviewed. Nonetheless, the analysis indicates that although far less likely, scenarios in which WTO reform does not progress or that IF does not advance could happen. Even less likely would be the scenario in which none of the issues advance and there is no modernization of the WTO, nor is there any continuity in the negotiations on investment. In this sense, based on the idea that Brazil would continue to operate as it has been operating with the initiatives, most experts indicate that there is room for modernization of the WTO together with the relationship between investment and trade within the scope of the organization, under the strengthening of the plurilateral paradigm as the main alternative. To advance these negotiations, the chapter emphasizes that it is also necessary to consider central issues to be resolved in the future, such as considering the important issues raised by the 2030 development agenda and the SDGs. In this sense, the chapter emphasized the fact that Brazil may remain active and favourable to the IF negotiations, maintaining its leadership position and pragmatic proximity to the members favourable to the initiatives, seeking to increase cooperation with them.

8. CONCLUSION

8.1. The Trouble Ahead: Future Prospects & Challenges for WTO Reform

In the context of the WTO, how important is this agreement? It is part of a WTO revitalization agenda to show that the WTO is a relevant and central forum in the discussion of trade issues in not only traditional disciplines, but also new ones.
(Paulo Elias, 2020)

As previous chapters have shed light on the role of Brazil in the WTO, as well as on the IF joint process, this final chapter shall attempt to elucidate more general aspects of WTO reform by evaluating the importance of reaching an IFA for the reshaping and future of the WTO as an organization. Insights on the issue would enable the author to sketch future scenarios for the multilateral trade system, and thus the final query directed to the experts was: "What are the prospects for WTO reform – and the main challenges it faces?"

Brazilian WTO Ambassador Alexandre Parola (2020) observes that WTO reform is a concern shared by most member countries. However, he believes that there are three conflicting categories of views within the organization. First, there are those countries that consider the current system to be at their advantage, and therefore refuse to change it. Second, there are some countries that want to exploit as much as possible the current system's loopholes before they are willing to change it. Thirdly, there are those countries that understand the current system's failures and wish to reform it. Overall, this contributes to a deadlocked situation, according to Parola, and without reform, he argues, the WTO is on the road to irrelevance.

When it comes to Brazil, in this situation, the Ambassador believes that the country benefits from several factors that increase its significance in the discussion. On the one hand, Brazil is a big economy, comprised of 200 million people; on the other, it is a developing country that is willing to reform. Thereby, Brazil signals to other developing countries to understand its position and change accordingly. One example, cited by Parola, is Brazil's stance shift on Special and Differential Treatment: at first, countries were confused; second, they attempted to understand; finally, they understood Brazil's decision.

Still, Celso Pereira (2020) thinks that the prospects of WTO reform are rather gloomy. Indeed, given the current opposing forces in the international arena, he infers that no major breakthroughs will occur unless some form of understanding is achieved between the USA and China, as it has already been established by other experts, such as Felipe Hees (2020). Indeed, Hees (2020) believes that the multilateral system entered a period of hibernation after the 2008 crisis, as countries were debating the new place of China in the world economy. Additionally, Hees doubts that a plurilateral initiative will bring change without US participation.

While conceding that the reshaping of the WTO depends on geopolitical factors that go beyond the organization, Henrique Moraes (2020) argues that, until the outbreak of COVID-19, the challenge of the WTO was to accommodate different models of capitalism. However, after the pandemic, Moraes questions whether the very nature of international trade is subject to change. Indeed, Gabrielle Marceau (2020) claims that if the WTO fails to reform, it will not survive, as currently one of the big players can block the budget to threaten the system. Thus, she hopes that the aftermath of the COVID-19 pandemic will stimulate more cooperation between member countries. However, new issues may arise in the aftermath of the pandemic, Pereira (2020) concludes, and thus the next Ministerial Conference of the WTO will have to face a number of hurdles in order to be significant at all.

On a similar note, Juan Carlos González (2020) notes that the present situation of the WTO must be observed in the context of the current crisis of multilateralism. He believes that countries lack a common sense of purpose, as has been previously observed in history, such as after World War II, or after the fall of the Berlin Wall and the downfall of communism. As with Marceau (2020), González hopes that the post-COVID-19 scenario will bolster new understandings on how countries can cooperate, including in the trade area.

José Alfredo Graça Lima (2020) goes even beyond the crisis of multilateralism, expressing pessimism about the current situation of the WTO, which is further aggravated by a pandemic which has provoked both supply and demand shocks in the global economy. Lima predicts that the post-war international order is threatened by a rise in protectionism, the race for technological advances, the confrontation between economic models, and issues of national security. In this scenario, the scholar considers multilateral reform essential to preserve peace and ensure economic growth. He calls for

private agents to demand positive action from their governments, to promote dialogue between nations and to improve the well-being of their populations.

Due to these political reasons, an interviewed Brazilian diplomat (2020) affirms that the prospects for WTO reform may revolve around the idea that the organization needs to be more flexible, that is, to gain flexibility from the single undertaking/consensus rules. He poses that a Tokyo Round approach would serve to benefit negotiations. Similarly, Vera Thorstensen (2020) expresses doubts about the current multilateral model of the WTO, instead praising the plurilateral model of rulemaking proposed by organizations such as the OECD, for example. She believes that WTO principles could be used to tackle most complicated issues with a group of likeminded countries within a plurilateral process. Furthermore, she claims, such principles could be then exported to partner countries, similarly to how the European Union obliges its partners to follow its own standards through the sheer size of its economy. In the case of Brazil, for instance, Thorstensen says this method could help the country modernize, and perhaps join the OECD as well.

Of course, most experts agree that the WTO must reform; as Willy Alfaro (2020) argues, in its current state, it is paralyzed. This is also the view, for instance, of the former DG of the WTO, Roberto Azevêdo. However, Alfaro also fears that in the end, some members have more urgent priorities than trade, and he thus posits that WTO reform is still an open question.

It seems, then, that most experts agree that the future of the multilateral trade system is uncertain, even if countries should reach a successful agreement on the issue of investment facilitation. Some experts expressed doubts over whether the escalating conflict between the USA and China will be resolved soon. The COVID-19 pandemic brought new uncertainty into the fore with regards to its

aftermath, in which new challenges for the multilateral system, as well as global trade flows, can arise. Finally, there is a lack of clarity about the ability of countries to positively preserve multilateral institutions as they shift towards a changed world order with new key players.

Nevertheless, some scholars did cite reasons to remain hopeful. For instance, the post-pandemic scenario could also lead to a new common sense of purpose among nations, furthering international cooperation. Moreover, it is possible that a shift to greater plurilateralism can benefit pragmatic countries such as Brazil that desire specific gains in areas of interest. Thirdly, the open nature of the discussions, as well as the novelty of the situation, provide an opportunity for private agents to engage in a renewed dialogue with their governments, mindful of the goal of shifting nations' priorities towards greater well-being and a more sustainable world order.

8.2. Fork in the Road: The Possible Scenarios Ahead

> *We will see in the period after the coronavirus that developed countries will not have too much money to help and this could be another kind of obstacle in the future.*
> (Ana Novik, 2020)

Based on the answers to questions 7, 8, 15, and 17, this section analyses possible future outcomes regarding the advancement of investment facilitation, WTO reform, and the diplomatic position of Brazil on these issues. According to interviewees' answers, there may be different implications for future practice, and continued efforts are needed to promote the revival of the multilateral trade system and maintain the dynamism of Brazilian diplomacy. To that end, this section deals with possible scenarios that Brazil can contribute to strengthen the multilateral trade system, the WTO, and IF initiatives. In this sense, the role of Brazil is analysed in

terms of its participation in the construction of new rules in the WTO context.

Taking into consideration that Brazilian activity at the WTO has been consistent for more than 20 years, conjecture regarding possible scenarios in relation to WTO and investment facilitation makes sense, and it is expected that the country's diplomats will be involved with future events, as has been the case in both past and present. In this regard, descriptive data was generated for two variables – the reform of the WTO and the success of IF negotiations. The WTO reshaping is deemed to produce two possible results, namely, success or failure. In the same vein, IF negotiations are thought to either reach an agreement or not.

Considering all possibilities, the future is likely to have one of four scenarios. In the first scenario, WTO member states agree to reform the organization and revive the significance of the multilateral trade system, as well as reach an agreement on investment facilitation that provide sustainable investment flows and guarantees the reinforcement of multilateralism, free trade, and investment growth. In the second scenario, WTO member states conclude an organizational modernization that allow the better functioning of the three pillars (negotiations, transparency and dispute settlement); nevertheless, the joint IF initiative faces a deadlock which impedes the flow of investment worldwide. In the third scenario, WTO member states block WTO reform and keep it entrenched, while they reach an agreement on investment facilitation that permits the fluidity of investments and proves that plurilateral agreements are possible. In the final scenario, WTO member states hinder modernization of the Organization and blockade the IF initiative, thus jeopardizing the whole multilateral trade system and the concepts of free trade and investment for development.

According to the interviews mentioned in the previous section, the answers to question 7, "How do you think the negotiations of an Investment Facilitation Agreement by WTO members could change the future of the organization?", indicate that scenario A may be more feasible than scenario B, in that it considers WTO modernization without investment facilitation. It seems that the plurilateral approach on investment facilitation is vital to deal with the deadlocks generated by multilateralism and the single-undertaking principle. Based on question 8 – "How might Brazil's role in investment facilitation negotiations help to reshape the WTO?" – most experts believe in scenarios that consider the continuity of IF initiatives, mainly in conjunction with the diplomatic leadership of Brazil. In this sense, both A and C scenarios may be feasible, but A is more likely, since the adoption of plurilateral paradigms may contribute to WTO modernization. The Brazilian leading role on investment facilitation is believed to be a possibility on enhancing modernization of the WTO and contributes actively to discussions surrounding the organization.

As the answers to Question 17 – "What are the prospects for WTO reform – and the main challenges it faces?" – indicate, there is a degree of uncertainty on whether the modernization of the WTO is going to take place in the future, which impacts WTO reform prospects. In this sense, most experts empathize that there are several challenges to avoid scenarios C and D. Those challenges can be seen in two different categories. On one hand, it is important to take global economic issues into account, such as the escalation of disputes between the US and China, and more recently the economic recovery and future discussions in the post-pandemic era. On the other hand, there are difficulties related to the WTO negotiation model, and past experiences of failure on important issues for the organization and for WTO member countries form still a challenge to be overcome. Nonetheless, experts believe in

general that there is a window of opportunity to new dialogues that may allow advancements in WTO modernization and reform. Thus, scenarios A and B seem to be feasible possibilities in which Brazil's pragmatism – and leadership – within the WTO is perceived as an important tool to advance in modernization.

Question 15 asked "To what extent has – or will – the investment facilitation initiative helped to reshape or reform the WTO?" The answers to this question have shed light on the direct link between the IF initiative and WTO reform. In general, most experts evaluate the IF model as positively reshaping the WTO, mainly due to its impact on the negotiation pillar. Hence, the positive moment generated by the implementation of investment facilitation indicates the feasibility of scenario A. Nonetheless, the responses show a certain degree of uncertainty, as some interviewees argued that the IF implementation would not necessarily lead to WTO reforms; in this case, scenarios B, C, or D may be feasible in the future.

Summarizing the ideas according to the answers and the feasibility of the scenarios, and considering that Brazilian diplomatic involvement is a consensus among experts regarding investment facilitation and restructuring of the WTO, the evidence indicates that scenario A is the most likely scenario. In this sense, responses indicate that it is quite credible to continue the plurilateral model reinforced by the investment facilitation and that the reform of the WTO would take place when adapting to these more recent discussions within WTO forums. Nonetheless, it is important to mention that the evidence indicates that some experts have options in which the investment facilitation may not advance as in scenario B, even as the structure of the WTO evolves, or even without having any type of reform as in scenario D in which neither reform nor investment facilitation would advance.

In addition, the latest developments from a global point of view may favour IF discussions, as the current global response to the pandemic crisis may favour plurilateral initiatives and impel IF discussions (WOLFF, 2022). In this case, although less likely, scenario C may occur, and the IF negotiations will proceed even without major reforms in the WTO.

8.3. Le Grande Affaire: Summary

> *What this agreement can do for Brazil are qualitative improvements in the business environment, because the investor considers a number of factors in their decision to invest*.
> (Paulo Elias, 2020)

Based on the perspective of investment facilitation and reform at the WTO, this thesis addressed important theoretical issues in the development of IR studies, such as the realist and liberal perspectives. Considering limitations identified in the literature, the constructivist perspective is presented and justified due to its satisfactory applicability to the object of study. In addition, other theoretical perspectives are referred to as they relate to the IF initiatives and WTO reforms, such as variable geometry, cooperative models, and game theory. In the same line of reasoning, theoretical questions regarding hegemony and international regimes are also presented, as well as the notions of soft power and hard or soft rules. Qualitative methods and historical dimensions of the methodology in line with the constructivist perspective were employed. Finally, the methodological question related to data collection through 24 expert interviews is also presented; both the questions asked, and the selected interviewees, are identified in detail.

At first, the relationship between trade and investment, as well as its historical development, is outlined. Considering this

historical perspective, the analysis then reviews in depth the current reformation process within the WTO. While putting into political and economic context the process itself, it then thoroughly explores how the crisis affects each of the three main pillars of the organization: the Dispute Settlement Pillar; the Monitoring and Transparency Pillar; and the Negotiation Pillar, which is deemed the most essential. Moreover, the text argues that thoughtful reform of the Negotiation Pillar may take priority over other efforts. Most crucially, reform entails a reconsideration of the single-undertaking and consensual decision-making pillars of the WTO, and thus a reform to GATT traditions as has been observed during the Tokyo Round, which is put forward as a model for consideration. Overall, the proposition is that between irreconcilable interests between the USA and China, and a myriad of other conflicts of interest between developed and developing nations, IF talks embody a breath of fresh air that could bolster the renewal of the Negotiation Pillar.

One of the main themes of this thesis analysis is the relationship between Brazilian diplomacy and the WTO, and its capacity and influence in terms of proposing changes in the organization's structure, as well as its positioning over time and facing issues relevant to the country's economy and its commercial interests. In this sense, the thesis aims at providing a general analysis of the Brazilian diplomatic history at the WTO, comments on main WTO issues from a Brazilian point of view, and notes its stance on topics such as agriculture, fishing, SPS, electronic commerce, and the TFA. In general, Brazil's posture in relation to the main difficulties that developing countries face due to existing WTO limitations is emphasized.

One of the issues of greatest interest is the role of investment facilitation as both a means to revive and modernize the WTO, satisfy the ever-increasing investment-related needs of developing countries, and deal with global challenges such as the rise of

nationalism or climate change. In fact, the thesis assesses investment facilitation as a novel approach to investment rulemaking, by avoiding contentious issues through increased pragmatism. The current state of IF negotiations is then laid out to provide a clear picture of negotiation prospects. For instance, the analysis assesses the impact of investment facilitation on other plurilateral Joint Initiatives, such as e-commerce, as well as today's main obstacles to a successful agreement on a future IFA at the WTO. Crucially, this section also examines the predominant role of developing countries in the negotiations, as they appear to break with a long tradition of developed country dominance within the negotiating pillar of the Organization. The role of China in this matter is therefore closely examined. Finally, the analysis ties IF to international investment needs, thereby contributing to the achievement of several SDGs, as well as increasing global welfare. Hence, as Carlos (2020) points out:

> Investment facilitation could be seen as a complement to trade facilitation. As in the case of trade facilitation, it could provide economic actors/companies with a concrete and practical tool that eases for them the way they do business, grow, and prosper, and therefore it would increase the value of the WTO and the multilateral system to its different stakeholders.

One of the objectives of the thesis was to analyse the following premise: Brazil can be considered a leading actor in investment facilitation at the WTO. In fact, the premise is linked to the main research question at hand: Can Brazil's protagonist role concerning IF negotiations contribute to reshaping the WTO? By interviews with experts, as well as a historical analysis of the developments of the IF negotiations, it is concluded that Brazil has so far significantly contributed to guide the shaping of the current Joint Statement on investment facilitation. Considering that such plurilateral processes form the core of the WTO's present transformations, the analysis

reaches the conclusion that thanks to Brazil's acceptance to negotiate investment-related treaties, the country has thus embraced the idea of multilateralizing its previously bilateral IF model. In sum, this led to the Brazilian proposal of IF text at WTO in 2018, and the country's active participation in the IF discussions. Overall, as it gathered support from domestic governmental actors and WTO members, Brazil has been acknowledged by other countries as one of the leading players in the negotiations.

To deepen the discussion on WTO reform, investment facilitation, and Brazil's participation in both processes, the thesis considers the answers to four related questions asked to the experts. The first one gauged opinion about how IF discussions can contribute to WTO reform. Then, the present work investigated the opinion about the extent of this possible impact. Thirdly, it examined to what extent the role of Brazil can contribute to changes in the WTO via IF. Finally, the investigation captured opinions on the reform prospects in the WTO, and the main challenges that arise in the opinion of the experts. Based on these issues, the thesis analysed possible scenarios for the future and what would be the easiest scenarios in terms of reforming the WTO and advancing investment discussions. Finally, considering the main challenges for the WTO evolution, the thesis highlights issues in which Brazil would be involved to continue reform and IF talks.

8.4. Core Claims: The Main Message

> *So I think that these negotiations are decisive and definitive in indicating what the future of the WTO will be.*
> (Thaís Mesquita, 2020)

This thesis has founded itself on the conduction of interviews with experts from the fields of academia, diplomacy, and policymaking. It has also made use of confidential documents such as embassy

telegrams, notes, and other tools of communication accessed through this author's status as a member of Brazil's diplomatic corps in Geneva. Moreover, the author has sought to combine personal research with professional experience to obtain unique insights that are inherent to the combination of both personas.

In sum, this work has delineated its efforts though the establishment of several research question and hypotheses that have guided the author throughout his reflection. The next sections shall therefore summarily answer and further develop these research questions, which concerned the following issues:

- Question #1: *What International Relations theories capture current intergovernmental discussion on WTO reform?*
- Question #2: *Why and how has Brazil's role within the WTO gained prominence over the last two decades?*
- Question #3: *How has Brazil's technical expertise with investment facilitation matters evolved and contributed to the country's influence within the plurilateral negotiations?*
- Question #4: *Can the Investment Facilitation on Development negotiation achieve an agreement and bolster the role of Brazil in WTO survival?*
- Question #5: *To what extent does Brazil's growing role and influence in the WTO reform process also reflect the growing leadership of developing countries in the system and their more outward-looking and proactive multilateral trade agenda?*

As it touches upon the end of its detailed account of Brazil's role in both the IF negotiations and WTO reform, this analysis can summarily address the following main messages:

- Brazil's role in the discussions can be equated to that of a pragmatic developing country that seeks to reinvigorate the

organization's Negotiation Pillar by going beyond – without necessarily neglecting – the traditional DDA themes.

- The plurilateral nature of the IF negotiations has contributed towards increasing its dynamism, and enabled Brazil to act as a mediator between diverse interest groups and blocs (such as China and the European Union), therefore delineating the terms of the discussion.
- Brazil's pre-existing experience with bilateral investment facilitation treaties (coined CFIA) has reinforced the country's authority with the subject matter and enhance its role as an agenda-setter within investment facilitation talks.
- As a dysfunctional organization, the WTO has suffered from lacklustre progress across a wide variety of agendas. However, by striving to restrict the discussion to non-contentious areas, Brazil has ensured the potential of IF talks to achieving an agreement among members, therefore promoting progress and change.
- As an ongoing process, the reform of the WTO is subject to change from a diverse set of factors. Thus, by promoting the achievement of an IFA within the Organization, Brazil has indirectly contributed towards the positive and pragmatic reform of its Negotiation Pillar.

8.5. Weighing the Scales: Assessment of Hypotheses

> *But the main anchor or pillar is that they all exert an effort to have an open and inclusive discussion, welcoming all members to come in when they want, sit in, listen.*
> (Manuel A. J. Teehankee, 2020)

To expand upon the core messages, this section shall henceforth provide synthetic answers to its initial hypotheses and research

questions. These answers will draw upon results and insights from all chapters. Afterwards, it shall explore future prospects for research, as well as possible remaining gaps within the literature.

8.5.1. What International Relations theories capture current intergovernmental discussion on WTO reform?

All the IR strands discussed in Chapter 2 have made significant contributions to this thesis. Indeed, the analysis has assessed both the schools of Realism and Liberalism, as well as the historical developments that have led to their creation. Such historical developments are well known – the first and second world wars, the Cold War – and thus attest to the prominence of these schools in our discipline. Furthermore, this thesis has considered individual theories or ways of thinking that are constitutive of the schools of thought, such as game theory, decision-making theory, hegemony theory or international regime theory. Notions such as that of soft and hard power, as well as soft and hard rulemaking, have also been explored in depth. Overall, these tools have proven essential to demonstrate Brazil's leading role within the current IF talks at the WTO.

These elements notwithstanding, constructivism has truly provided the most essential perspective with regards to capturing the current intergovernmental discussion on reforming the WTO. As Chapter 2 demonstrated, constructivism is particularly useful because it calls into question the very structure of modernity, from the immutability of global power relationships to the definition of national self-interest as inexorable will-to-power. Moreover, constructivism re-examines these same structures under a procedural lens, with power relationships being the outcomes of actual practices and processes, and self-interest constantly redefined by decisionmakers, politicians, diplomats, etc., as well as what Pierre

Renouvin called the "deep forces" that power the "great movements of society" – culture, identity, norms, and rules.

It is when combined with the significant influence of historical analysis as well as with rich insights by experts from the field that constructivism has reached its greatest potential within this work. In fact, as elaborated in Chapter 2, by adopting the constructivist point of view, the analysis has obtained the necessary tools to delve into the intricate intersubjectivity that defines diplomatic work in Geneva as well as negotiations such as the IF talks. In other words, the constructivist approach proved to be much better suited to understand the perspective of the individuals – diplomats, academics, politicians – that compose and shape the negotiating processes of the WTO daily. To the degree that these very professionals think and act in accordance with their own favoured set of theories and interests, the constructivist school of thought allows us to take those into consideration, as a constitutive factor in the social and scientific construction of reality. According to Jean-Baptiste Duroselle, it is this subjective reality that constitutes the makings of historical change, a notion which has served as basis for this thesis's assertions.

Finally, the constructivist approach has enabled this work to better delineate and define Brazil's role as an active stakeholder in the IF negotiations, and by doing so, managed to join the "common character of the world" with the "subjectivity" that interprets it, as aforementioned works by Hannah Arendt remarked. Without dismissing subjectivity as an obstacle to positive science, the theoretical analysis has emphasised its potential as a contributor to better understanding an environment – WTO diplomacy – characterised by interpersonal exchange.

8.5.2. Why and how has Brazil's role within the WTO gained prominence over the last two decades?

Chapter 4 has carefully elaborated upon Brazil's growing role and influence within the WTO over the past two decades, as it became a central pillar of global trade. Indeed, although over the last few years the WTO has found it difficult to move forward with negotiations in its traditional format, Brazil was one of the important players during the Doha Round negotiations, and even came to become an agenda-setting country thanks to the skilful work of its diplomatic corps. With regards to the WTO, however, the 2008 crisis has further aggravated the scenario, making negotiations more complicated due to the retraction of some member countries. Nevertheless, the election of Brazilian Roberto Azevêdo as Director General of the WTO (and his performance) has been emphasized as a landmark event for Brazil in the Organization, enhancing Brazilian diplomatic leadership in international trade, as it is believed that election as a DG reinforces the centrality that one country enjoys within WTO negotiations.

As has been established, from the 1990s Brazil started to endeavour towards a more open economy, intensifying its trade flows globally in the process. Simultaneously, the country experienced strong growth rates, having emerged from a difficult economic situation in the 1980s. Inevitably, as the country's economy began to devote more attention to international trade, it is unsurprising that it also began to push for better and more pragmatic gains within the WTO.

Overall, Brazil's diplomatic efforts helped generate greater democratization in the WTO's decision-making process, due to the expressive negotiating projection of developing countries. That began mainly with the creation of the Agricultural G20 in 2003. From then on, Brazil's role has only increased in prominence, despite setbacks

suffered by all members jointly during the GFC, which strongly slowed the pace of the liberalizing spirit of the multilateral system, but also nurtured dynamism among emerging economies that wished to enhance the negotiating process enshrined by the Doha Round. Moreover, while the DDR was eventually weakened, the negotiation of bilateral, regional, and plurilateral trade agreements emerged nevertheless as an alternative way of opening markets or advancing trade rules between groups of countries. An interesting feature of these agreements is to allow negotiation of specific interests of the participants, responding to the logic of economic complementation and minimizing the possible drawbacks on sensitive sectors.

Investment facilitation as a negotiating process within the WTO emerged from that trend of plurilateral agreement proliferation. Undoubtedly, the author has confirmed throughout this work that Brazil's role as both a technical authority on IF matters and a prominent negotiating partner within the WTO has contributed towards bringing "new themes" to the fore of the organization, while simultaneously preserving the importance of pro-development strategies for the multilateral trade system. Indeed, the Brazilian position presents the particularity of being both in favour of development-focused initiatives and being not opposed to going beyond the deadlocked DDA. As has been shown, this position contributed to making Brazil a pivotal country between strong member partners such as China, which favours a post-Doha agenda while harbouring a similar position vis-à-vis the Doha themes, India, which refuses to move forward with new themes before achieving concrete gains on Doha issues, and the US, which prioritizes advancing its own interests in new themes such as e-commerce.

Thus, all of the aforementioned elements further contribute to reinforcing Brazil's reputation as a country that has "soft power", a certain diplomatic *savoir-faire* combined with technical knowledge that translates into elements such as the ability to develop, present,

and defend concrete negotiation proposals, to provide transit capacity – and even leadership – in different groups and categories of countries and to build consensus, and to harness the ability to defend its interests effectively within the WTO's dispute settlement mechanism. Concerning the ISDS mechanism, Brazil's search for an alternative that would allow the functioning of the mechanism constitutes another facet of the country's pragmatic stance within the Organization, which is currently in crisis. Indeed, as one of the most active users of ISDS, it is in the interest of the Brazilian Mission to find a durable solution for the deadlock. While some members, such as the EU and Canada, have resorted to bilateral agreements in order to circumvent the deadlock, Brazil has been pushing for a plurilateral solution. Brazil's active engagement for greater dynamism across all pillars of the WTO provide irrefutable proof of the country's role as a pragmatic and progressive member state.

8.5.3. How has Brazil's technical expertise with IF matters contributed to its influence within plurilateral negotiations?

Brazil's ambition to reach global cooperation and sustainable development targets, embodied in the UN's Agenda 2030, UNCTAD's recommendation on "using investment facilitation efforts to channel investment towards sustainable development," as well as the country's former requirement to optimize both inbound and outbound FDI flows, have led to the establishment of its own model of bilateral investment treaties (BIT) starting in 2015. This marked a shift from Brazil's previous approach to bilateral investment negotiations, which was much more sceptical due to the developed world's emphasis on market access and investor-state dispute settlement, or other measures that went counter to the Brazilian constitution and need for sovereign policymaking. Indeed, Brazil stood out for a long time as the only country that had not ratified its BITs, even though most other players in the international investment regime had. Thus, the

CFIA derived from lessons learned, and embodies policy solutions that prove to have worked in the past while rejecting those that did not, such as investment protection and ISDS.

This understanding, further developed by Chapter 6, holds that the Brazilian government has developed a new model of investment agreement based on a positive approach that seeks to foster institutional cooperation and the facilitation of mutual investment flows between the parties. Not only is Brazil's shift towards CFIAs coherent with its overly cautious approach to negotiations, but the focus on investment facilitation also makes the CFIA Brazil's technical basis for the country's proposals for an IF framework at the WTO in 2017. Indeed, it was found that Brazil's CFIA expertise contributed to the country's leadership within the multilateral IF negotiations.

Furthermore, along with a diplomatic stance based on pragmatism, Brazil's bilateral model embodied by CFIA has provided a solid basis for multilateralizing the IF theme. Brazil has thereby managed to propose an alternative way of discussing developing matters. As mentioned before, this new way enjoys the advantage of greater support among all nations, by avoiding contentious topics, but also by seeking concrete gains and pragmatic improvements to bilateral cooperation. Due to its previous experience with BITs that focus on investment facilitation, Brazil was able to contribute to technical discussions and thereby enhance its role towards one of leadership and predominance among members of the WTO.

It has been argued, and confirmed through expert interviews, that Brazil's pragmatic proposals provided systemic win-win scenarios for partner countries, and thus established this country's consensus-building reputation. In sum, members have shown trust in Brazil with regards to technical matters, not only thanks to the country's previous experience with CFIA, but also to its positive historical record of favouring multilateral cooperation – without sacrificing the

need for pragmatism and concrete results – within an increasingly dysfunctional WTO.

8.5.4. Can the IFD negotiation achieve an agreement and bolster the role of Brazil at WTO survival?

It has been a strong deduction that the negotiations on investment facilitation – if successful – shall bolster and renew that pillar of the WTO and thus contribute to its reform. To verify this hypothesis, this thesis has conducted several interviews with experts from both academia and the technical areas of policymaking. Among others, it has posed questions such as "How might Brazil's role in IF negotiations help reshape the WTO?", "To what extent has – or will – the IF initiative helped to reshape or reform the WTO?", "What are some of the main obstacles to reaching an IF agreement in the WTO?", "What are the prospects for WTO reform – and the main challenges it faces?", and more.

Overall, results tend to agree that the IF discussions at the WTO are capable of changing the organization. On one hand, these are plurilateral discussions and thus contribute to promoting such processes. The idea of plurilateral negotiations face the rejection of some members, such as India or South Africa, that wish to remain faithful to the principle of single undertaking, or the consensus-based decision-making process of the WTO that most notably aims to enhance the voice of less powerful and influential members. Nevertheless, Brazil and other likeminded partners do not shy away from a plurilateral process if it can move things forward and inject dynamism into the WTO. Furthermore, it has been shown, byways of historical analysis, that plurilateral processes can find precedents in ancient GATT customs and Tokyo Round-era negotiations. In any case, it remains a fact that multilateralizing current plurilateral processes is the goal for various members and Brazilian partners.

Thus, Brazil promotes progress on some areas without necessarily undermining WTO benchmark practices.

On the other hand, the very topics of the discussions, the flow of investments, constitutes the engine to economic growth and trade, and thus contributes to the benefit of all nations. Indeed, investments have been argued to be the other facet of trade, as in most situations both are two sides of the same coin. Thus, through its backing and promotion of an investment-related accord at the WTO that stays clear of contentious issues such as protection or market access, Brazil endeavours to open new pathways for progress and reform within the organization, in a healthy and cooperative manner that avoids compromising members' sovereign policymaking space and focuses exclusively on the notion of facilitation.

Some experts have lamented that the current prevailing uncertainty within the international context could hamper progress. Indeed, the conflict between China and the United States, for instance, has been identified as a horizontal issue within the organization that hampers progress in all areas. Moreover, it remains unclear on how this conflict can be resolved from within the WTO. Crucially, it was thus found that the so-called "trade war" between China and the United States is an exogenous conflict to the organization, so IF negotiations have been slowed down.

Still, it has been demonstrated by this work's qualitative data that the IF discussions at the WTO contain a degree of transformation potential for the organization, mainly due to the plurilateral status of the negotiations. Considered by some as constitutive of a WTO *à la carte*, plurilateral negotiations seem indeed to provide a solution for the failure of the single-undertaking principle, and of a solid basis for a post-COVID agenda within the organization. It has also brought into light the considerable global relevance of investments with regards to economic growth, and thus the potential demand

for an international agreement on investment facilitation, so long as the WTO negotiations would focus more on the text about rules of conduct, good practices, and guidance, than on tariffs bargaining. If great challenges such as the current negative international context, and the WTO's anachronism with regards to contemporary challenges, can be softened, it has been shown, it can be achieved partially through progress on the IF matter.

8.5.5. To what extent does Brazil's growing role and influence in the WTO reform process also reflect the growing leadership of development countries in the system and their more outward-looking and proactive multilateral trade agenda?

Overall, this thesis has found that the main reasons behind the fact that developing countries are the leading forces of the IF negotiations can be divided into three categories: the structure of the international financial system, the need for pro-development inward investments, and the rise of outward investments in the global south. Chapter 5 has explored the growing role of emerging members in the current chessboard of the WTO and has therefore questioned experts on the matters of "Why were developing countries – rather than developed countries – the initial proponents and drivers of IF negotiations in the WTO?", as well as "What seems to be China's interest in seeking an IF agreement in the WTO?". The current proposed framework for investment facilitation with regards to the UN's well-established Agenda 2030 for Sustainable Development was also evaluated.

In general terms, qualitative insights have pointed towards the idea that developing countries, such as, for instance, the rising superpower of China, as well as Brazil, were pioneers to provide the ideas and political articulations of the IF framework at hand. Thus, the rise of investment facilitation as a formal discussion within this organization represents, more broadly, the rise of China, as much

as a rise of other developing countries such as Brazil within the new global economic order. Considering this, investment facilitation can be deemed as a landmark: it is the first developing-country-oriented initiative in the WTO to date. Hence, the desire from developing countries to advance investment-related matters in the organization is both symptomatic of the new economic world order of which they are part, as well as of their newfound interests in the multilateral trade system.

Structurally, therefore, the analysis has identified the increasing importance of developing member countries to the WTO and the international system, as well as the push for enhancing the participation of these developing countries in the global investment market. Simultaneously, it has been established that the IF initiative stems from these countries' aspiration to maintain the WTO's functioning and to explore new themes within the organization, after the deadlock surrounding Doha themes. Indeed, on the one hand, with regards to the matter of inward investment, experts have duly assessed the huge dependence of developing countries on FDI to ensure economic development. In Brazil, for example, this interest is related to these countries' scarcity of savings and know-how in matters of development, as well as their budgetary constraints. Finally, concerning outward investments, the thesis has proposed that large developing countries, such as China and even Brazil, have also started to export investments, and thus have become implicated in the desire to improve these global flows.

Considering the profound impact the Doha Development Agenda had on the notion that the WTO may encourage and enhance members' economic development capacity – as well as the established fact that investment facilitation is an initiative carried mainly by developing countries – it is now of the utmost importance to assess the contribution of investment facilitation for global development. Of course, not all developing countries

express equal positions regarding WTO affairs. However, while some developed countries still have fixed domestic laws and policies that support the traditional BIT approach, some are nevertheless starting to see the value of a multilateral solution for investment facilitation. Likewise, South-South cross investments have increased, and big developing economies want to secure easier access for their multinational enterprises, which have emerged as a result of their aggregate economic development. In sum, while the past agendas on investment, concerning mainly litigation and protection, benefited capital-exporting developed countries, a multilateral solution could provide the basis for cooperation that is crucially needed today to ensure the sustained prosperity of all countries.

Without a doubt, China's systemic position at the WTO has made it an impressive negotiating partner with significant clout on all matters, which is especially true concerning investment facilitation. Indeed, China's influence across the international trade system, as well as the global economy, has increased significantly since it joined the WTO in 2001 as the Organization's 143rd member. Thus, in Chapter 5, the role of that country in contributing to the latter initiative is analysed. Overall, it has been found that China sees investment facilitation as an opportunity to modernize and preserve the rulemaking function of the WTO, while it develops a positive leadership position within the organization. Moreover, results indicate that, by acting as a leader, China wishes to make a proposal vis-à-vis other developed countries on transparency. Finally, as the Coordinator of the Friends of Investment Facilitation for Development, China has been focusing on outreach, particularly towards developing and least developed countries. Ultimately, some experts that have been interviewed fear that the country sees the initiative as a way to keep the investment discussion alive in order to, at another time, advance other investment-related agendas.

Indeed, China's outbound investment has exceeded its inbound investment due to its phenomenal economic development over the last 20 years. The Chinese are important investors in developing countries across Africa, Asia, and Latin America. Thus, if today China wishes to strengthen its role as an investor by establishing more transparent and homogenous rules, advancing efficiency, as well as reducing red tape and regulations, it also pressures developed countries to dump the barriers that are being imposed on Chinese investors, as it has concerns on the practice of other countries concerning investments. Thus, some scholars expressed doubts over whether China truly wanted to negotiate an IF agreement at the WTO, or if it just wishes to exert pressure and fulfil its self-interest via this new theme in the Organization.

In any case, the reform of the WTO, particularly the adoption of plurilateral initiatives in the negotiation pillar, is key for sustainable development. While the issues relevant for ecological sustainability are not usually associated with investment facilitation, it has been shown that investigations into this area are still in progress and seem likely to confirm the hypothesis that the former can promote the latter. The possible outcomes that will result from promoting sustainable investments in IF negotiations seem to be significant. Therefore, aligning investment facilitation with the 2030 Sustainable Development Agenda is important to consider for WTO delegates, as it ensures that future investments comply with the SDGs set by the United Nations. Indeed, on the one hand, the Guiding Principles proposed by scholars to structure future discussions are closely related to investment facilitation. On the other hand, these same Guiding Principles can contribute to advancing the SDG agenda, most notably, when it comes to SDGs 8, 9, 16, and 17 (for example, through the enhancing of digital procedures, or the coordination of policy with investors' needs). Moreover, an inclusive IF agenda could promote capacity-building in LDCs, as well as enhance public-private

partnerships. The conclusion of this plurilateral agreement, thus, would benefit the modernization of the WTO and the sustainability of humankind.

8.6. The Skeleton of the Work: Retrospective Chapter Breakdown

Chapter 2

Chapter 2 opened the discussion by establishing the theoretical foundations underlying this work. Select elements constitutive of the principal schools of thought within the discipline of international relations (IR) were hence purposed for the study of IF talks within the World Trade Organization (WTO), as well as of the latter's process of reform. More precisely, after assessing the identified limitations existing in the traditional schools of Realism and Liberalism, Chapter 2 concluded that the constructivist perspective permitted more satisfactory applicability to the object of study at hand. Naturally, the chapter also thoroughly assessed the methodology employed, most notably with regards to the objectives of the chosen MMR method as a methodological approach that is in line with the constructivist perspective. For instance, the method for data collection through 24 interviews with a specialist in the area has been outlined in Chapter 2, as well as the relevant questions and the qualitative profiles of the interviewed experts. As a result, the insights derived from Chapter 2's reflection have been constantly applied in the theoretical background underlying every following chapter.

Chapter 3

Chapter 3 firstly enterprises a historiographic work on the lasting relationship between investment and trade, with the ultimate objective of focusing the reform and changes occurring within the WTO into its broader historical, political, and economic context. Then, Chapter 3 sheds light on the most crucial issues dealing with

the WTO's dysfunctional state. These include – but are not limited to – issues such as the reconsideration of the single-undertaking and consensual decision-making pillars of the WTO, and thus a rollback to GATT practices observed during the Tokyo Round, which has been put forward as a model for consideration. Chapter 3's all-encompassing analysis of the current state of the WTO set the stage for a more precise analysis – thereby proceeding from general to specifics – of the role of Brazil across negotiations, and how this fit into the overall trade landscape.

Chapter 4

Chapter 4 reviews thoroughly specific aspects of the WTO reform process in each of the Organization's three core pillars: the Dispute Settlement Pillar; the Monitoring and Transparency Pillar; and the Negotiation Pillar, which is deemed the most essential, and may therefore take priority over other efforts. Overall, the chapter proposes that due to irreconcilable interests between the USA and China, and a myriad of other conflicts of interest between developed and developing nations, IF talks embody a breath of fresh air that could bolster the renewal of the Negotiation Pillar, leading into a discussion of Brazil's specific role in the following chapter.

Chapter 5

Building on the basis set by the preceding chapters, Chapter 5 further developed the longstanding relationship between Brazilian diplomacy and the WTO from a historical perspective. Moreover, the chapter analysed Brazil's capacity and influence in terms of proposing changes in the organization's structure, as well as its positioning over time with regards to issues relevant to the country's economic and commercial interests. These topics include, for instance, the matters of agriculture, fishing, sanitary and phytosanitary measures, electronic commerce, and finally the TFA. Furthermore, Chapter 5 assessed the posture of Brazil in relation to these themes as a

developing country perspective, which enabled the identification of salient difficulties this group of members face regarding the limitations on the proper functioning of the WTO.

Chapter 6

The focus of Chapter 6 is the IF agreement. In specific, the chapter presents the interviews carried out according to the methodology proposed in the thesis. The questions are presented in numerical order, and the answer of each respondent to a specific question. In general, the analysis seeks to relate the answers to the main arguments of the thesis, as well as the constructivist perspective adopted by the author. Chapter 6 investigates the opinions that, in the context of its leadership in the IF talks, Brazil is leading the restructuring of the WTO taking place under a plurilateral system. In general, the answers indicate that there is a general agreement on various aspects among specialists, which reinforces the idea of social construction based on the knowledge of the main agents involved in international relations.

The role of China in this matter has also been closely examined. Finally, the analysis assessed the utmost relevance of investment facilitation in order to satisfy international investment needs, thereby contributing to achieving several SDGs, as well as increasing global welfare.

Chapter 6 expanded the reasoning concerning the role of investment facilitation as both a means to revive and modernize the WTO, as well as to satisfy the ever-increasing investment-related needs of developing countries. Indeed, the chapter underlines the fact that facing global challenges such as the rise of nationalism or climate change requires such measures that facilitate global flows of capital and thereby promote cooperation and peace. To achieve this, the chapter assessed investment facilitation as a novel approach to investment rulemaking, which avoids contentious

issues – which failed to achieve progress all throughout the WTO's recent history – through increased pragmatism. Then, the current state of IF negotiations is laid out in order to provide a clear picture of future prospects and issues at hand. Among other things, the chapter assessed the impact of investment facilitation on other plurilateral Joint Initiatives, such as e-commerce, as well as today's main obstacles to successful agreement on a future IFA at the WTO. Chapter 6 also examined the predominant role of developing countries in the negotiations, as the latter appears to break with a long tradition of developed country-dominance within the WTO.

Chapter 7

Focusing mainly on Brazil's role in the IFD agreement, Chapter 7 sought to combine insights and results from previous sections in order to explore two foundational hypotheses that compose the object of this thesis. On the one hand, the notion that Brazil can be considered a leading actor in investment facilitation at the WTO; on the other hand, the proposition that Brazil's leading role concerning IF negotiations contributes to reshaping the WTO. In other terms, Chapter 7 attempted to validate the idea of Brazilian leadership. By way of interviews with experts, as well as a historical analysis of the developments of the IF negotiations, the chapter thus concluded that Brazil has so far significantly contributed to guide the shaping of the current Joint Statement on investment facilitation. Considering that such plurilateral processes form the core of the WTO's present transformations, the analysis reaches the conclusion that thanks to Brazil's acceptance to negotiate investment-related treaties, the country has thus embraced the idea of multilateralizing its previously bilateral IF model. In sum, this led to the Brazilian proposal of IF text at WTO in 2018, and the country's active participation in the IF discussions. Overall, as it gathered support from domestic governmental actors and WTO

members, Brazil has been acknowledged by other countries as one of the leading players in the negotiations.

Chapter 8

Chapter 8 analysed the answers to four related questions asked to the experts. The first one investigates opinions about how IF discussions can contribute to WTO reform. There are then the results for the question that investigates the extent of this possible impact. Thirdly, it is investigated to what extent Brazil can contribute to changes in the WTO via investment facilitation. Finally, the chapter captures opinions on reform prospects in the WTO and the main challenges that arise in the opinion of the experts. Based on these issues, the chapter analyses the possible scenarios for the future and what would be the easiest scenarios in terms of reforming the WTO and advancing investment discussions. Finally, considering the main challenges ahead, the chapter highlights the issues in which Brazil would be involved to continue IF talks and WTO reform.

8.7. The Next Thesis: Prospects for Future Research

> *They need to have a more in-depth study on how exactly this can be built into the WTO system, because every pro-lateral has its own characteristics.*
> (ITC Expert, 2020)

Considering the results and main messages, the present work now presents and briefly elaborates on a few issues that are significant for the advancement of the research in the field, and that constitute potential remaining research gaps in the ever-evolving area of WTO affairs.

This thesis has strived to explore and understand the perspective of Brazil with regards to the matter of investment facilitation, and its position in the reform of the WTO relative to other member countries. For instance, the results suggested that Brazil's stance

concerning the issue is not only a matter of self-interest from a realist perspective, but also, from a constructivist point of view, a socially embedded practice in the daily life of its diplomatic corps, as well as a historical outcome over the last 20 years, as the country built up its capabilities to become an active member of the WTO. Thus, it would matter for the purposes of this scientific endeavour to further explore the perspectives of other countries and stakeholders contributing to the IF agenda within the Organization. For future research, a possible path is to take into consideration that the constructivist perspective and methods applied in this work are also applicable for this same purpose but with other countries. Undoubtedly, such work would be complementary to the work in the present thesis, and the combined perspectives of both would reinforce constructivist insights.

Indeed, a more profound understanding of other countries' motivations and objectives with regards to the agenda could have significant implications for our current understanding of the WTO's formal reform process. As has been established through this work's analysis, the IF negotiation influences the WTO reform because it is a plurilateral process that seeks to establish "new themes" after the failure of the Doha Round to reach consensus among members. Furthermore, the discussions aim at pursuing the precedent of facilitation set by the TFA, and thereby shift the membership's efforts and negotiating abilities towards less contentious issues that benefit all and do not impede sovereign policymaking and sustainable economic development.

It would matter to further understand the perspectives of key member countries partaking in the IF discussions, such as China and the USA. While these were briefly explored in the last section of Chapter 6 of this work, this was done through the means of internal Brazilian communications and was therefore limited in nature. In fact, to the degree that these powerful members' activities,

as well as their mutual relationship, horizontally impact all WTO issues, to approach the matter at hand from their perspective would provide valuable material to further the discipline by revealing new insights. For instance, it would be of interest to further understand the consequences of the upcoming US Presidential election on the reform process of the WTO.

As of late 2020, the reform of the WTO is an ongoing, ever-evolving process. Over the year, several events have affected it, as well as other processes within the Organization such as the IF matters. These unexpected events, such as the outbreak of COVID-19, the changing of Director-General (DG) within the WTO, and the US presidential election, undoubtedly would have significant impact on the object of our study – the IF talks and the reform of the WTO. For instance, COVID-19 has altered investment-related priorities and needs worldwide, the new DG of the WTO will have to deal with the reform agenda, and the next American president will certainly continue to shape the US-China relationship for years to come, thereby affecting all issues of the Organization. Throughout this work, these events were unavoidably discussed, as well as their potential implications, most notably thanks to the expert insights of interviewees from the field, who are usually the first to experience the effects of such conjecture.

Nevertheless, the focus of this analysis was historical. First, the period covered by this author's primary sources start in 2016, when the IF initiative at the WTO started to take form, before working from the formal Joint Statement in 2017 all the way to events of early 2019. Indeed, most events that have occurred from then on, such as those events that happened in 2020, could only be approached from a more journalistic perspective, as it remains too soon to successfully adopt the necessary historical distance.

Thus, the author strongly recommends further inquiry into these matters, and principally with regards to the IF issue, as well as that of WTO reform. Those investigations could lead to greater understanding of the causes and the nature of the relationship between, for instance, the development of a worldwide pandemic response, capital flows, and the ever-evolving need for investment facilitation. Moreover, further research on the role and challenges awaiting the upcoming DG of the WTO could promote clarity and a better decision-making process with regards to the needed WTO reform. Finally, a full analysis of the relationship between US domestic politics and the chessboard of the WTO could enhance the negotiating process across all joint initiatives – including investment facilitation – to the degree that this country's sheer size makes it a pivotal member of the organization, as well as within the global trade system generally.

BIBLIOGRAPHY

Primary Sources

41ST Cairns Group Ministerial Meeting Statement and Framework for Negotiations. The Cairns Group, 23 Jan. 2020. Available at: https://www.cairnsgroup.org/Pages/Statement-of-the-41st-Cairns-Group-Ministerial-Meeting.aspx>. Last access on: 5 Oct. 2023.

AG Committee's safeguards discussion touches on negotiations. World Trade Organization, 18 Mar. 2008. Available at: <https://www.wto.org/english/news_e/news08_e/ag_com_18march08_e.htm>. Last access on: 5 Oct. 2023.

ALFARO, Willy. Brazil: Investment Facilitation and the WTO [Interview], 2020.

AZEVÊDO, R. General Council: Appointment of the Director-General, 2017.

CANADA. Joint Communiqué of the Ottawa Ministerial on WTO Reform, 25 Oct. 2018. Available at: <https://www.canada.ca/en/global-affairs/news/2018/10/joint-communique-of-the-ottawa-ministerial-on-wto-reform.html>. Last access on: 5 Oct. 2023.

CANADA. Canada-led WTO meeting concludes in Davos, Switzerland, 24 Jan. 2019. Available at: <https://www.canada.ca/en/global-affairs/news/2019/01/canada-led-wto-meeting-concludes-in-davos-switzerland.html>. Last access on: 5 Oct. 2023.

CANADA. WTO Reform and the Ottawa Group, 2020.

CASTILLO, H. E. A. D., MODERNIZATION OF THE WTO. Modernization / Proposals for WTO, 2020.

CAVALCANTE, Pedro Mendonça. Brazil: Investment Facilitation and the WTO [Interview], 2020.

CLEETON, David L. Global Value Chains and the Transatlantic Trade and Investment Partnership, 2015. Available at: <http://aei.pitt.edu/79670/>. Last access on: 5 Oct. 2023.

CONFEDERAÇÃO NACIONAL DA INDÚSTRIA. *Acordo de Facilitação de Comércio da OMC:* um guia de negócios para países em desenvolvimento. Exportações para um desenvolvimento sustentável, 2014.

CONFEDERAÇÃO NACIONAL DA INDÚSTRIA. Facilitação de Investimentos da OMC: contexto, agenda e implicações para o Brasil, 2018. Available at: <https://static.portaldaindustria.com.br/media/filer_public/c7/66/c7669b53-ccc9-4a7c-883f-005ec2cba9a7/web_facilitacao_na_omc_1.pdf>. Last access on: 5 Oct. 2023.

DEUTSCHES INSTITUT FÜR ENTWICKLUNGSPOLITIK, INTERNATIONAL TRADE CENTER & WORLD ECONOMIC FORUM. Report on the 1st virtual meeting of the Commentary Group on a Multilateral Framework on Investment Facilitation for Development, 2020. Available at: <https://www3.weforum.org/docs/WEF_IF_1st_Commentary_Group_26_Feb_2020_report.pdf>. Last access on: 5 Oct. 2023.

DG Azevêdo to launch intensive consultations on resolving Appellate Body impasse. *World Trade Organization*, 9 Dec. 2019. Available at: <https://www.wto.org/english/news_e/news19_e/gc_09dec19_e.htm>. Last access on: 5 Oct. 2023.

EU Foreign Direct Investment flows in 2018. *Eurostat*, 17 Jul. 2019. Available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20190717-1>. Last access on: 5 Oct. 2023.

EUROPEAN COMMISSION. *EU Concept paper on WTF Reform:* WTO modernisation – Introduction to future EU proposals, 2018. Available at: <https://www.wita.org/atp-research/eu-concept-paper-on-wto-reform/>. Last access on: 5 Oct. 2023.

EUROPEAN COMMISSION. Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, 2019. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_5915>. Last access on: 5 Oct. 2023.

EUROPEAN COMMISSION. MEMO/11/751 – WTO Trade Negotiations: Doha Development, 2011.

EUROPEAN COMMISSION. Trade: EU and 16 WTO members agree to work together on an interim appeal arbitration arrangement, 2020. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_113>. Last access on: 5 Oct. 2023.

EUROPEAN COUNCIL. G20 Leaders' declaration. Building consensus for fair and sustainable development, 1 Dec. 2018. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2018/12/01/g20-leaders-declaration/>. Last access on: 5 Oct. 2023.

EUROPEAN COUNCIL. G20 Osaka Leaders' Declaration, 29 Jun. 2019, p. 1-13. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/06/29/g20-osaka-leaders-declaration/>. Last access on: 5 Oct. 2023.

FOUCAULT, Michel. Les Mots et les Choses [Interview], 1966.

GADELHA, Bertha. Brazil: Investment Facilitation and the WTO [Interview], 2020.

GENERAL Profile: China. *UNCTADstat*, 2020. Available at: <https://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/156/index.html>. Last access on: 5 Oct. 2023.

HEES, Felipe. Brazil: Investment Facilitation and the WTO [Interview], 2020.

HELMORE, Edward. Trump: U.S. will Quit World Trade Organization Unless It Shapes Up. *The Guardian*, 31 Aug. 2018. Available at: <https://www.theguardian.com/us-news/2018/aug/30/trump-world-trade-organization-tariffs-stock-market?CMP=gu_com>. Last access on: 5 Oct. 2023.

ITC. COVID-19 Temporary T, 2020.

LIGHTHIZER, Robert. How to make trade work for workers. *Foreign Affairs*, Issue Jul/Aug. 2020, p. 1-14.

LIGHTHIZER, Robert. U.S. Trade Policy Priorities: Robert Lighthizer, United States Trade Representative. *Center for Strategic & International Studies*, 18 Sep. 2017. Available at: <https://www.csis.org/analysis/us-trade-policy-priorities-robert-lighthizer-united-states-trade-representative>. Last access on: 5 Oct. 2023.

MARTINS, Paulo Elias. Brazil: Investment Facilitation and the WTO [Interview], 2020.

MEMBERS OK amendment to make health flexibility permanent. World Trade Organization, 6 Dec. 2005. Available at: <https://www.wto.org/english/news_e/pres05_e/pr426_e.htm>. Last access on: 5 Oct. 2023.

MINISTÉRIO DAS RELAÇÕES EXTERIORES. Telegramas e despachos telegráficos com a Delegação do Brasil junto à OMC em Genebra, 2017.

MINISTÉRIO DAS RELAÇÕES EXTERIORES. Strengthening the Deliberative Function of the SPS Committee (G/SPS/W/319/Rev.2), 2020.

MINISTÉRIO DAS RELAÇÕES EXTERIORES. Telegramas e despachos telegráficos com a Delegação do Brasil junto à OMC em Genebra, 2018.

MINISTÉRIO DAS RELAÇÕES EXTERIORES. WT/GC/W/176, 2019.

MORAES, Henrique C. Brazil: Investment Facilitation and the WTO [Interview], 2020.

NAKAMURA, David & SCHNEIDER, Howard. U.S. files complaint against China over auto tariffs. *The Washington Post,* 6 Jul. 2012. Available at: <https://www.washingtonpost.com/politics/us-to-pursue-trade-complaint-against-china-over-autos/2012/07/05/gJQAUODTPW_story.html>. Last access on: 5 Oct. 2023.

NOVIK, Ana. Brazil: Investment Facilitation and the WTO [Interview], 2020.

PANELS established to review US steel and aluminium tariffs, countermeasures on US imports. *World Trade Organization*, 21 Nov. 2018. Available at: <https://www.wto.org/english/news_e/news18_e/dsb_19nov18_e.htm>. Last access on: 5 Oct. 2023.

PETTINATO, Carlo. Brazil: Investment Facilitation and the WTO [Interview], 2020.

POLITI, James. Donald Trump hits out at WTO Developing Economy Designations. *Financial Times*, 26 Jul. 2019. Available at: <https://www.ft.com/content/3fce3c70-afd2-11e9-8030-530adfa879c2>. Last access on: 5 Oct. 2023.

POLITI, James. What's in the US-China 'phase one' trade deal? *Financial Times*, 15 Jan. 2020. Available at: <https://www.ft.com/

content/a01564ba-37d5-11ea-a6d3-9a26f8c3cba4>. Last access on: 5 Oct. 2023.

PRAZERES, Tatiana L. Brazil: Investment Facilitation and the WTO [Interview], 2020.

SAUVANT, Karl P. Brazil: Investment Facilitation and the WTO [Interview], 2020.

SPEECH delivered by the Brazilian President during the Plenary Session of the World Economic Forum, held on 22 January 2019. Available at: <https://www.biblioteca.presidencia.gov.br/presidencia/ex-presidentes/bolsonaro/discursos/discurso-do-presidente-da-republica-jair-bolsonaro-durante-a-abertura-da-sessao-plenaria-do-forum-economico-mundial-2019>. Last access on: 5 Oct. 2023.

STATEMENT by Ministers, Davos, Switzerland, 24 January 2020.

TRADE in Goods with China. *United States Census Bureau*, 2020. Available at: <https://www.census.gov/foreign-trade/balance/c5700.html#2020>. Last access on: 5 Oct. 2023.

TRUMP Threatens to Pull Out of World Trade Organization. *BBC*, 31 Aug. 2018. Available at: < https://www.bbc.com/news/world-us-canada-45364150 >. Last access on: 5 Oct. 2023.

TRUMP, Donald. Memorandum on Reforming Developing-Country Status in the World Trade Organization, 26 Jul. 2019. Available at: <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-reforming-developing-country-status-world-trade-organization/>. Last access on: 5 Oct. 2023.

UNITED STATES OF AMERICA & PEOPLE'S REPUBLIC OF CHINA. Economic And Trade Agreement Between the Government Of The United States Of America And The Government Of The People's Republic Of China, 15 Jan. 2020. Available at: <https://ustr.

gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/text>. Last access on: 5 Oct. 2020.

UNITED STATES OF AMERICA. Omnibus Trade and Competitiveness Act of 1988. Issue 5.

UNITED STATES OF AMERICA. Statements by the United States at the Meeting of the WTO Dispute Settlement Body in Geneva on February 28, 2018. Available at: <https://ustr.gov/sites/default/files/enforcement/DS/Feb28.DSB.Stmt.(Item%207_AB%20terms).(public).pdf>. Last access on: 5 Oct. 2023.

UNITED STATES OF AMERICA. Joint Statement from President Donald J. Trump and President Jair Bolsonaro, 19 Mar. 2019. Available at: <https://br.usembassy.gov/joint-statement-from-president-donald-j-trump-and-president-jair-bolsonaro/>. Last access on: 5 Oct. 2023.

WHAT'S in the U.S.-China Phase 1 trade deal. *Reuters*, 15 Jan. 2020. Available at: <https://www.reuters.com/article/us-usa-trade-china-details-factbox-idUSKBN1ZE2IF>. Last access on: 5 Oct. 2023.

WOLFF, Alan. WTO and U.S. Trade Law and Policy Program [Interview], 17 July 2020.

WORLD Economic Outlook, October 2019: Global Manufacturing Downturn, Rising Trade Barriers. World Economic Outlook, 15 Oct. 2019. Available at <https://www.imf.org/en/Publications/WEO/Issues/2019/10/21/World-Economic-Outlook-October-2019-Global-Manufacturing-Downturn-Rising-Trade-Barriers-48513#:~:text=World%20Economic%20Outlook-,World%20Economic%20Outlook%2C%20October%202019%3A%20Global,Manufacturing%20Downturn%2C%20Rising%20Trade%20Barriers&text=Summary%3A,April%202019%20World%20Economic%20Outlook.>. Last access on: 5 Oct. 2023.

WORLD TRADE ORGANIZATION. Joint Ministerial Statement: Declaration on the Establishment of a WTO Informal Work Programme for MSMES, WT/MIN(17)/58, 13 Dec. 2017. Available at: <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=241096,240868&CurrentCatalogueIdIndex=1&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True>. Last access on: 5 Oct. 2023.

WORLD TRADE ORGANIZATION. Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement – Contribution by Chile and the US, TN/DS/W/28, 23 Dec. 2022. Available at: <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=63478,67682,51129,106302,70544,15104,46381&CurrentCatalogueIdIndex=6&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True>. Last access on: 5 Oct. 2023.

WORLD TRADE ORGANIZATION. World Trade Report: Factors shaping the future of world trade, 2013. Available at: <https://www.wto.org/english/res_e/publications_e/wtr13_e.htm>. Last access on: 5 Oct. 2023.

WORLD TRADE ORGANIZATION. Enhancing Transparency in Non-Preferential Rules of Origin, 2019. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/RO/W182R2.pdf&Open=True>. Last access on: 5 Oct. 2023.

WORLD TRADE ORGANIZATION. World Trade Report. Geneva: WTO Publications, 2007.

WORLD TRADE ORGANIZATION. *WTO negotiations on domestic regulation disciplines*. Available at: <https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_e.htm>. Last access on: 5 Oct. 2023.

WORLD TRADE ORNAGIZATION. DS8: Japan – Taxes on Alcoholic Beverages. Available at: <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds8_e.htm>. Last access on: 5 Oct. 2023.

Secondary Sources

ABBOTT, Frederick M. *The Intersection of Law and Trade in the WTO System*: Economics and the Transition to a Hard Law System, issue 955-2016-74816, 1995. Available at: <https://ageconsearch.umn.edu/record/50697/files/AbbottFrederickM..pdf>. Last access on: 5 Oct. 2023.

ABBOTT, Frederick M., 2001. *The Trips Agreement, Access to Medicines, and the WTO Doha Ministerial Conference*. FSU College of Law, Public Law Working Paper n. 36 and QUNO Occasional Paper n. 7, Oct. 2001. Available at: <https://ssrn.com/abstract=285934>. Last access on: 5 Oct. 2023.

ABBOTT, Kenneth. W. & SNIDAL, Duncan. Why states act through formal international organizations. *Journal of Conflict Resolution*, v. 42, issue 1, 1998, p. 3-32.

ABDALLAH, Patrízia Raggi & SUMAILA, Ussif Rashid. An historical account of Brazilian public policy on fisheries subsidies. *Marine Policy*, v. 31, issue 4, 2007, p. 444-450.

ABDELAL, Rawi. Constructivism as an approach to international political economy. In: *Routledge Handbook of International Political Economy*. London: Routledge, 2009, p. 62-76.

ABREU, Marcelo de Paiva (Org.). *A ordem do progresso:* dois séculos de política econômica no Brasil. Rio de Janeiro: Campus-Elsevier, 2014.

ABREU, Marcelo de Paiva. *Brazil, the GATT, and the WTO:* history and prospects. Text for discussion n. 392, Pontifícia Universidade Católica do Rio de Janeiro, Department of Economics PUC-Rio, Rio de Janeiro, 1998.

ADLER, Emanuel. Seizing the Middle Ground: Constructivism in World Politics. *European Journal of International Relations*, v. 3, issue 3), 1997, p. 319-363.

ADLUNG, Rudolf & MAMDOUH, Hamid. Plurilateral trade agreements: An escape route for the WTO? *Journal of World Trade*, v. 52, issue 1, 2018, p. 85-111.

AGAG, Gomaa. E-commerce Ethics and Its Impact on Buyer Repurchase Intentions and Loyalty: An Empirical Study of Small and Medium Egyptian Businesses. *Journal of Business Ethics*, v. 154, issue 2, 2019, p. 389-410.

ALLISON, Graham T. *Essence of decision:* explaining the Cuban missile crisis. Massachusetts: Little Brown, 1971.

ALLISON, Graham. The Thucydides Trap. *Foreign Policy*, v. 9, 2017, p. 2-6.

ANGELL. *The Great Illusion*, 1909.

ARADAU, Claudia & HUYSMANS, Jef. Critical Methods in International Relations: The Politics of Techniques, Devices and Acts. *European Journal of International Relations*, v. 20, issue 3, p. 596-619.

ARENDT, Hannah & COLLIN, Françoise. Philosophie et Politique. *Les Cahiers du GRIF*, v. 33, 1986.

ARSLANIAN, Regis P. *O recurso à Seção 301 da legislação de comércio norte-americana e a aplicação de seus dispositivos contra o Brasil*. Brasília: FUNAG, 1993.

AXELROD, Robert. The emergence of cooperation among egoists. *American Political Science Review*, v. 75, issue 2, p. 306-318.

AXELROD, Robert. *The evolution of cooperation*. New York: Basic Books, 1984.

BACCHUS, James & MANAK, Inu. The Fate of the WTO and Global Trade Hangs on Fish. *Foreign Policy*, 5 May 2020. Available at: <https://foreignpolicy.com/2020/05/05/wto-global-trade-fisheries-fishing-subsidies/#cookie_message_anchor>. Last access on: 5 Oct. 2023.

BADIN, Michelle Ratton Sanchez; LUIS, Daniel Tavela & OLIVEIRA, Mario Alfredo de. A proposal for reflection on ACFIs: To what extent the most favoured nation treatment can undermine the political strategy on which ACFIs are based on? *Revista de Direito Internacional*, v. 14, issue 2, 2017, p. 160-177.

BAGWELL, Kyle; BOWN, Chad P. & STAIGER, Robert W. Is the WTO Passé? *Journal of Economic Literature*, v. 54, issue 4, p. 1125-1231. Available at: <https://www.aeaweb.org/articles?id=10.1257/jel.20151192>. Last access on: 5 Oct. 2023.

BALDWIN, David A. *Power and International Relations:* Conceptual Approach. Princeton and Washington: Princeton University Press, 2016.

BALIÑO, Sofía; BRAUCH, Martin Dietrich & JOSE, Rashmi. Investment Facilitation: History and the latest developments in the structured discussions. Geneva: International Institute for Sustainable Development and CUTS International, 2020. Available at: <https://www.iisd.org/publications/report/investment-facilitation-history-and-latest-developments-structured-discussions>. Last access on: 31 Oct. 2023.

BANK, T. W. et al. B & B Italia, 2020.

BARU, Sanjaya. Power shifts and new blocs in global trading system. *Adelphi Series*, v. 54, issue 450, p. 11-16.

BATES, Thomas R. Gramsci and the Theory of Hegemony. *Journal of the History of Ideas*, v. 36, issue 2, p. 351-366. Pennsylvania: University of Pennsylvania Press, 2015.

BECK, Ulrich. *Die Risikogesellschaft*: Auf dem Weg in eine andere Moderne. Frankfurt: Suhrkamp, 1986.

BEERS, Brian. Value Chain Analysis: Advantages and Disadvantages. *Investopedia*, 17 May 2021. Available at: <https://www.investopedia.com/ask/answers/061115/what-are-some-advantages-and-disadvantages-value-chain-analysis.asp>. Last access on: 5 Oct. 2023.

BEESON, Mark & HIGGOTT, Richard. Hegemony, Institutionalism, and US Foreign Policy: theory and practice in comparative historical perspective. *Third World Quarterly*, v. 26 n. 7, 2005, p. 1173-1188.

BEGHIN, John C. & BUREAU, Jean-Christophe. Quantitative policy analysis of sanitary, phytosanitary and technical barriers to trade. *Economie Internationale*, v. 87, issue 3, 2001, p. 107-130.

BEISHEIM, Marianne & WALTER, Gregor. Globalisierung – Kinderkrankheiten eines Konzeptes. *Zeitschrift für Internationale Beziehungen*, v. 4, issue 1, 1997, p. 153-180.

BENJAMIN, D. A. Introdução, 2013.

BERGER, Axel & DADKHAH, Ali. *Challenges of negotiating and implementing an international investment facilitation framework*. Deutsches Institut für Entwicklungspolitik, 2019. Available at: <https://www.idos-research.de/fileadmin/user_upload/pdfs/Sonstige/Challenges_of_negotiating_and_implementing_an_international_investment_facilitation_framework_5.12.2019.pdf>. Last access on: 5 Oct. 2023.

BERGER, Axel & OLEKSEYUK, Zoryana. Investment Facilitation for Sustainable Development: Index maps adoption at domestic

level. Available at: <https://blogs.idos-research.de/longform/investment-facilitation-for-sustainable-development/>. Last access on: 5 Oct. 2023.

BERNASCONI-OSTERWALDER, Nathalie. Repensando a solução de controvérsias relacionadas a investimentos. *Revista Pontes*, v. 12, issue 1, 2019, p. 18-22.

BIASUTTI, Constanza N.; PANZINI, Fabrizio S. O retorno dos acordos de investimentos na agenda comercial brasileira. *Revista Pontes*, v. 12, n. 1, 2016.

BIELER, Andreas & MORTON, Adam David. A critical theory route to hegemony, world order and historical change: neo-Gramscian perspectives in International Relations. *Capital & Class*, v. 28, 2004, p. 85-113.

BOEHM, Peter M. Is Zoom Diplomacy the New Normal? COVID- 19 and the End of the Air Kiss. *Policy Magazine*, 21 May 2020. Available at: <https://www.policymagazine.ca/is-zoom-diplomacy-the-new-normal-covid-19-and-the-end-of-the-air-kiss/>. Last access on: 5 Oct. 2023.

BOWN, Chad P. & IRWIN, Douglas A. What Might a Trump Withdrawal from the World Trade Organization Mean for US Tariffs? *Peterson Institute for International Economics*, Nov. 2018. Available at: <https://www.piie.com/publications/policy-briefs/what-might-trump-withdrawal-world-trade-organization-mean-us-tariffs>. Last access on: 5 Oct. 2023.

BOWN, Chad P. & REYNOLDS, Kara M. Trade Agreements and Enforcement: Evidence from WTO Dispute Settlement. American Economic Journal: *Economic Policy*, v. 9, issue 4, 2017, p. 64-100.

BRAMS, Steven J. Game Theory: Pitfalls and Opportunities in Applying It to International Relations. *International Studies Perspectives*, v. 1, issue 3, Dec. 2000, p. 221-232.

BRAMS, Steven. *Theory of Moves*. Cambridge: Cambridge University Press, 1994.

BREWSTER, Rachel. The Trump administration and the future of the WTO. *The Yale Journal of International Law*, v. 44, 2019, p. 1-10.

BRUN, Jean-François & GNANGNON, Sèna Kmm. *Does Trade Openness Contribute to Driving Financing Flows for Development?* WTO Working Paper ERSD-2017-06, 2017, p. 1-36.

BRZEZINSKI, Zbigniew. Can China avoid the Thucydides trap? *New Perspectives Quarterly*, v. 31, issue 1, 2014, p. 31-33.

BUCKLEY, Peter. J & STRANGE, Robert. The governance of the global factory: location and control of world economic activity. *Academy of Management Perspectives*, v. 29, issue 2, 2015, p. 237-249.

BUSH, Richard. C. Trump's misguided brinkmanship on China. *Brookings*, 14 Jan. 2017. Available at: <https://www.brookings.edu/articles/trumps-misguided-brinkmanship-on-china/>. Last access on: 5 Oct. 2023.

CALLEN, Tim. Purchasing Power Parity: Weights Matter. International Monetary Fund, 2020. Available at: <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Purchasing-Power-Parity-PPP>. Last access on: 5 Oct. 2023.

CAMPELLO, Daniela & LEMOS, Leany. The Non-Ratification of Bilateral Investment Treaties in Brazil: A Story of Conflict in a Land of Cooperation. *Review of International Political Economy*, v. 22, issue 5, 2015, p. 1078.

CANUTO, Otaviano; FLEISCHHAKER, Cornelius & SCHELLEKENS, Philip. The Cost of Brazil's Closed Economy. The World Bank,

5 Feb. 2015. Available at: <https://www.worldbank.org/en/news/opinion/2015/02/05/the-cost-of-brazils-closed-economy>. Last access on: 5 Oct. 2023.

CAPORAL, Jack; REINSCH, William Alan; WADDOUPS, Madeleine & MONTAIGU, Catherine Tassin de. A Report of the CSIS 2019. Scholl Chair in International Business.

CARVALHO, Monique; AZEVÊDO, André & MASSUQUETTI, Angélica. Emerging countries and the effects of the trade war between US and China. *Economies*, v. 7, issue 2, 2019, p. 1-21.

CASTELAN, Daniel & SANTOS, Leandro Wolpert. O Brasil no Órgão de Solução de Controvérsias da OMC: soft balancing? *Carta Internacional*, v. 13, issue 3, 2018. Available at: <https://doi.org/10.21530/ci.v13n3.2018.762>. Last access on: 5 Oct. 2023.

CERVO, Amado Luiz & BUENO, Clodoaldo. *História da política exterior do Brasil*. Brasília: Editora UnB, 2015.

CERVO, Amado Luiz. A instabilidade internacional (1919-1939). In: *História das Relações Internacionais Contemporâneas:* da sociedade internacional do Século XIX à era da globalização. São Paulo: Editora Saraiva, 2018.

CHANG, Yanan. The Effect of E-commerce on The International Trade of Small and Medium Enterprises in China. 2016. Research Paper (Master of Arts) – Department of Economics, Southern Illinois University Carbondale, Illinois, 2016.

CHARNOVITZ, Steve. Grading Trump's China trade strategy. 2019. GWU Law School Public Law Research Paper Nº 2019-26, p. 4-8. Available at: <https://ssrn.com/abstract=3393083>. Last access on: 5 Oct. 2023.

CHECKEL, Jeffrey. T. International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide. *European Journal of*

International Relations, v. 3, issue 4, 1997, p. 473-495. Available at: <https://doi.org/10.1177/1354066197003004003>. Last access on: 5 Oct. 2023.

CHEN, Jiyong; LIU, Yishuang & LIU, Wei. Investment facilitation and China's outward foreign direct investment along the belt and road. *China Economic Review*, v. 61, 2020.

CHO, Young Nam & JEONG, Jon Ho. China's soft power: Discussions, resources, and prospects. *Asian Survey*, v. 48, issue 3, 2008, p. 453-472. Available at: <https://doi.org/10.1525/as.2008.48.3.453>. Last access on: 5 Oct. 2023.

CHO, Youngjeen. Revisiting WTO Fisheries Subsidies Negotiations. *Beijing Law Review*, v. 6, issue 1, 2015, p. 9-15. Available at: <https://www.scirp.org/journal/paperinformation.aspx?paperid=53414>. Last access on: 5 Oct. 2023.

CHONG, Terence Tai-leung & LI, Xiaoyang, 2019. Understanding the China–US trade war: causes, economic impact, and the worst-case scenario. *Economic and Political Studies*, v. 7, issue 2, 2019, p. 185-202. Available at: <https://www.tandfonline.com/doi/abs/10.1080/20954816.2019.1595328>. Last access on: 5 Oct. 2023.

CLARK, Ian. Bringing Hegemony Back: The United States and International Order. *International Affairs*, v. 85, n. 1, 2009, p. 23-36.

CLARK, Ian. *Hegemony in International Society*. Oxford: Oxford University Press, 2011.

CLAUSSEN, B. Kathleen. Old Wine in New Bottles? The Trade Rule of Law. *The Yale Journal of International Law Online*, v. 44, issue 1, 2019. Available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3395158>. Last access on: 5 Oct. 2023.

COHEN, Raymond. Rules of the Game in International Politics. *International Studies Quarterly*, v. 24, issue 1, 1980, p. 129-150.

CONGRESSIONAL RESEARCH SERVICE. *China's Economic Rise:* History, Trends, Challenges, and Implications for the United States, 25 Jun. 2019. Available at: <https://sgp.fas.org/crs/row/RL33534.pdf>. Last access on: 5 Oct. 2023.

CONGRESSIONAL RESEARCH SERVICE. *Export Restrictions in Response to the COVID-19 Pandemic*, 2020. Available at: <https://crsreports.congress.gov/product/pdf/IF/IF11551>. Last access on: 5 Oct. 2023.

CORNFORD, Andrew. *Variable Geometry for the WTO: Concept and Precedents*. UNCTAD Discussion Paper, n. 171, 30 Apr. 2004. Available at: <https://unctad.org/publication/variable-geometry-wto-concept-and-precedents>. Last access on: 5 Oct. 2023.

COVID-19 and international trade: Issues and actions. *OECD*, 12 Jun. 2020. Available at: <https://www.oecd.org/coronavirus/policy-responses/covid-19-and-international-trade-issues-and-actions-494da2fa/>. Last access on: 31 Oct. 2023.

COX, Robert W. Social Forces, States and World Orders: Beyond International Relations Theory. Millennium: *Journal of International Studies*, v. 10, issue 2, 1981, p. 139.

COX, Robert W. Production and Hegemony: Toward a Political Economy of World Order. In: Jacobson, H.K. & Sidjanski, D. (eds.). *The Emerging International Economic Order:* Dynamic Processes, Constraints, and Opportunities, London: Sage Publications, 1982.

COX, Robert W. *Production, Power, and World Order:* Social Forces in the Making of History. New York: Columbia University Press, 1987.

COZENDEY, Carlos Márcio Bicalho & CAVALCANTE, Pedro M. Novas Perspectivas para Acordos Internacionais de Investimentos – o Acordo de Cooperação e Facilitação de Investimentos (ACFI). *Cadernos de Política Exterior*, v. 10, issue 2, 2015, p. 87-110.

COZENDEY, Carlos Márcio Bicalho. O pedido de acessão do Brasil à OCDE: onde estamos. *Centro Brasileiro de Relações Internacionais,* dossier 5, issue 18, 2019.

COZENDEY, Carlos Márcio Bicalho. *O Sistema de Solução de Controvérsias da OMC:* para além dos contenciosos, a política externa. Brasília: FUNAG, 2013.

DAVENPORT, Thomas H.; BARTH, Paul & BEAN, Randy. How big data is different. *MIT Sloan Management Review*, v. 54, issue 1, 2012, p. 43-46.

DESAI, Radhika. *Geopolitical economy:* After US hegemony, globalization, and empire (the future of world capitalism). London: Pluto Press, 2013.

DIMAND, Marie-Ann & DIMAND, Robert W. *The History of Game Theory*. London: Routledge, 1996.

DOCTOR, M. Brazil's role in institutions of global economic governance: the WTO and G20. *Global Society*, v. 29, issue 3, 2015, p. 286-300. Available at: <https://doi.org/10.1080/13600826.2015.1025041>. Last access on: 5 Oct. 2023.

ELLIOTT, Kimberly Ann. Another Unilateral Decision by Trump, Another Blow to the Multilateral Trading System. *World Politics Review*, 3 Mar. 2020. Available at: <https://www.worldpoliticsreview.com/in-another-blow-to-the-wto-trump-takes-aim-at-developing-countries/>. Last access on: 5 Oct. 2023.

ELSIG, Manfred. The Functioning of the WTO: Options for Reform and Enhanced Performance. E15 Expert Group on the Functioning

of the WTO – Policy Options Paper. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2016. Available at: <https://www3.weforum.org/docs/E15/WEF_Functioning_WTO_Options_Reform_Enhanced_Performance_report_2015_1401.pdf>. Last access on: 5 Oct. 2023.

ER, Lam Peng. China, the United States, alliances, and war: avoiding the Thucydides trap? *Asian Affairs: An American Review*, v. 43, issue 2, 2016, p. 36-46.

ESCOBAR, Arturo. *Encountering Development:* The Making and Unmaking of the Third World. Princeton: Princeton University Press, 1995.

FEINBERG, Andrew. Trump Just Threatened to Pull Out of WTO Unless the U.S. Keeps Winning Cases. *Newsweek,* 10 Apr. 2020. Available at: <https://www.newsweek.com/trump-just-threatened-pull-out-wto-unless-us-keeps-winning-cases-1497326>. Last access on: 5 Oct. 2023.

FOOTER, Mary E. *The Role of Soft Law Norms in Reconciling the Antinomies of WTO Law*. Society of International Economic Law (SIEL) – Inaugural Conference 2008, 14 Jul. 2008. Available at: <https://ssrn.com/abstract=1159929>. Last access on: 5 Oct. 2023.

FRANK, Robert. Penser historiquement les relations internationales. *Annuaire français des relations internationales*, v. 4, 2003, p. 42-65.

FURTADO, Celso. *Formação econômica do Brasil*. Rio de Janeiro: Editora Fundo de Cultura, 1961.

GARDINI, Gian Luca. Brazil: what rise of what power? *Bulletin of Latin American Research*, v. 35, issue 1, 2016, p. 5-19. Available at: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/blar.12417>. Last access on: 5 Oct. 2023.

GED, DIE, ITC & WEF. Opportunities and challenges of establishing an international framework on investment facilitation for development in the WTO. Expert Workshop, 11 Dec. 2019. World Trade Organizazion: Geneva, 2019.

GIL, Jeffrey. *Soft Power and the worldwide promotion of Chinese language learning:* The Confucius Institute project. Bristol: Multilingual Matters, 2017.

GILL, Bates & HUANG, Yanzhong. Sources and limits of Chinese 'soft power'. *Survival*, v. 48, issue 2, 2006, p. 17-36. Available at: <https://www.comw.org/cmp/fulltext/0606gill.pdf>. Last access on: 5 Oct. 2023.

GILPIN, Robert. *War and Change in World Politics*. Cambridge: Cambridge University Press, 1981.

GLAUBER, Joseph; LABORDE, David; MARTIN, Will & VOS, Rob. COVID-19: Trade restrictions are worst possible response to safeguard food security. In: *COVID-19 and global food security*. Washington: International Food Policy Research Institute (IFPRI), 2020, p. 66-68.

GODECHOT, Jacques. *Independência do Brasil e a Revolução do Ocidente*. São Paulo: Perspectiva, 1972.

GOEL, Poorvi; FEVRIER, Stephen & SOOBRAMANIEN, Teddy Y. Trade Hot Topics – Priorities for Small and Vulnerable Economies in the WTO: Nairobi and Beyond. *The Commonwealth*, issue 122, 2015, p. 1-8. Available at: <https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/view/194/191/1512>. Last access on: 5 Oct. 2023.

GOLDSMITH, Mike. Variable geometry, multilevel governance: European integration and subnational government in the new

millennium. In: FEATHERSTONE, Kevin & RADAELLI, Claudio M. *The Policits of Europeanization*. Oxford: Oxford University Press, 2003.

GRAHAM, Thomas R. The Rise (and Demise?) of the WTO Appellate Body, 2020. Available at: <https://worldtradelaw.typepad.com/files/t.graham.greenwaldlecture.final_.pdf>. Last access on: 5 Oct. 2023.

GRAMSCI, Antonio. Quaderni del carcere. *Trans/Form/Ação*, v. 2, 1975, p. 198-202.

GREIF, Avner. Economic History and Game Theory. *Handbook of Game Theory*, v. 3, 2002, p. 1989-2024.

GUZZINI, Stefano. A Reconstruction of Constructivism in International Relations. *European Journal of International Relations,* v. 6, issue 2, 2000, p. 147-182.

GWYNN, Maria A. Structural power and international regimes. *Journal of Political Power*, v. 12, issue 2, 2019, p. 200-223.

HAAS, Peter M. Introduction: Epistemic Communities and International Policy Coordination. *International Organization*, v. 46, issue 1, 1992, p. 1-35.

HAGGARD, Stephen & SIMMONS, Beth A. Theories of international regimes. *International organization*, v. 41, issue 3, 1987, p. 491-517. Available at: <https://dash.harvard.edu/bitstream/handle/1/3117934/Simmons_TheoriesInternational.pdf>. Last access on: 5 Oct. 2023.

HALL, Todd & YARHI-MILO, Karen. The personal touch: Leaders' impressions, costly signalling, and assessments of sincerity in international affairs. *International Studies Quarterly*, v. 56, issue 3, 2012, p. 560-573.

HALLAK, Issam. Multilateral Investment Court: Overview of the reform proposals and prospects. Brussels: European Parliamentary Research Service, 2020. Available at: <https://www.europarl.europa.

eu/thinktank/en/document/EPRS_BRI(2020)646147>. Last access on: 5 Oct. 2023.

HAMDANI, Khalil. Investment facilitation at the WTO is not investment redux. Columbia University, Columbia Center on Sustainable Investment (CCSI), 2018.

HAN, Alice Siqui. China's Economic Black Box. *Foreign Policy*, 17 Mar. 2019. Available at: <https://foreignpolicy.com/2019/03/17/chinas-economic-black-box/#cookie_message_anchor>. Last access on: 5 Oct. 2023.

HEATH, Ryan. For global diplomats, Zoom is not like being in the room. *Politico*, 16 Apr. 2020. Available at: <https://www.politico.com/news/2020/04/16/zoom-diplomacy-coronavirus-188811>. Last access on: 5 Oct. 2023.

HEES, Felipe. Facilitação de investimentos: uma agenda multilateral. *Pontes*, informações e análises sobre comércio e desenvolvimento sustentável, v. 14, 2017, p. 4-7.

HENDERSON, Bruce D. Brinkmanship in Business. *Harvard Business Review*, v. 45, issue 2, 1967, p. 49-55.

HINGMIRE, Ganesh & CHINCHOLE, Paresh. Position Paper on Public Stockholding, Food Security and India – 11th WTO Ministerial Conference. Buenos Aires, 10-13 Dec. 2017. Available at: <https://www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_ps_fs_india.pdf>. Last access on: 5 Oct. 2023.

HOBSBAWN, Eric J. A origem da Revolução Industrial: Da Revolução Industrial inglesa ao Imperialismo. Sl, Forense Universitária, 2000.

HODA, Anwarul. *Tariff Negotiations and Renegotiations under the GATT and the WTO:* Procedures and Practices. 2. ed. Cambridge: Cambridge University Press, 2018.

HOEKMAN, Bernard. Revitalizing Multilateral Governance at the World Trade Organization – Report of the High-Level Board of Experts on the Future of Global Trade Governance, 2018. Available at: <https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/MT_Report_Revitalizing_Multilateral_Governance_at_the_WTO.pdf>. Last access on: 5 Oct. 2023.

HOEKMAN, Bernard. The Bali trade facilitation agreement and rulemaking in the WTO: Milestone, mistake, or mirage? *The World Trade System: Trends and Challenges*, v. 10212, 2015, p. 109-192.

HOEKMAN, Bernard. Trade Wars and the World Trade Organization: Causes, Consequences, and Change. *Asian Economic Policy Review*, v. 15, issue 1, 2020, p. 98-114.

HOPEWELL, Kristen. New protagonists in global economic governance: Brazilian agribusiness at the WTO. *New Political Economy*, v. 18, issue 4, 2013, p. 603-623.

HOPF, Ted. Common-sense Constructivism and Hegemony in World Politics. *International Organization*, v. 67, issue 2, 2013, p. 317-354.

HOPF, Ted. The Promise of Constructivism in International Relations Theory. *International Security*, v. 23, issue 1, 1998, p. 171-200.

HUFBAUER, Garry Clyde. The future direction of the trade war & role of the WTO [Interview]. *Japan SPOTLIGHT*, 2018, p. 94-97. Available at: <https://www.jef.or.jp/journal/pdf/221st_Special_Interview_01.pdf>. Last access on: 5 Oct. 2023.

HUFBAUER, Gary Clyde & CIMINO-ISAACS, Cathleen. How will TPP and TTIP Change the WTO System? *Journal of International Economic Law*, v. 18, issue 3, 2015, p. 679-696.

HUNT, E. K. *História do pensamento econômico*. Rio de Janeiro: Campus, 2005.

HURRELL, Andrew & NARLIKAR, Aamrita. A New Politics of Confrontation? Brazil and India in Multilateral Trade Negotiations. *Global Society*, v. 20, issue 4, 2006, p. 415-433.

HYNEK, Nik. Evolutionary and Disciplinary Characteristics of Regime Theorization. In: HYNEK, Nik; DITRYCH, Ondrej & STRITECKY, Vit. *Regulating Global Secutiry.* London: Palgrave Macmillan, 2019.

IKENBERRY, G. John & KUPCHAN, Charles A. Socialization and Hegemonic Power. *International Organization*, v. 44, issue 3, 1990, p. 283-315.

IPEA. *Perspectivas do desenvolvimento brasileiro*. Instituto de Pesquisa Econômica Aplicada, 2010. Available at: <https://repositorio.ipea.gov.br/bitstream/11058/3305/1/livro10_perspectivasdodesenvolvimento.pdf>. Last access on: 5 Oct. 2023.

ISMAIL, Yasmin. E-Commerce in the World Trade Organization. *International Institute for Sustainable Development*, 2020. Available at: <https://www.iisd.org/publications/report/e-commerce-world-trade-organization-history-and-latest-developments>. Last access on: 5 Oct. 2023.

ITO, Tasashi & AOYAGI, Takahide. Did the least developed countries benefit from duty-free quota-free access to the Japanese market? Japan and the World Economy, v. 49, issue C, 2019, p. 32-39.

JACOBSON, Louis. Did Donald Trump Turn Around U.S. Record at the WTO? *Politifact*, 16 Aug. 2019. Available at: <https://www.politifact.com/factchecks/2019/aug/16/donald-trump/did-donald-trump-turn-around-us-record-wto/>. Last access on: 5 Oct. 2023.

JAN, Farah N. & PHANSALKAR, Megan. Trump's War on the World Trade Organization. *The Diplomat*, 12 Dec. 2019. Available at: <https://thediplomat.com/2019/12/trumps-war-on-the-world-trade-organization/>. Last access on: 5 Oct. 2023.

JERVIS, Robert. *Perception and misperception in international politics*. Princeton: Princeton University Press, 1976.

JOHNSON, Lise; SACHS, Lisa & LOBEL, Nathan. Aligning International Investment Agreements with the Sustainable Development Goals. *Columbia Journal of Transnational Law*, v. 58, 2019.

JOHNSON, Richard. Post-hegemony? I do not think so. *Theory, culture & society*, v. 24, issue 3, 2007, p. 95-110.

JOSEPH, Reji K. Investment facilitation: new dynamism at the WTO on investment. *Columbia FDI Perspectives*, issue 235, 2018, p. 2-4.

KALLUMMAL, Murali. North–South Imbalances in the Doha Round: The Use of Specific Duties as a Trade Policy Instrument. Agrarian South: *Journal of Political Economy*, v. 4, issue 1, 2015.

KAPLAN, Devorah Abrams. Logistics is Booming in China – But Not Where You Think. *Supply Chain Drive,* 11 Sep. 2018. Available at: <https://www.supplychaindive.com/news/logistics-booms-in-China-3-cities-inland/531989/>. Last access on: 5 Oct. 2023.

KAPUSTINA, Larisa; LIPKOVÁ, Ľudmile; SILIN, Yakov & DREVALEV, Andei. US-China trade war: Causes and outcomes. *SHS Web of Conferences*, v. 73, n. 01012, 2020.

KATZENSTEIN, Peter J. *The Culture of National Security:* Norms and Identity in World Politics. New York: Columbia University Press, 1996.

KAZEMI, Yasaman. AI, Big Data & Advanced Analytics in The Supply Chain. *Forbes*, 29 Jan. 2019. Available at: <https://www.forbes.com/sites/yasamankazemi/2019/01/29/ai-big-data-advanced-analytics-in-the-supply-chain/?sh=3f4acc05244f>. Last access on: 5 Oct. 2023.

KEOHANE, Robert O. & MARTIN, Lisa L. The promise of institutionalist theory. *International Security*, v. 20, issue 1, 1995, p. 39-51.

KEOHANE, Robert O. & VICTOR, David G. The regime complex for climate change. *Perspectives on Politics*, v. 9, issue 1, 2011, p. 7-23.

KEOHANE, Robert O. *After hegemony:* Cooperation and discord in the world political economy. Princeton: Princeton University Press, 2005.

KEOHANE, Robert O. Reciprocity in international relations. *International Organization*, v. 40, issue 1, 1986, p. 1-27.

KEOHANE, Robert O. *The Demand for International Regimes*. Ithaca: Cornell University Press, 1983.

KERTZER, Joshua D. & BRUTGER, Ryan. Decomposing audience costs: Bringing the audience back into audience cost theory. *American Journal of Political Science*, v. 60, issue 1, 2016, p. 234-249.

KEYNES, Soumaya & BOWN, Chad P. Trade Talks Episode 54: Can Trump Withdraw from Trade Deals? Peterson Institute for International Economics, 2018. Available at: <https://www.piie.com/experts/peterson-perspectives/trade-talks-episode-54-can-trump-withdraw-trade-deals>. Last access on: 31 Oct. 2023.

KHALIQI, Muhammad; RIFIN, Amzul & ADHI, Andriyono Kilat. Trade Effect of Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) on Indonesia's Shrimp Export. *Indonesian Journal of Agricultural Research*, v. 1, issue 2, 2018, p. 134-141.

KHAN, Naila Iqbal. Global trade war and its impact on trade and growth: War between USA, China and EU. *International Journal of Innovative Technology and Exploring Engineering*, v. 8, issue 8, 2019, p. 934-942. Available at: <https://www.ijitee.org/wp-content/uploads/papers/v8i8/G5629058719.pdf>. Last access on: 31 Oct. 2023.

KOREMENOS, Barbara; LIPSON, Charles & SNIDAL, Duncan. The Rational Design of International Institutions. *International Organization*, v. 55, issue 4, 201, p. 761-799.

KRASNER, Stephen D. Structural causes and regime consequences: regimes as intervening variables. *International organization*, v. 36, n. 2, 1982, p. 185-205. Available at: <https://pos-graduacao.uepb.edu.br/ppgri/files/2016/02/Krasner-Structural-Causes-and-Regime-Consequencies-Regime-as-Intervening-Variables.pdf>. Last access on: 31 Oct. 2022.

KRASNER, Stephen D. *International regimes*. Ithaca: Cornell University Press, 1983.

KREBS, Robert R. & LOBASZ, Jennifer. Fixing the meaning of 9/11: Hegemony, coercion, and the road to war in Iraq. *Security Studies*, v. 16, issue 3, 2007, p. 409-451.

LABORDE, David; MARTIN, Will & VOS, Rob. Poverty and food insecurity could grow dramatically as COVID-19 spreads worldwide Option. *IFPRI*, 16 Apr. 2020. Available at: <https://www.ifpri.org/blog/poverty-and-food-insecurity-could-grow-dramatically-covid-19-spreads>. Last access on: 31 Oct. 2023.

LAITIN, David D. Capitalism and hegemony: Yorubaland and the international economy. *International Organization* – Cambridge University Press, v. 36, issue 4, 1982, p. 687-713.

LAMY, Pascal. Emerging economies have shifted the balance of power in world trade. *World Trade Organization*, 26 Nov. 2012. Available at: <https://www.wto.org/english/news_e/sppl_e/sppl258_e.htm>. Last access on: 5 Oct. 2023.

LAPID, Yosef & KRATOCHWIL, Friedrich. *The Return of Culture and Identity in IR Theory*. Boulder: Lynne Rienner, 1996.

LAPLUME, Andre O.; PETERSEN, Bent & PEARCE, Joshua M. Global value chains from a 3D printing perspective. *Journal of International Business Studies*, v. 47, issue 5, 2016, p. 595-609.

LAWRENCE, Robert. Rulemaking amidst Growing Diversity: A Club-of-Clubs Approach to WTO Reform and New Issue Selection. *Journal of International Economic Law*, v. 9, issue 4, 2003, p. 823-835.

LEE, James. Did Thucydides believe in Thucydides' trap? The history of the Peloponnesian War and its Relevance to US-China Relations. *Journal of Chinese Political Science*, v. 24, issue 1, 2019, p. 67-86.

LEVY, Jack S. Explaining Events and Developing Theories: History, Political Science, and the Analysis of International Relations. In: ELMAN, Colin & ELMAN, Miriam F. *Bridges and Boundaries:* Historians, Political Scientists, and the Study of International Relations. Cambridge: MIT Press, 2001, p. 39-83.

LIPPERT, Barbara & PERTHES, Volker. *Strategic rivalry between United States and China*. SWP Research Paper N. 4, 2020, p. 9-16. Available at: <https://www.swp-berlin.org/publications/products/research_papers/2020RP04_China_USA.pdf>. Last access on: 31 Oct. 2023.

LLOYD, Peter. The Variable Geometry Approach to International Economic Integration. *International Journal of Business and International Studies*, 2008. Available at: <https://journals.usb.ac.ir/article_1304_cf58b15ac0cec6fb55a894e891cb0520.pdf>. Last access on: 31 Oct. 2023.

LUZ, Lília & DURANTE, Daniel. A guerra dos pneus: a controvérsia entre Brasil e Comunidades Europeias sobre o comércio internacional de pneus usados. *Desenvolvimento e Meio Ambiente*, v. 27, 2013, p. 37-55. Available at: <https://revistas.ufpr.br/made/article/download/28422/20670>. Last access on: 31 Oct. 2023.

MAGGETTI, Martino & MORAES, Henrique Choer. The Policy-Making of Investment Treaties in Brazil: Policy Learning in the Context of Late Adoption. In: C. A. Dunlop *et al* (ed.). Learning in Public Policy. *International Series on Public Policy*, 2018, p. 295-316. Available at: <https://maggetti.org/wp-content/uploads/2020/06/Maggetti-Moraes-The-policy-making.pdf>. Last access on: 31 Oct. 2023.

MALIK, Shah Rukh; RAFIQ, Mujahid & KAHLOON, Muhammad Ahmad. Cloud Security in E-Commerce Applications. In: GOCHHAIT, Saikat; SHOU, David Tawei & FAZALBHOY, Sabiha. *Cloud Computing Applications and Techniques for E-Commerc*e. Pennsylvania: IGI Global, 2020.

MALLORY, Tabitha Grace. Fisheries subsidies in China: Quantitative and qualitative assessment of policy coherence and effectiveness. *Marine Policy*, v. 68, 2016, p. 74-82.

MANEY, Gregory M.; WOEHRLE, Lynne M. & COY, Patrick G. Harnessing and challenging hegemony: The US peace movement after 9/11. *Sociological Perspectives*, v. 48, issue 3, 2005, p. 357-381. Available at: <https://www.aldeilis.net/terror/788.pdf>. Last access on: 31 Oct. 2023.

MARCH, James G. & OLSEN, Johan P. 1998. The Institutional Dynamics of International Political Orders. *International Organization*, v. 52, issue 4, 1998, p. 943-969.

MARSILI, Marco. Brazil: the carambole strategy of a rising power. *Relações Internacionais*, v. 13, issue 1, 2015, p. 63-83. Available at: <https://www.researchgate.net/publication/282204070_Brazil_the_Carambole_Strategy_of_a_Rising_Power>. Last access on: 31 Oct. 2023

MARTIN, Antoine & MERCURIO, Bryan. Doha dead and buried in Nairobi: lessons for the WTO. *Journal of International Trade Law and Policy*, v. 16, issue 1, 2017, p. 49-66.

MCCLORY, Jonathan. *The New Persuaders II* – A 2011 Global Ranking of Soft Power. London: Institute for Government, 2011.

MEARSHEIMER, John J. Bound to Fail: The Rise and Fall of the Liberal International Orde. *International Security,* v. 43, issue 4, 2019, p. 7-50.

MESQUITA, Paulo Estivallet de. *A Organização Mundial do Comércio*. Brasília: FUNAG, 2013.

MESQUITA, Thaís. Brazil: Investment Facilitation and the WTO [Interview], 2020.

MILLS, Alex. Towards a Public International Perspective on Private International Law: Variable Geometry and Peer Governance. Faculty of Laws, University College London, Mar. 2012.

MIRANDA, Jorge & MIRANDA, Manuel Sánchez. Chronicle of a Crisis Foretold: How The WTO Appellate Body Drove Itself Into A Corner. Journal of International Economic Law, v. 26, issue 3, 2023, p. 435-461. Available at: <https://doi.org/10.1093/jiel/jgad023>. Last access on: 31 Oct. 2023.

MOORE, Gregory J. Avoiding a Thucydides Trap in Sino-American relations (... and 7 reasons why that might be difficult). *Asian Security*, v. 13, issue 2, 2017, p. 98-115.

MORAES, Henrique Choer & HEES, Felipe. Breaking the BIT mold: Brazil's pioneering approach to investment agreements. Symposium on the BRICS approach to the investment treaty system. American Journal of International Law, v. 112, 2018, p. 197-201.

MOREIRA, Assis. Brasil indica Graça Lima para mecanismo de apelação da OMC, e CNI defende acordos bilaterais. *Valor Econômico*, 22 Mai. 2020.

MORGENTHAU, Hans J. Six principles of political realism. *Classic Readings of International Relations*, 2006, p. 34-38.

MORGENTHAU, Hans J. *A Política Entre as Nações*. Brasília: Editora UnB, 2003.

MOROSINI, Fabio & BADIN, Michelle Ratton Sanchez. ACFI: o que está por trás desta inovação regulatória? *PONTES*, v. 12, issue 1, 2016, p. 9-12.

MUZAKA, Valbona & BISHOP, Matt L. Doha stalemate: The end of trade multilateralism? *Review of International Studies,* v. 41, issue 2, 2014, p. 383-406.

NERY, Tiago. UNASUL: a dimensão política do novo regionalismo sul-americano. *Caderno CRH,* v. 29, issue 3, 2016, p. 59-75.

NEVES, Murilo C. A contribuição do Acordo de Facilitação de Comércio para a evolução do comércio exterior de países em desenvolvimento. 2017. 14 f. Undergraduate final paper (Specialisation in International Business Management and Development) – Universidade do Sul de Santa Catarina, Santa Catarina, 2017. Available at: <https://repositorio.animaeducacao.com.br/handle/ANIMA/11797>. Last access on: 31 Oct. 2023.

NEVES, Victor de Sá. Nova dinâmica nas negociações sobre comércio internacional: eleição de Roberto Azevêdo na OMC, Mundorama, 2013.

NOBLE, William. China: A Poor State in a Rich-State Dominated World Trade Regime. *University of Florida International Review*, 2017, p. 69-81.

NOGUEIRA, João Pontes & MESSARI, Nizar. *Theory of International Relations*. Rio de Janeiro: Gen Atlas, 2005.

NOVIK, Ana & CROMBRUGGHE, Alexandre. Towards an International Framework for Investment Facilitation. Investment Insights, Apr. 2018. Available at: <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>. Last access on: 31 Oct. 2023.

NYE, Joseph S. & GOLDSMITH, Jack Landman. The future of power. *Bulletin of the American Academy*, v. 64, issue 3, 2011, p. 45-52.

NYE, Joseph S. Public Diplomacy and Soft Power. *The Annals of the American Academy of Political and Social Science*, v. 616, issue 94, 2008.

NYE, Joseph S. Soft power. *Foreign policy*, v. 80, 1990, p. 153-171.

NYE, Joseph S. The Kindleberger Trap. Project Syndicate, 9 Jan. 2017. Available at: <https://www.project-syndicate.org/commentary/trump-china-kindleberger-trap-by-joseph-s--nye-2017-01?barrier=accesspaylog>. Last access on: 31 Oct. 2023.

NYE, Joseph S. *Soft Power:* the means to success in world politics. New York: Public Affairs, 2004.

ODELL, John S. *How Should the WTO Launch and Negotiate a Future Round?* Robert Schuman Centre for Advanced Studies Research Paper, n. 2014/110, 2014.

OECD. China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape. In: *OECD Business and Financial Outlook*. Paris: OECD Publishing, 2018.

OECD. *Unpacking E-commerce*. Paris: OECD Publishing, 2019. Available at: <https://www.oecd.org/digital/ieconomy/unpacking-ecommerce.pdf>. Last access on: 31 Oct. 2023.

OLIVEIRA, Marcelo Fernandes de. Multilateralismo, democracia e política externa no Brasil: contenciosos das patentes e do algodão na Organização Mundial do Comércio (OMC). *Contexto Internacional*, v. 29, issue 1, 2007, p. 7-38.

OLIVEIRA, Ricardo Figueiredo de. Perspectives on Topical Foreign Direct Investment Issues. In: *The useful institution of an investment ombudsperson*, v. 273, 2020.

OMIC, Ahmed & STEPHENSON, Matthew. What can governments do to facilitate investment? Important measures identified through surveys. World Economic Forum, 2019. Available at: <https://www3.weforum.org/docs/WEF_Investment_Facilitation_2019.pdf>. Last access on: 31 Oct. 2023.

ONUF, Nicholas Greenwood. *World of Our Making:* Rules and Rule in Social Theory and International Relations. Columbia: University of South Carolina Press, 1989.

PACKARD, Clark. Trump's Real Trade War is Being Waged in the WTO. FOREIGN POLICY, 9 Jan. 2020. Available at: <https://foreignpolicy.com/2020/01/09/trumps-real-trade-war-is-being-waged-on-the-wto/>. Last access on: 16 Jan. 2024.

PALLAVER, Matteo. *Power and its Forms: Hard, Soft, Smart*. Thesis (Master of Philosophy) – London School of Economics and Political Science, London, 2011.

PAYOSOVA, Tetyana; HUFBAUER, Gary Clyde & SCHOTT, Jeffrey J. The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures. *Peterson Institute for International Economics*, v. PB18-5, 2018.

PEET, Curtis. Declining hegemony and rising international trade: Moving beyond hegemonic stability theory. *International Interactions*, v. 18, issue 2, 1992, p. 101-127.

PEREIRA, Celso de Tarso; COSTA, Valéria Mendes & ARAUJO, Leandro Rocha de. 100 Casos na OMC: a experiência brasileira em solução de controvérsias. *Política Externa*, v. 20, issue 4, 2012, p. 121-134. Available at: <https://edisciplinas.usp.br/pluginfile.php/114309/mod_resource/content/3/Artigo_Solucao_Controversias_OMC.pdf>. Last access on: 5 Oct. 2015.

PERRONE, Nicolás M. & CÉSAR, Gustavo Rojas de Cerqueira. Brazil's bilateral investment treaties: More than a new investment treaty model? *Columbia Center on Sustainable Investment*, issue 159, 2015.

PINTO, Daniel Roberto. Muito mais que a Embraer: os contenciosos Brasil-Canadá e o país que queremos ser. In: BENJAMIN, Daniela Arruda (ed.). *O Sistema de Solução de Controvérsias da OMC*. Brasília: FUNAG, 2013.

POLANYI, Karl. *The Great Transformation*. New York: Farrar & Rhinehart, 1944.

PRICE, Richard & TANNENWALD, Nina. Norms and Deterrence: The Nuclear and Chemical Weapons Taboos. In: *The Culture of National Security:* Norms and Identity in World Politics. New York: Columbia University Press, 1996.

PRICE, Richard M. A Genealogy of the Chemical Weapons Taboo. *International Organization*, v. 49, issue 1, 1995, p. 73-103.

PRICE, Richard M. *The Chemical Weapons Taboo*. Ithaca: Cornell University Press, 1997.

PUCHALA, Donald & HOPKINS, Raymond. International regimes: lessons from inductive analysis. *International organization*, v. 36, issue 2, 1982, p. 245-275.

RAMALHO, Vinícius da Costa, 2020. *A crise do sistema de solução de controvérsias da OMC*. Brasília: FUNAG, 2020.

RAPHAEL, Freddy. Interpretative Sociology and Axiological Neutrality in Max Weber and Werner Sombart. *Cultural Dynamics*, v. 3, issue 2, 1990, p. 173-189.

RATHBUN, Brian C. *Trust in International Cooperation:* International Security Institutions, Domestic Politics, and American Multilateralism. Cambridge: Cambridge University Press, 2011.

RICARDO, David. On the Principles of Political Economy and Taxation. 3 ed. Kitchener: Batoche Books, 2001.

RISSE, Thomas. Social Constructivism Meets Globalization. In: HELD, David & MCGREW, Anthony. *Understanding Globalization:* Theories and Controversies. Cambridge: Polity Press, 2005.

ROSE, Gideon. Neoclassical realism and theories of foreign policy. *World Politics*, v. 51, issue 1, 1998, p. 144-172.

RUGGIE, John G. International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order. *International Organization*, v. 36, issue 2, 1982, p. 379-415.

SARAIVA, José Flávio Sombra (ed.). *História das Relações Internacionais do século XIX à lá era da globalização*. São Paulo: Saraiva, 2008.

SATANA, Nil Seda. Multilateral interventions as a power-enhancing instrument: rising powers' path from the periphery to the centre. In: KENKEL, Kai Michael & CUNLIFFE, Philip (eds). *Brazil as a Rising Power*. London: Routledge, 2016.

SAUVANT, K. P. Five Key Considerations for the WTO Investment-Facilitation Discussions, Going Forward. *Columbia FDI Perspectives,* issue 243, 2019. Available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3316340>. Last access on: 5 Nov. 2023.

SAUVANT, Karl P. & GABOR, Evan. Advancing Sustainable Development by Facilitating Sustainable FDI, Promoting CSR, Designating Recognized Sustainable Investors, and Giving Home

Countries a Role. *Columbia Center of Sustainable Investment*, 2019. Available at: <https://ccsi.columbia.edu/content/advancing-sustainable-development-facilitating-sustainable-fdi-promoting-csr-designating>. Last access on: 5 Nov. 2023.

SAUVANT, Karl P. China, the G20 and the International Investment Regime. *China & World Economy*, v. 24, issue 4, 2016, p. 73-92.

SAUVANT, Karl P., 2018. The Evolving International Investment Law and Policy Regime: Ways Forward. International Centre for Trade and Sustainable Development and World Economic Forum – E15 Initiative, 2016. Available at: <https://ssrn.com/abstract=2722949>. Last access on: 5 Nov. 2023.

SAUVANT, Karl P.; STEPHENSON, Matthew & KAGAN, Yardenne. *An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?* 3 ed. Technical paper – International Trade Centre, Geneva, 2022.

SCHELLING, Thomas C. *The strategy of conflict*. 2 ed. Cambridge: Harvard University Press, 1980.

SCHILL, Stephan & VIDIGAL, Geraldo. Perspectives on topical foreign direct investment issues. *Columbia FDI Perspectives*, issue 248, 2017, p. 1-3. Available at: <https://ccsi.columbia.edu/sites/default/files/content/docs/publications/No-248-Schill-and-Vidigal-FINAL.pdf>. Last access on: 6 Nov. 2023.

SCHMIDT, Brian. Hegemony: A conceptual and theoretical analysis. *Dialogue of civilizations Research Institute*, v. 15, 2018.

SCHOTT, Jeffrey J. & WATAL, Jayashree. Decision-Making in the WTO. *Policy Brief*, Mar. 2000. Available at: <https://www.piie.com/publications/policy-briefs/decision-making-wto>. Last access on: 6 Nov. 2023.

SCHOTT, Jeffrey J. Challenges Facing the World Trade Organization. In: *The World Trading System:* Challenges Ahead. Washington: Peterson Institute for International Economics, 1996, p. 3-24.

SCHWAB, Klaus. The Universal Purpose of a Company in the Fourth Industrial Revolution. World Economic Forum, 2 Dec. 2019. Available at: <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/>. Last access on: 6 Nov. 2023.

SCHWALBE, Ulrich & WALKER, Paul. Zermelo and the Early History of Game Theory. *Games and Economic Behavior*, v. 34, issue 1, 2001, 123-137.

SCHWARZ, Michael & SONIN, Konstantin. A Theory of Brinkmanship, Conflicts, and Commitments. *Journal of Law, Economics, and Organization*, v. 24, issue 1, 2008, p. 163-183.

SCORZA, Flavio Augusto Trevisan. Facilitação do comércio e procedimentos aduaneiros nas negociações da OMC: os impactos para o direito aduaneiro do Brasil. *Revista Brasileira de Comércio Exterior*, issue 92, 2007, p. 44-58.

SHAFFER, Gregory & GAO, Henry. China's rise: How it took on the U.S. at the WTO. *University of Illinois Law Review*, 2018, issue 1, p. 115-184.

SHAFFER, Gregory; SANCHEZ, Michelle Ratton & ROSENBERG, Barbara. The trials of winning at the WTO: what lies behind Brazil's success. *Cornell International Law Journal,* v. 41, 2008, p. 383.

SHAPIRO, Daniel B. & RAKOV, Daniel. Will Zoomplomacy Last? *Foreign Policy*, 18 May 2020. Available at: <https://foreignpolicy.com/2020/05/18/will-zoomplomacy-last/>. Last access on: 6 Nov. 2023.

SHARMA, Sachin Kumar. WTO and policy space for agriculture and food security: issues for China and India. *Agricultural Economics Research Review*, v. 31, issue 2, 2018, p. 207-219.

SHEA, Dennis. Challenges Posed to the WTO by Non-Market Policies and Practices. U.S. Mission to International Organizations in Geneva, 9 Dec. 2019. Available at: <https://geneva.usmission.gov/2019/12/09/ambassador-shea-challenges-posed-to-the-wto-by-non-market-policies-and-practices/>. Last access on: 6 Nov. 2023.

SHEA, Dennis. U.S. Engagement at the World Trade Organization. U.S. Mission to International Organizations in Geneva, 6 Feb. 2020. Available at: <https://geneva.usmission.gov/2020/02/07/u-s-engagement-at-the-world-trade-organization/>. Last access on: 6 Nov. 2023.

SHUBIK, Martin. Game theory, behavior, and the paradox of the Prisoner's Dilemma: three solutions. *Journal of Conflict Resolution*, v. 14, issue 2, 1970, p. 181-193.

SINGH, Kavaljit. *Do We Need a Multilateral Instrument on Investment Facilitation?* Madhyam, May 2017. Available at: <https://www.madhyam.org.in/wp-content/uploads/2017/05/Briefing-Paper-on-MIIF.pdf>. Last access on: 6 Nov. 2023.

SIQUEIRA, Ada Bogliolo Piancastelli de. What Can an Investment Facilitation Agreement at the WTO Do for Sustainable Development? E15 Initiative. Geneva: International Centre for Trade and Sustainable Development and World Economic Forum, 2018.

SMITH, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Methuen & Co., 1776.

SNIDAL, Duncan. The Game Theory of International Politics. *World Politics*, v. 38, issue 1, 1985, p. 25-57.

SNIDAL, Duncan. The limits of hegemonic stability theory. *International organization*, v. 39, issue 4, 1985, p. 579-614.

SNYDER, Glenn Herald & DIESING, Paul. *Conflict among nations:* Bargaining, decision making, and system structure in international crises. Princeton: Princeton University Press, 1977.

SOOBRAMANIEN, Teddy; VICKERS, Brendan & ENOS-EDU, Hilary. *WTO Reform:* Reshaping Global Trade Governance for 21st Century Challenges. London: Commonwealth Secretariat, 2019.

SPROUT, Harold & SPROUT, Margaret. The dilemma of rising demands and insufficient resources. *World Politics*, v. 20, issue 4, 1968, p. 660-693.

SRIVASTAVA, Sanjay. Negotiation Analysis. *International Studies*, v. 45, issue 1, 2008, p. 23-43.

STEINBERG, Richard H. In the shadow of law or power? Consensus-based bargaining and outcomes in the GATT/WTO. *International organization*, v. 56, issue 2, 2002, p. 339-374. Available at: <https://edisciplinas.usp.br/pluginfile.php/161149/mod_resource/content/1/Steinberg%202002.pdf>. Last access on: 6 Nov. 2023.

STEINBOCK, Dan. U.S.-China trade war and its global impacts. *China Quarterly of International Strategic Studies*, v. 4, issue 4, 2008, p. 515-542. Available at <https://doi.org/10.1142/S2377740018500318>. Last access on: 6 Nov. 2023.

STONE, Randall. The Use and Abuse of Game Theory in International Relations. *Journal of Conflict Resolution*, v. 45, issue 2, 2001, p. 216-244.

STRANGE, Roger & ZUCCHELLA, Antonella. Industry 4.0, Global Value Chains and International Business. *Multinational Business Review*, v. 25, issue 4, 2017, p. 174-184.

STUENKEL, Oliver. *Post-Western World:* How Emerging Powers Are Remaking Global Order. Cambridge: Polity, 2016.

SULSER, Timothy & DUNSTON, Shahnila. COVID-19-related trade restrictions on rice and wheat could drive up prices and increase hunger. *International Food Policy Research Institute (IFPRI)*, 15 May 2020. Available at: <https://www.ifpri.org/blog/covid-19-related-trade-restrictions-rice-and-wheat-could-drive-prices-and-increase-hunger>. Last access on: 6 Nov. 2023.

SVOBODA, Karel. Norms as a Political Weapon? Sanitary, Phytosanitary, and Technical Norms as Russia's Foreign Trade Tool. *Problems of Post-Communism*, v. 68, issue 1, 2021, p. 66-73.

TANNENWALD, Nina. Justice and Fairness in the Nuclear Non-proliferation Regime. *Ethics and International Affairs*, v. 27, issue 3, 2013, p. 299-317.

TANNENWALD, Nina. The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-use. *International Organization*, v. 53, issue 3, 1999, p. 433-468.

TANNENWALD, Nina. *The Nuclear Taboo:* The United States and the Non-use of Nuclear Weapons Since 1945. Cambridge: Cambridge University Press, 2007.

TAYLOR, Michael. *Anarchy and cooperation*. London: John Wiley and Sons, 1976.

TELLIS, Ashley J.; SZALWINSKI, Alison & WILLS, Michael (eds). *Strategic Asia* 2020: U.S-China competition for global influence. Washington: The National Bureau of Asian Research, 2020.

TEMA, Malvina. Basic assumptions in Game Theory and International Relations. *International Relations Quarterly*, v. 5, issue 1, 2014, p. 1-4.

THIES, Cameron G. A Pragmatic Guide to Qualitative Historical Analysis in the Study of International Relations. *International Studies Perspectives*, v. 3, issue 4, 2002, p. 351-372.

THORSTENSEN, Vera & FERRAZ, Lucas. O isolamento do Brasil em relação aos acordos e mega-acordos comerciais. *Boletim de Economia e Política Internacional*, v. 16, 2014, p. 5-17. Available at: <https://repositorio.ipea.gov.br/bitstream/11058/3762/1/BEPI_n16_isolamento.pdf>. Last access on: 7 Nov. 2023.

THORSTENSEN, Vera; MASCARENHAS, Fernanda & PAOLA, Giulia D. E-commerce in Brazil: where we are in terms of regulatory practices. *FGV*, São Paulo, Sep. 2019. Available at: <https://bibliotecadigital.fgv.br/dspace/handle/10438/28007>. Last access on: 7 Nov. 2023.

THORSTENSEN, Vera. A OMC – Organização Mundial do Comércio e as negociações sobre investimentos e concorrência. *Revista Brasileira de Política Internacional*, v. 41, issue 1, 1998, p. 57-89.

TOMZ, Michael. *Reputation and international cooperation*: Sovereign debt across three centuries. Princeton: Princeton University Press, 2012.

TURBAN, Efraim et al. *Electronic Commerce 2018:* A Managerial and Social Networks Perspective. New York: Springer International Publishing, 2018.

VALLS, Lia Baker. Acordos de investimentos na agenda Brasil-China. *Revista Conjuntura Econômica*, v. 71, issue 9, p. 63-65.

VAN DAMME, Isabelle. Treaty Interpretation by the WTO Appellate Body. *European Journal of International Law*, v. 21, issue 3, 2010, p. 605-648.

VANGRASSTEK, Craig & SAUVÉ, Pierre. The Consistency of WTO Rules: Can the Single undertaking be Squared with Variable

Geometry. *Journal of International Economic Law*, v. 9, issue 4, 2006, p. 837-864.

VANHAM, Peter. A brief history of globalization. Cologny Economic Forum, 17 Jun. 2016. Available at: <https://www.weforum.org/agenda/2019/01/how-globalization-4-0-fits-into-the-history-of-globalization/>. Last access on: 7 Nov. 2023.

VIEIRA, Vinícius Rodrigues. Beyond the Market: the Global South and the WTO's Normative Dimension. *International Negotiation*, v. 21, issue 2, 2016, p. 266-293.

VIEIRA, Vinícius Rodrigues. Blended Diplomacy: Institutional Design and Brazil's National Interest in Trade. *Rising Powers Quarterly*, v. 2, issue 2, 2017, p. 31-53. Available at: <https://risingpowersproject.com/blended-diplomacy-institutional-design-brazils-national-interest-trade/>. Last access on: 7 Nov. 2023.

VLASSIS, Antonios. Soft power, global governance of cultural industries and rising powers: the case of China. *International Journal of Cultural Policy*, v. 22, issue 4, 2016, p. 481-496.

VON NEUMANN, John & MORGENSTERN, Oskar. *Theory of Games and Economic Behavior*. Princeton: Princeton University Press, 1944.

WALLERSTEIN, Immanuel. Brexit: Symptom, Not Cause, of Turmoil. Immanuel Wallerstein Commentary n. 428, 1 Jul. 2016. Available at: <https://iwallerstein.com/brexit-symptom-not-cause-of-turmoil/>. Last access on: 7 Nov. 2023.

WALTZ, Kenneth. *Theory of International Politics*. New York: MacGraw Hill, 1979.

WEBER, Max. *Economy and Society*. Berkeley: University of California Press, 1979.

WENDT, Alexander. Anarchy is What States Make of It: The Social Construction of Power Politics. *International Theory*, v. 46, issue 2, 1992, p. 129-177.

WENDT, Alexander. *Social theory of international politics*. Cambridge: Cambridge University Press, 1999.

WIESEMEYER, Jim. WTO Mostly Concurs with U.S. Challenge of China Supports for Farmers. *Pro Farmer,* 28 Feb. 219.

WILKINSON, Rorden; HANNAH, Erin & SCOTT, James. The WTO in Nairobi: The Demise of the Doha Development Agenda and the Future of the Multilateral Trading System. *Global Policy*, v. 7, issue 2, 2016, p. 247-255.

WINHAM, Gilbert R. *International Trade and the Tokyo Round Negotiation*. Princeton: Princeton University Press, 1986.

WOLFE, Robert. The WTO single undertaking as negotiating technique and constitutive metaphor. *Journal of International Economic Law*, v. 12, issue 4, 2009, p. 835-858.

WOLFF, Alan. WTO 2025: Getting back to the negotiating table. *Peterson Institute for International Economics*, working paper 22-7, May 2022. Available at: <https://www.piie.com/publications/working-papers/wto-2025-getting-back-negotiating-table>. Last access on: 7 Nov. 2023.

WONG, Dorcas & KOTY, Alexandre Chipman. The US-China Trade War: A Timeline. *China Briefing*, 25 Aug. 2020. Available at: <https://www.china-briefing.com/news/the-us-china-trade-war-a-timeline/>. Last access on: 5 Oct. 2023.

WORLD ECONOMIC FORUM. Stakeholder Capitalism: A Manifesto for a Cohesive and Sustainable World, 15 Jan. 2020. Available at: <https://www.weforum.org/press/2020/01/stakeholder-capitalism-

a-manifesto-for-a-cohesive-and-sustainable-world/>. Last access on: 7 Nov. 2023.

WU, Mark. *The WTO Environmental Goods Agreement: from multilateralism to plurilateralism*. Cheltenham: Edward Elgar Publishing, 2016.

WURGAFT, Benjamin Aldes. *Thinking in Public:* Strauss, Levinas, Arendt. Philadelphia: University of Pennsylvania Press, 2019.

YANG, Yuan. Escape both the 'Thucydides Trap' and the 'Churchill Trap': Finding a Third Type of Great Power Relations under the Bipolar System. *The Chinese Journal of International Politics*, v. 11, issue 2, 2018, p. 193-235.

YIN, Jason Z. & HAMILTON, Michael H. The Conundrum of US-China Trade Relations Through Game Theory Modelling. *Journal of Applied Business and Economics*, v. 20, issue 8, 2018. Available at: <https://articlegateway.com/index.php/JABE/article/view/217>. Last access on: 7 Nov. 2023.

YOUNG, Oran R. *Resource regimes:* Natural resources and social institutions. Berkeley: University of California Press, 1982.

ZAKARIA, Fareed. *The Post American World*. New York: W. W. Norton & Company, 2008.

ZANGL, Bernhard; HEUSSNER, Frederick; KRUCK, Andreas & LANZENDÖRFER, Xenia. Imperfect adaptation: how the WTO and the IMF adjust to shifting power distributions among their members. *The Review of International Organizations*, v. 11, issue 2, 2016, p. 171-196.

ZEHFUSS, Maja. *Constructivism in International Relations. The politics of reality*. Cambridge: Cambridge University Press, 2002.

ZHANG, Joe. Investment Facilitation: Making sense of concepts, discussions and processes. *International Institute for Sustainable*

Development, 10 Jul. 2018. Available at: <https://www.iisd.org/publications/brief/investment-facilitation-making-sense-concepts-discussions-and-processes>. Last access on: 7 Nov. 2018.

ZINSER, Michael; ROSE, Justin & SIRKIN, Hal. The Robotics Revolution: The Next Great Leap in Manufacturing. *Boston Consulting Group*, 23 Sep. 2015. Available at: <https://www.bcg.com/publications/2015/lean-manufacturing-innovation-robotics-revolution-next-great-leap-manufacturing>. Last access on: 7 Nov. 2023.

APPENDIX

A.1 Investment Facilitation Negotiation Text

RESTRICTED

WORLD TRADE ORGANIZATION

INF/IFD/RD/74/Rev.6

9 February 2022

(22-1139)

Original: English

WTO STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

CONSOLIDATED DOCUMENT BY THE COORDINATOR

"EASTER TEXT"

Revision[*]

1. The 'Easter Text' is aimed at facilitating negotiations among participating Members on an Agreement on Investment Facilitation for Development. It consolidates the successive updates made to the 'Consolidated Document' ('Easter Text') since the first version circulated to all Members on 12 April 2021. The 'Easter Text' and its revisions, including the present one, have been prepared under the responsibility of the Coordinator and are based on the text proposals and contributions submitted by Members to date, as well as text contributions by small/discussion groups, and 'text' prepared by the Coordinator, that have been discussed at plenary meetings.

2. This document has been prepared on a without prejudice basis and does not change the structure, nor nature of the 'Easter Text', which is to facilitate negotiations on the basis of one 'single text', allowing participants to further visualize the contours of the future Agreement. It is understood that specific provisions may need to be revisited in light of the negotiations on other sections or provisions of the future Agreement. The 'plain text' that is not in square brackets does not indicate agreement to, or conclusion of, the text and only highlights areas of common ground among participating Members with the aim of facilitating further convergence among them. Instead, the 'text boxes' including the proposals by Members, which are contained in the Annex to this document, highlight those issues that require further work or discussion. Those provisions or sections that appear in 'text boxes' in the Annex have been replaced, in the corresponding provisions or sections of the text, by placeholders in light blue colour.

[*] Following the negotiating meeting held on 26-27 January 2022, this sixth revision concerns the inclusion of provisions 26 and 27 in Section V ('Special and Differential Treatment for Developing and Least- developed Country Members'), and the inclusion in the Annex (under 'Other Definitions') of a 'text contribution' on the definitions of 'investor of another Member' and 'juridical person', which was submitted by the facilitator of the Discussion Group on Scope based on the discussions held by the Group (circulated to all Members on 18 January 2022). Lastly, this revision also includes a revised text proposal by China, which is contained in the Annex (sub-paragraph 2.2(c) of the 'text box' under 'Other possible exclusions' in Section I on 'Scope and General Principles').

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PREAMBLE

Members,

Recognizing the complementary relationship between investment and trade and their key role to advance development in the global economy;

Recognizing the importance of investment in the promotion of sustainable development, economic growth, poverty reduction, job creation, technology transfer, the expansion and diversification of productive capacity and trade, as well as for the achievement of the United Nations 2030 Sustainable Development Goals;

Desiring to increase the participation of developing countries in investment flows including, *inter alia*, through a more transparent and efficient investment environment;

Aiming to enhance investment, including investment in and by micro, small and medium enterprises;

Wishing to establish multilateral rules and disciplines on investment facilitation to enhance the transparency, efficiency and predictability of the investment regulatory environment;

Affirming the importance of responsible business conduct and combating corruption for promoting sustainable investment;

Recognizing the particular needs of developing and especially least-developed country Members and the importance to support them in implementing this Agreement through enhanced technical assistance and capacity building;

Recognizing the importance of information sharing, the exchange of best practices and other means of international cooperation on investment facilitation, including with relevant international organizations;

Recognizing the importance of domestic coordination, regulatory coherence and enhancing relations with relevant stakeholders;

Recognizing the right of Members to regulate in the public interest within their territories so as to meet their policy objectives;

Hereby *agree* as follows:

SECTION I: SCOPE AND GENERAL PRINCIPLES

1 OBJECTIVES

1.1. The purpose of this Agreement is to improve the transparency of measures, streamline administrative procedures, and adopt other investment facilitation measures, as well as to promote international cooperation, as a means of facilitating the flow of [foreign direct] investment between Members, particularly to developing and least developed country Members, with the aim of fostering sustainable development.

2 SCOPE

2.1. With the aim of facilitating investments, this Agreement applies to measures adopted or maintained by a Member [affecting/relating to] investment activities from investors of another Member.

2.2. Nothing in this Agreement shall be construed to create new or modify existing commitments relating to market access,[1] nor to create new or modify existing rules on the protection of investments or investor-state dispute settlement.

2.3. A Member's obligations under this Agreement shall apply to measures adopted or maintained by:

a. its central, regional or local governments and authorities; and

b. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

2.4. In fulfilling its obligations and commitments under this Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

[OTHER POSSIBLE EXCLUSIONS] 2 *BIS* DEFINITIONS

For purposes of this Agreement:

a. "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.

b. "investment activities" means the establishment, acquisition, expansion, operation, management, maintenance, and sale or other disposal of an investment.

[OTHER DEFINITIONS]

3 RELATION TO INTERNATIONAL INVESTMENT AGREEMENTS

3.1. International Investment Agreements shall not serve as a means to interpret or apply this Agreement.

3.2. This Agreement shall not serve as a means to interpret any provision of an International Investment Agreement of a Member, and shall not be used as the basis for a claim or in any way by a claimant under the procedures for the resolution of investment disputes between investors and states provided for in an International Investment Agreement of a Member.[2]

[1] [For purposes of this Agreement, the term 'market access' includes the concept of 'right of establishment'.]

[2] For greater certainty, provisions included in this Agreement do not in themselves constitute "treatment" within the meaning of relevant provisions of International Investment Agreements.

SECTION II: TRANSPARENCY OF INVESTMENT MEASURES

5 PUBLICATION AND AVAILABILITY OF MEASURES AND INFORMATION

5.1. Each Member shall promptly publish[3] or otherwise make publicly available and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application with respect to matters falling within the scope of this Agreement in such a manner as to enable investors, other interested persons and other Members to become acquainted with them. Each Member shall publish, at the latest by the time of their entry into force, international agreements affecting investment to which it is a signatory party.

5.2. Each Member shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of a law or regulation referred to in paragraph 5.1 and the date on which investors must comply with the law or regulation.

5.3. In publishing a new law or regulation referred to in paragraph 5.1, or changes thereto, or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Member shall endeavour to explain the purpose and rationale of the law or regulation.

5.4. Each Member shall make available via electronic means information of importance to investors, and keep the information updated, as appropriate. Such information includes:

a. laws and regulations specifically addressing foreign direct investment, where they exist;

b. information on which sectors are open, restricted or prohibited to foreign direct investment;

c. where practicable, information on the practical steps relevant to invest in its territory. This information should cover, *inter alia*, the requirements and procedures, where they exist, related to:

   i. company establishment and business registration;

   ii. connecting to essential infrastructure;

   iii. acquisition and registering of property;

   iv. construction permits;

   v. capital transfers and payments;

   vi. the payment of taxes;

   vii. public incentives available to investors; and

   viii. resolving insolvency;

d. contact information of relevant competent authorities.

[3] For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website.

6 INFORMATION TO BE MADE PUBLICLY AVAILABLE IF AN AUTHORIZATION IS REQUIRED FOR AN INVESTMENT

6.1. If a Member requires authorization for an investment in its territory, the Member shall promptly publish or otherwise make publicly available in writing, to the extent practicable via electronic means, and keep updated, the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, *inter alia*, where it exists:

a. the requirements including the relevant technical regulations and standards applicable to the respective investment;

b. the relevant forms;

c. procedures;

d. indicative timeframes for processing of an application;

e. authorization fees;

f. opportunities for public involvement, such as through hearings or comments;

g. procedures for appeal or review of decisions concerning applications;

h. procedures for monitoring or enforcing compliance with the terms and conditions of authorizations; and

i. contact information of the relevant competent authorities.

6.2. To the extent practicable, the information in paragraph 6.1 should be made available in one of the official languages of the WTO.

7 SINGLE INFORMATION PORTAL

7.1. To the extent practicable, each Member is encouraged to make available measures and information referred to in paragraphs 5.1, 5.4 and 6.1 through a single information portal, which includes making available the relevant web links to electronic publications.

7.2. Members shall endeavour to ensure that the single information portal is kept updated.

7.3. Each Member should include in the single information portal the contact information of the focal points or appropriate mechanisms referred to in paragraph 21.1.

7.4. Each Member is encouraged to publish on the single information portal the measures and information referred to in paragraphs 5.4 and 6.1 in one of the official languages of the WTO.

8 NO FEES IMPOSED FOR ACCESS TO INFORMATION

8.1. No fee shall be imposed on any investor or person seeking to invest in a Member's territory for access to the measures or information provided under this section.

9 PUBLICATION IN ADVANCE AND OPPORTUNITY TO COMMENT ON PROPOSED MEASURES

9.1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member[4] shall publish in advance:

a. its laws and regulations of general application, or changes thereto, it proposes to adopt in relation to matters falling within the scope of this Agreement; or

b. documents that provide sufficient details about such a possible new law or regulation to allow investors, other interested persons and other Members to assess whether and how their interests might be significantly affected.

9.2. To the extent practicable and in a manner consistent with its legal system for adopting measures each Member is encouraged to apply paragraph 9.1 to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of this Agreement.

9.3. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member shall provide investors, other interested persons and other Members a reasonable opportunity to comment on such proposed measures or documents published under paragraph 9.1 or 9.2 and shall consider the comments received.[5]

10 NOTIFICATION TO THE WTO

10.1. Each Member shall promptly notify the Committee on Investment Facilitation established under paragraph 32.1 of:

a. the introduction of any new, or any significant changes to existing, laws or regulations of general application referred to in paragraph 5.1;

b. the official place(s) where the measures in paragraphs 5.1 and 6.1 have been published;

c. the website(s) referred to in paragraphs 5.4, 6.1 and 7.1;

d. the contact information of the relevant competent authorities referred to in paragraphs 5.4(d) and 6.1(i), and of the focal points or appropriate mechanisms referred to in paragraph 21.1.

11 DISCLOSURE OF CONFIDENTIAL INFORMATION

[Note: The specific placement of this provision TBD]

11.1. Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

[4] Paragraphs 9.1 to 9.3 recognize that Members have different systems to consult interested persons and other Members on certain measures before their adoption, and that the alternatives set out in paragraph 9.1 reflect different legal systems.

[5] This provision does not place any obligation on the final decision of a Member that adopts or maintains any measure for authorisation for an investment. The submission of comments does not oblige the relevant competent authorities to accept them in whole or in part.

SECTION III: STREAMLINING AND SPEEDING UP ADMINISTRATIVE PROCEDURES

12 REASONABLE, OBJECTIVE AND IMPARTIAL ADMINISTRATION OF MEASURES

12.1. Each Member shall ensure that all measures of general application within the scope of this Agreement are administered in a reasonable, objective and impartial manner.

13 GENERAL PRINCIPLES FOR AUTHORIZATION PROCEDURES

13.1. Each Member shall ensure that authorization procedures it adopts or maintains do not unduly complicate or delay investment activities.

13.2. If a Member adopts or maintains measures relating to the authorization for an investment, the Member shall ensure that:

a. such measures are based on objective and transparent criteria;[6]

b. the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist; and

c. the procedures do not in themselves unjustifiably prevent the fulfilment of requirements.

13.3. The assessment by a Member's relevant competent authorities of an application for authorization shall be made on the basis of criteria set out in a measure in accordance with its legal system.[7]

14 AUTHORIZATION PROCEDURES

14.1. If a Member requires authorization for an investment, it shall ensure that its competent authorities:

APPLICATION PERIODS

a. to the extent practicable permit submission of an application at any time throughout the year.[8] If a specific time period exists for applying for an authorization, the Member shall ensure that the competent authorities allow a reasonable period for the submission of an application;

ACCEPTANCE OF AUTHENTICATED COPIES[9]

b. accept copies of documents that are authenticated in accordance with the Member's laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorization process; and

c. where a competent authority of a Member requires and holds original documents, any other competent authority of that Member shall accept an authenticated copy from the applicant or, where applicable, a copy from the authority holding the original.

[6] Such criteria may include, *inter alia*, competence and the ability to [perform an economic activity], including to do so in a manner consistent with a Member's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

[7] For greater certainty, the assessment of a single application based upon the assessment-specific criteria referred to in paragraph 13.3, or the conclusion reached by the competent authorities regarding a single application, is not subject to the WTO Dispute Settlement Understanding.

[8] Competent authorities are not required to start considering applications outside of their official working hours and working days.

[9] Also addressed in paragraph 17.1 on "Submission of applications online, use of electronic forms, documents and copies".

PROCESSING OF APPLICATIONS

d. to the extent practicable, provide an indicative timeframe for processing of an application;

e. at the request of the applicant, provide without undue delay information concerning the status of the application;

f. to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Member's laws and regulations;

g. if they consider an application complete for processing under the Member's laws and regulations[10], within a reasonable period of time after the submission of the application, ensure that:

i. the processing of the application is completed; and

ii. the applicant is informed of the decision concerning the application[11], to the extent possible in writing;[12]

TREATMENT OF INCOMPLETE APPLICATIONS

h. if they consider an application incomplete for processing under the Member's laws and regulations, within a reasonable period of time after the submission of the application, to the extent practicable:

i. inform the applicant that the application is incomplete;

ii. [either upon their own initiative or] upon request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and

iii. provide the applicant with the opportunity[13] to provide the additional information that is required to complete the application;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time after the rejection decision; and

REJECTION OF APPLICATIONS

i. if an application is rejected, to the extent practicable, either upon their own initiative or upon request of the applicant, inform the applicant in writing of the reasons for rejection and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application[14] solely on the basis of a previously rejected application.

14.2. The competent authorities of a Member shall ensure that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions.[15]

[10] Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

[11] Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application.

[12] "In writing" may include in electronic form.

[13] Such opportunity does not require a competent authority to provide extensions of deadlines.

[14] Competent authorities may require that the content of such an application has been revised.

[15] Competent authorities are not responsible for delays due to reasons outside their competence.

[RISK MANAGEMENT TECHNIQUES AND 'SILENCE IS CONSENT' PRINCIPLE]

[Note: These two elements (included in text proposals by a Member) may be included in a 'Future Work Programme' to be decided.]

15 MULTIPLE APPLICATIONS

15.1. Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization. If an investment is within the jurisdiction of multiple competent authorities, multiple applications for authorization may be required. In such cases, to the extent practicable and in accordance with its legal system, each Member is encouraged to utilize a single-entry point for the applications. Members may use the single information portal referred to in paragraph 7.1 under Section II for that purpose.

16 AUTHORIZATION FEES

16.1. Each Member shall ensure that the authorization fees[16] charged by its competent authorities, where they exist, are reasonable, transparent, based on authority set out in a measure, and do not in themselves restrict investment activities [of investors of another Member].

16.2. Each Member shall accord an adequate time period between the publication of new or amended authorization fees and their entry into force, except in urgent circumstances. Such fees shall not be applied until information on them has been published.

16 *BIS* AUTHORIZATION FEES – FINANCIAL SERVICES

16.3. Each Member shall ensure that its competent authorities, with respect to authorization fees they charge regarding financial services, provide an applicant with a schedule of fees or information on how fee amounts are determined. Members shall not use such fees as a means of avoiding the Member's commitments or obligations under this Agreement.

17 USE OF ICT/E-GOVERNMENT[17]

Submission of applications online, use of electronic forms, documents and copies

17.1. If a Member requires authorization for an investment, its competent authorities, taking into account their competing priorities and resource constraints, shall endeavour to accept electronic submission of applications, including in electronic format.[18]

ONLINE PAYMENT OF AUTHORIZATION FEES

17.2. Each Member shall, to the extent practicable, allow the electronic payment of authorization fees collected by relevant competent authorities.

18 INDEPENDENCE OF COMPETENT AUTHORITIES

18.1. If a Member adopts or maintains a measure relating to the authorization for an investment, the Member shall ensure that the competent authority reaches and administers its decisions in a manner independent from any enterprise carrying out the economic activity for which authorization is required.[19]

[16] Authorization fees do not include fees for the use of natural resources, royalties, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

[17] Including electronic submission of applications, documents and copies, and use of electronic forms.

[18] This provision applies also to the acceptance of copies in lieu of original documents.

[19] For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

19 APPEAL OR REVIEW

19.1. Each Member shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting investment. Such tribunals or procedures shall be impartial and independent of the authority entrusted with the administrative decision concerned and they shall not have any substantial interest in the outcome of the matter. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

19.2. The provisions of paragraph 19.1 shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

19.3. Each Member shall ensure that the parties in paragraph 19.1 are provided with the right to:

a. a reasonable opportunity to support or defend their respective positions and submit all relevant information [; and

b. a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority].

19.4. The decision in paragraph 19.3 shall, subject to appeal or further review as provided for in each Member's law, be implemented by the authority entrusted with administrative enforcement.

20 PERIODIC REVIEW

20.1. Each Member is encouraged to review, at intervals it deems appropriate, its measures of general application within the scope of this Agreement to determine whether any of such measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Member's investment facilitation regime more effective in achieving its policy objectives and in addressing the specific needs of micro, small and medium enterprises (MSMEs).

20.2. Each Member is encouraged to periodically review its authorization fees with a view to reducing their number and diversity.

20.3. Members are encouraged to consider stakeholder feedback [and make use of relevant international performance indicators]. Members are invited to share with the Committee on Investment Facilitation established under paragraph 32.1 their experiences in carrying out periodic reviews and policy recommendations resulting thereof.

[SECTION III *BIS*: TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES / FACILITATION OF THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]

[SECTION III *TER*: TRANSFERS AND PAYMENTS]

SECTION IV: FOCAL POINTS, DOMESTIC REGULATORY COHERENCE AND CROSS-BORDER COOPERATION

21 FOCAL POINTS

21.1. Each Member shall establish or maintain one or more focal points or appropriate mechanisms to:

a. respond to enquiries from investors or persons seeking to invest[20] regarding the measures covered by this Agreement;[21] and,

b. assist investors or persons seeking to invest in obtaining relevant information [on matters falling within the scope of this Agreement/measures covered by this Agreement] from competent authorities.

21.2. Members are encouraged not to require the payment of a fee for answering enquiries or assisting investors in obtaining relevant information.

21.3. Members may assign additional functions to the focal points or appropriate mechanisms established under paragraph 21.1 [such as to seek to resolve problems of investors or persons seeking to invest that may arise regarding measures covered by this Agreement or recommend measures to improve the investment environment.]

[BUSINESS OBSTACLE ALERT MECHANISM]

[Note: This element (included in a text proposal by a Member) may be included in a 'Future Work Programme' to be decided.]

22 DOMESTIC REGULATORY COHERENCE

22.1. When preparing major regulatory measures within the scope of this Agreement, each Member is encouraged to carry out, in accordance with its respective rules and procedures, an impact assessment[22] of such measures.

22.2. When conducting such impact assessments, the regulatory authority of the Member should offer reasonable opportunities for any interested person, on a non-discriminatory basis, to provide comments and take into consideration the potential impact of the proposed regulation on investors, including micro, small and medium enterprises (MSMEs).

22.3. Each Member should ensure that, in accordance with its legal system, its competent authorities responsible for procedures related to investments cooperate with one another and coordinate their activities in order to facilitate investment.

23 DOMESTIC SUPPLIER DATABASES

23.1. Each Member is encouraged to promote the establishment of one, or more, domestic supplier database(s)[23] with the aim of making available to investors and persons seeking to invest information on possible relevant domestic suppliers, including MSMEs.[24]

[20] The Member shall endeavour to respond to enquiries within a reasonable time-period set by each Member, which may vary depending on the nature or complexity of the request.

[21] Any information provided under this provision shall be without prejudice as to whether the measure is consistent with this Agreement

[22] The impact assessment aims to consider, among others, the social, economic and environmental impact of the intended regulatory measure, as well as appropriate alternatives to a given measure.

[23] For greater certainty, it is up to each Member to decide how to implement such domestic supplier database, including which entity, public or private (e.g., business association), would be in charge of the database.

[24] Such domestic supplier databases are for information purposes only and, therefore, Members shall not be liable in any form whatsoever for the content shared through these databases.

23.2. This database may exhibit, *inter alia*, the following features, where possible:

a. be searchable by sector or industry, company, product or service, location, certifications, etc.;

b. be available online;

c. be available in one of the WTO official languages; and

23.3. Members shall endeavour to ensure that domestic supplier databases are kept updated.

24 CROSS-BORDER CO-OPERATION ON INVESTMENT FACILITATION

24.1. On request, a Member shall, to the extent practicable, respond to questions from other Members on any measure covered by the Agreement. Members shall designate an enquiry point or use the focal points or appropriate mechanisms referred to in paragraph 21.1.

24.2. Members shall, to the extent practicable, encourage cooperation between their respective competent authorities with respect to any matter falling within the scope of this Agreement. Areas for cooperation may include:

a. exchange of information and sharing of experiences regarding the implementation of this Agreement;

b. exchange of information on domestic investors; and

c. the promotion of facilitation agendas with a view to increasing investment for development, including investment in and by micro, small and medium enterprises (MSMEs).

24.3. Members are encouraged to inform the Committee on Investment Facilitation about cooperation activities undertaken under this provision.

[SECTION IV *BIS*: SUPPLIER-DEVELOPMENT PROGRAMMES]

[SECTION IV *TER*: HOME STATE OBLIGATIONS]

SECTION V: SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING AND LEAST-DEVELOPED COUNTRY MEMBERS

25 GENERAL PRINCIPLES

25.1. Members should acknowledge the special difficulties experienced by developing and particularly least-developed country Members in implementing the provisions of this Agreement.

25.2. Assistance and support for capacity building[25] should be provided to help developing and least-developed country Members implement the provisions of this Agreement, in accordance with their nature and scope.[26]

25.3. The extent and the timing of implementation of the provisions of this Agreement shall be related to the implementation capacities of developing and least-developed country Members. Where a developing or least-developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

25.4. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development and financial needs or their administrative and institutional capabilities.

25.5. These General Principles shall be applied through the provisions set out in this Section.

26 CATEGORIES OF PROVISIONS, NOTIFICATION AND IMPLEMENTATION

Categories of Provisions

26.1 There are three categories of provisions:

a) Category A contains provisions that a developing country Member or a least-developed country Member designates for implementation [upon entry into force of this framework, or in the case of a least-developed country Member within one year after entry into force] TFA [within 18 months and two years respectively, following entry into force of the Agreement.] DMA, GRD

b) Category B contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement.

c) Category C contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building.

26.2 Each developing country and least-developed country Member shall self-designate, on an individual basis, the provisions it is including under Category A, Category B and Category C. [These self-designations shall be guided by the self-assessment of compliance levels and implementation needs of developing and least-developed country Members.] DMA, GRD

[26.3 Members shall provide developing and least-developed country Members with support to conduct self-assessments of their compliance levels and implementation needs.] DMA, GRD

[25] For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

[26] [Assistance [should] [shall] also be provided to those countries in undertaking self-assessments to determine the categorization of provisions for implementation of this Agreement.]

NOTIFICATION AND IMPLEMENTATION OF CATEGORY A

26.4. [Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments.] [TFA] [Within 18 months following entry into force of the Agreement, developing country Members shall notify and implement their Category A commitments.] [DMA, GRD] Those commitments designated under Category A will thereby be made an integral part of this Agreement.

26.5 [A least-developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement.] [TFA] [Within two years following entry into force of the Agreement, a least-developed country Member shall notify and implement their Category A commitments.] [DMA, GRD] Each least-developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

NOTIFICATION OF DATES FOR IMPLEMENTATION OF CATEGORIES B AND C

26.7 With respect to the provisions that a developing country Member has not designated in Category A, the Member may further delay implementation in accordance with the process set out in this provision.

DEVELOPING COUNTRY MEMBER CATEGORY B

a) [Upon] [TFA] [Within 18 months following] [DMA, GRD] entry into force of this Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category B and their corresponding indicative dates for implementation.[27]

b) No later than [one year] [TFA] [two and half years] [DMA, GRD] following entry into force of this Agreement, each developing country Member shall notify the Committee of its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

DEVELOPING COUNTRY MEMBER CATEGORY C

c) [Upon] [TFA] [Within 18 months following] [DMA, GRD] entry into force of this Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category C and their corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement.[28]

d) [Within one year] [TFA] [Within two and half years] [DMA, GRD] following entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place [, notifications pursuant to paragraph 29.1] [TFA] and information submitted pursuant to subparagraph (c) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.[29]

e) The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.

[27] Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency or entity responsible for implementation.

[28] Members may also include information on national investment facilitation implementation plans or projects, the domestic agency or entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

[29] Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations [consistent with sub-paragraph 28.3] [TFA].

f) Within 18 months from the date of the provision of the information stipulated in subparagraph (d), donor Members and respective developing country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

26.8 With respect to those provisions that a least-developed country Member has not designated under Category A, least-developed country Members may further delay implementation in accordance with the process set forth in this provision.

LEAST-DEVELOPED COUNTRY MEMBER CATEGORY B

a) No later than [one][TFA] [three] [DMA, GRD] years following entry into force of this Agreement, a least-developed country Member shall notify the Committee of its Category B provisions and may notify their corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least-developed country Members.

b) No later than two years after the notification date stipulated under subparagraph (a) above, each least-developed country Member shall notify the Committee to confirm designations of provisions and notify its definitive dates for implementation. If a least- developed country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

LEAST-DEVELOPED COUNTRY MEMBER CATEGORY C

c) For transparency purposes and to facilitate arrangements with donors, [one] [TFA] [three] [DMA, GRD] years following entry into force of this Agreement, each least-developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least-developed country Members.

d) One year after the date stipulated in subparagraph (c) above, least-developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.[30]

e) No later than two years after the notification under subparagraph (d) above, least- developed country Members and relevant donor Members, taking into account information submitted pursuant to subparagraph (d) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C. The participating least-developed country Member shall promptly inform the Committee of such arrangements. The least-developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance and support arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.

(f) No later than 18 months from the date of the provision of the information stipulated in subparagraph (e), relevant donor Members and respective least-developed country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each least-developed country Member shall, at the same time, notify the Committee of its list of definitive dates for implementation.

26.9 Developing country Members and least-developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 26.7 and
26.8 because of the lack of donor support or lack of progress in the provision of assistance and support for capacity building should notify the Committee as early as possible prior to the expiration

[30] [Members may also include information on national trade facilitation implementation plans or projects, the domestic agency or entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.] [TFA]

of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.

26.10 Three months before the deadline stipulated in subparagraphs 26.7(b) or (f), or in the case of a least-developed country Member, subparagraphs 26.8(b) or (f), the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 26.9, or in the case of a developing country Member subparagraph 26.7(b), or in the case of a least-developed country Member subparagraph 26.8(b), to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in subparagraphs 26.7(b) or (f), or in the case of a least-developed country Member, subparagraphs 26.8(b) or (f), or extended by paragraph 26.9.

26.11 No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C provisions in accordance with paragraphs 26.7, 26.8, or 26.9, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 26.10, thereby making these annexes an integral part of this Agreement.

27 OTHER SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C

27.1

(a) A developing country Member or least-developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date [established under subparagraphs 26.7(b) and (f), or in the case of a least-developed country Member subparagraphs 26.8(b) and (f)] [TFA] shall notify the Committee. Developing country Members shall notify the Committee no later than 120 days before the expiration of the implementation date. Least-developed country Members shall notify the Committee no later than 90 days before such date.

(b) The notification to the Committee shall indicate the new date by which the developing country Member or least-developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance and support for capacity building not earlier anticipated or additional assistance and support to help build capacity.

27.2 Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least-developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.

27.3 Where a developing country or least-developed country Member considers that it requires a first extension longer than that provided for in paragraph 27.2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in subparagraph 27.1(b) no later than 120 days in respect of a developing country Member and 90 days in respect of a least-developed country Member before the expiration of the original definitive implementation date or that date as subsequently extended.

27.4 The Committee shall give [sympathetic] [TFA] [supportive] [DMA, GRD] consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance and support for capacity building.

EXPERT GROUP TO SUPPORT IMPLEMENTATION OF CATEGORY B AND CATEGORY C

27.5 If a developing country Member or a least-developed country Member, having fulfilled the procedures set forth in paragraphs 26.7 or 26.8 and in paragraph 27.1 to 27.4 ('Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C'), and where an extension requested has not been granted or where the developing country Member or least- developed country Member otherwise experiences unforeseen circumstances that prevent an extension being granted under paragraphs 27.1 to 27.4, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.

27.6 The Committee shall establish an Expert Group immediately, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least-developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.

27.7 Expert Group shall be composed of five independent persons that are highly qualified in the fields of investment facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least-developed country Member is involved, the Expert Group shall include at least one national from a least-developed country Member. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.

27.8 The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Committee. When considering the Expert Group's recommendation concerning a least-developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.

27.9 The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For a least-developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply to the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the date of the first Committee meeting set out above, whichever is earlier.

27.10 Where a least-developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in sub-paragraphs 27.5 to 27.10.

SHIFTING BETWEEN CATEGORIES B AND C

27.11 Developing country Members and least-developed country Members which have notified provisions under Categories B and C, may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to Category C, the Member shall provide information on the assistance and support required to build capacity.

27.12 In the event that additional time is required to implement a provision shifted from Category B to Category C, the Member may:

(a) use the provisions of sub-paragraphs 27.1 to 27.4 ('Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C') including the opportunity for an automatic extension; or

(b) request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group

under sub-paragraphs 27.5 to 27.10 ('Expert Group to Support Implementation of Category B and Category C'); or

(c) in the case of a least-developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least-developed country Member shall continue to have recourse to sub-paragraphs 27.1 to 27.4 ('Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C'). It is understood that assistance and support for capacity building is required for a least-developed country Member so shifting.

GRACE PERIOD FOR THE APPLICATION OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

27.13 For a period of [two] [TFA] [five] [DMA, GRD] years after entry into force of this Agreement, the provisions of [Articles XXII and XXIII of GATT 1994 as elaborated and applied by] [TFA] the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.

27.14 For a period of six years after entry into force of this Agreement, the provisions of [Articles XXII and XXIII of GATT 1994 as elaborated and applied by] [TFA] the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a least-developed country Member concerning any provision that the Member has designated in Category A.

27.15 For a period of eight years after implementation of a provision under Category B or C by a least-developed country Member, the provisions of [Articles XXII and XXIII of GATT 1994 as elaborated and applied by] [TFA] the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least-developed country Member concerning that provision.

27.16 Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes, and at all stages of dispute settlement procedures with regard to a measure of a least-developed country Member, a Member shall give particular consideration to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least- developed country Members.

27.17 Each Member shall, upon request, during the grace period allowed under this Article, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

28 PROVISION OF ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING

28.1. Donor Members[31] agree to facilitate the provision of technical assistance and support for Members on mutually agreed terms, either bilaterally or through the appropriate international organizations.[32] The objective is to assist developing country and least-developed country Members to implement the provisions of Sections II through IV and VI of this Agreement.

28.2. Given the special needs of least-developed country Members, targeted assistance and support [[shall] [should] be] [are to be] provided to the least-developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and consistent with the principles of technical assistance and support for capacity building as referred to in paragraph [28.3], development partners shall endeavour to

[31] Donor Members include developed country Members, and developing country Members in a position to provide technical assistance and support for capacity building.

[32] Such activities shall seek to complement and build on existing frameworks or arrangements between the Members concerned.

provide assistance and support for capacity building in this area in a way that does not compromise existing development priorities.

28.3. Members shall endeavor to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:

(a) take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;

(b) include, where relevant and appropriate, activities to address regional and subregional challenges and promote regional and sub-regional integration;

(c) ensure that ongoing investment facilitation reform activities of the private sector are factored into assistance activities;

(d) promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:

i. coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;

ii. for least-developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and

iii. Members should also promote internal coordination between their investment, trade and development officials, both in capitals and in Geneva, in the implementation of this Agreement and technical assistance.

(e) encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and

(f) encourage developing country Members to provide capacity building to other developing and least-developed country Members and consider supporting such activities, where possible.

28.4. The Committee shall hold at least one dedicated session per year to:

a) discuss any problems regarding implementation of provisions or sub-parts of provisions of this Agreement;

b) review progress in the provision of assistance and support for capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate assistance and support for capacity building;

c) share experiences and information on ongoing assistance and support for capacity building and implementation programs, including challenges and successes;

d) review donor notifications as set forth in Article 29; and

e) review the operation of paragraph [28.2].

[28.5. Technical assistance may include:[33]

a) building expertise in relevant authorities to strengthen their capacities to maximize positive impacts of investment;

b) building capacity for the preparation of feasibility studies for investment projects, including environmental and social impact assessments and regulatory and administrative requirements; and

c) [capacity building and] assistance to developing and least-developed country Members to better understand [and implement] the requirements of the Agreement and to meet their notification deadlines.]

29 INFORMATION ON ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING TO BE SUBMITTED TO THE COMMITTEE

29.1. To provide transparency to developing country Members and least-developed country Members on the provision of assistance and support for capacity building for implementation of the relevant sections of this Agreement, each donor Member assisting developing country Members and least-developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of this Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding 12 months and, where available, that is committed in the next 12 months:[34]

a) a description of the assistance and support for capacity building;

b) the status and amount committed/disbursed;

c) procedures for disbursement of the assistance and support;

d) the beneficiary Member or, where necessary, the region; and

e) the implementing agency in the Member providing assistance and support.

Developing country Members declaring themselves in a position to provide assistance and support for capacity building are encouraged to provide the information above.

29.2. Donor Members assisting developing country Members and least-developed country Members shall submit to the Committee:

a) contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of Sections II through IV and VI of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and

b) information on the process and mechanisms for requesting assistance and support for capacity building.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

29.3. Developing country Members and least-developed country Members intending to avail themselves of investment facilitation-related assistance and support for capacity building shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.

[33] [Members understand that technical assistance and capacity building include also other activities and priorities as agreed by beneficiary and donor Members.]

[34] The information provided will reflect the demand driven nature of the provision of assistance and support for capacity building.

29.4. Members may provide the information referred to in paragraphs 29.2 and 29.3 through internet references and shall update the information as necessary. The Secretariat shall make all such information publicly available.

29.5. The Committee shall invite relevant international and regional organizations (such as the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the Organisation for Economic Co-operation and Development (OECD), the International Trade Centre (ITC), the United Nations Regional Commissions and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 29.1, 29.2, and 29.4.

29.6. The WTO may collaborate with other international organizations such as those referred to in paragraph 29.5 to comprehensively study and evaluate the needs for investment facilitation of developing Members, especially the least-developed country Members, and at the request of these Members, provide assistance and support for capacity building programs that are commensurate with their development levels and economic objectives. Such collaboration should aim to enhance coordination in order to maximize the benefits of this Agreement.

SECTION VI: SUSTAINABLE INVESTMENT

30 RESPONSIBLE BUSINESS CONDUCT

30.1. Each Member shall encourage investors and enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their business practices and internal policies internationally recognized principles, standards and guidelines of responsible business conduct[35] that have been endorsed or are supported by that Member. These principles, standards and guidelines address areas such as labour, environment, gender equality, human rights, community relations and the rights of Indigenous peoples.

30.2. In accordance with its legal system, each Member should encourage investors or enterprises operating within its territory to undertake and maintain meaningful engagement and dialogue, in accordance with international responsible business conduct principles, standards and guidelines that have been endorsed or are supported by that Member, with Indigenous peoples, traditional communities and local communities.

30.3. Each Member recognises the importance of investors and enterprises implementing due diligence in order to identify and address adverse impacts, such as on the environment and labour conditions, in their operations, their supply chains and other business relationships.

30.4. Members agree to exchange information and best practices on issues covered by paragraphs 30.1 and 30.2, including on possible ways to facilitate the uptake by enterprises and investors of responsible business practices and reporting, in the Committee on Investment Facilitation.

31 MEASURES AGAINST CORRUPTION

31.1. In accordance with its legal system and internationally agreed standards and commitments that it has adhered to or that it supports[36], each Member shall ensure that measures are taken to prevent and fight corruption [and money laundering] with respect to matters falling within the scope of this Agreement.

31.2. Each Member recognises the importance of principles such as accountability, transparency and integrity with regard to the development of its anti-corruption policies, and of taking measures affecting investment in a transparent manner and avoiding conflicts of interest and corrupt practices.

31.3. Members agree to exchange information and best practices on issues covered by paragraphs 31.1 and 31.2, including with a view to identifying measures or areas of cooperation to prevent and fight corruption in matters affecting investment, in the Committee on Investment Facilitation.

[35] Principles, standards and guidelines of responsible business conduct are those referred to in international instruments such as the United Nations Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises and related due diligence guidance.

[36] Internationally agreed standards and commitments may include the United Nations Convention against Corruption done at New York on 31 October 2003, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on 21 November 1997, or the Inter-American Convention Against Corruption, done at Caracas on 29 March 1996.

SECTION VII: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS

32 WTO COMMITTEE ON INVESTMENT FACILITATION

32.1. A Committee on Investment Facilitation is hereby established.

32.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than [once] [twice] a year, for the purpose of affording Members the opportunity to consult on any matters related to the implementation and operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

32.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

32.4. The Committee shall develop procedures for the sharing by Members of information and experiences on investment facilitation, as well as the identification of best practices, as appropriate.

32.5. The Committee [shall] [may] prepare an annual report on investment facilitation measures undertaken to implement the Agreement [based on information notified by Members or otherwise authorized by them].

32.6. The Committee shall maintain close contact with other international organizations in the field of investment facilitation [such as UNCTAD, UNIDO, World Bank, the OECD and ITC],[37] with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

a. attend meetings of the Committee;

b. discuss specific matters related to the implementation of this Agreement [; and

c. propose cooperation and facilitation agendas].

32.7. The Committee shall review the operation and implementation of this Agreement [four] [five] years from its entry into force, and periodically thereafter. [Recommendations arising from the review shall be presented to the General Council.] [The Committee shall report to the General Council periodically.]

32.8. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

32.9. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement with a view to reaching a mutually satisfactory solution promptly.

32.10. [The Committee shall explore and discuss the possibility of establishing an Investment Facilitation Facility to manage the contributions that Members may voluntarily provide to the WTO, [with the aim of assisting] [in furtherance of supplementary assistance to] developing Members, and especially the least-developed country Members, to implement the provisions of this Agreement.]

[37] [This provision includes maintaining close contact with relevant international organizations in the field of responsible business conduct.]

33 GENERAL AND SECURITY EXCEPTIONS

33.1. GATS Article XIV, GATS Article XIV bis, paragraph 1 (a), (b) and (c), 1994 GATT Article XX and 1994 GATT Article XXI[38] shall apply mutatis mutandis to the provisions of this Agreement.

34 FINANCIAL EXCEPTIONS

34.1. Nothing in this Agreement shall be construed to prevent any Member from adopting or maintaining measures for prudential reasons, including for:

a. the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier; or to

b. ensure the integrity and stability of the financial system.

[POSSIBLE ANTI-CIRCUMVENTION CLAUSE]

35 DISPUTE SETTLEMENT

35.1. For any dispute concerning the interpretation and application of the provisions of this Agreement, Members shall only have recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (hereinafter referred to as "the Dispute Settlement Understanding").

35.2. The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement.

[NON-VIOLATION COMPLAINTS]

35.3. Members are encouraged to consider resorting to good offices, conciliation and mediation provided in Article 5 and arbitration provided in Article 25 of the Dispute Settlement Understanding to facilitate the solution of their disputes.

35.4. Members shall not have recourse to dispute settlement under this Article for matters arising under Article 30 on "Responsible business conduct" and Article 31 on "Measures against corruption".

[36 FINAL PROVISIONS]

[38] Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement Establishing the World Trade Organization and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.

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SECTION I: SCOPE AND GENERAL PRINCIPLES

2 SCOPE

[OTHER POSSIBLE EXCLUSIONS]

[2.2 This framework shall not apply to:

government procurement;

public concessions and the conditions thereby established, provided that the framework applies to investment made as a result of concessions. In case of inconsistencies between this framework and the terms of the concession, the latter shall prevail; and

subsidies or grants provided by a Member, including government-supported loans, guarantees, and insurances, other than public incentives(footnote) provided to investors of another Member.[39]

Footnote: For greater certainty, the scope of incentives shall be determined according to Members' own legal system and practice.]

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[3.3. This framework shall also not apply to:

government procurement;

Member's subsidies (grants, loans, insurance and guarantees) granted exclusively by that Member to its own investors in national development activities and programmes;

2 *BIS*

DEFINITIONS

[OTHER

DEFINITIONS]

["Investor of another Member" means:

a natural person having the nationality of that Member in accordance with its laws and regulations;

a natural person who has the right of permanent residence in that Member [, where such Member does not have nationals or has made a notification pursuant to Article XXVIII(k)(ii) of the GATS,]; or

a juridical person [with substantive business operations in the territory] of that Member; that is engaging in investment activities in the territory of another Member.

[39] Sub-paragraph 2.2(c) on the exclusion on subsidies or grants provided by a Member contains a revised proposal by China (INF/IFD/RD/91), which replaces the previous proposal by China on this matter (contained in document INF/IFD/RD/48).

"Juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.][40]

[3.7 a. "Authorization" means the administrative act by which an authority of a Member approves an investment activity while laying down the conditions for its exercise or its realization that an investor from another Member must meet in order to legally carry out its investment activity in that Member.] MAR

[5. For the purposes of this Framework;

a. "authorization" means the permission to pursue investment activities, resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements;

b. "applicant" means an investor of a Member who applied for an authorization in the territory of another Member;] TUR

[3.7 b. "Enterprise" refers to any legal person duly constituted or organized under a Member's laws and regulations, for profit, having its registered office, its central administration or principal place of business in the territory of that Member and whether owned or controlled by the State or its nationals, including any corporation, partnership, sole proprietorship, joint venture, organization or enterprise.

c. "Enterprise of a Member" means any corporation more than 50% of whose capital is directly or indirectly owned, exclusively or jointly, by the public bodies of a State.] MAR

[c. "enterprise" means any juridical person or any other entity duly constituted or organised under the applicable laws and regulations, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company;

d. "enterprise of a Member" means… ;] TUR

["the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

i. an enterprise and a branch of an enterprise;

ii. shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

iii. bonds, debentures, loans and other forms of debt, including rights derived therefrom;

iv. rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

v. claims to money and to any performance under contract having a financial value;

vi. intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

[40] 'Text contribution' submitted by the facilitator of the Discussion Group on Scope based on the discussions held by the Group, circulated to all Members on 18 January 2022 and discussed at the plenary negotiating meeting held on 26-27 January 2022.

rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations, and permits, including those for the exploration and exploitation of natural resources; and

any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

An investment includes the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investment."] JPN

[e. "investment" means an enterprise, a branch of an enterprise or a representative office;] TUR

[4 MOST-FAVOURED NATION TREATMENT [NON-DISCRIMINATION]]

[2.1 Each [Member] [Party] shall accord immediately and unconditionally to investors of another [Member] [Party] and their investments treatment no less favourable than that it accords, in like situations, to investors of any other country and their investments, with respect to the application of provisions set out in this agreement in its territory.] EU

[4.1 Each [Member] [Party] shall accord […] to investors of another [Member] [Party] and their investments treatment no less favourable than that it accords, in like [situations] [circumstances], to investors of any other country and their investments, with respect to the application of provisions set out in this Agreement.][41]

[2.2 Paragraph 2.1 shall not be construed as obliging a [Member] [Party] to extend to investors of another [Member] [Party] or their investments the benefit of any treatment resulting from:

(a) measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.

(b) any bilateral, regional or multilateral agreement which includes commitments to abolish substantially all barriers to investment among the parties or requires the approximation of legislation of the parties in one or more economic sectors.] EU

[4.2 Paragraph 4.1 shall not be construed as requiring a [Member] [Party] to extend to investors of another [Member] [Party] or their investments the advantage of any treatment resulting from:

[a) an International Investment Agreement, whether it is a separate agreement or an investment chapter in an agreement forming a free trade area or a customs union pursuant to Article XXIV of the GATT 1994 or the Enabling Clause,[42] or an economic integration agreement pursuant to Article V of GATS.]

[b) measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.]]

[2.3 For greater certainty, provisions included in other international agreements concluded by a Member do not in themselves constitute "treatment" as referred to in paragraph 1 and thus cannot be taken into account when assessing a breach of this Agreement.] EU

[41] The paragraphs in black letters correspond to 'Draft Text' prepared by the Coordinator, which was circulated to all Members on 11 June 2021 and discussed at the plenary meetings held on 15-16 June and 2-3 November 2021.

[42] Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979 (L/4903).

[4.3 For greater certainty, provisions included in International Investment Agreements concluded by a Member do not in themselves constitute "treatment" as referred to in paragraph 4.1 and thus cannot be taken into account when assessing a breach of this Agreement.[43]]

[4.1 Each Member shall not discriminate between investors and investments of other Members, with respect to the application of provisions set out in this Agreement.

The application of provisions set out in this Agreement by a Member to investors and investments of another Member shall be exempted from the obligation in paragraph 4.1, if it arises from:

an International Agreement, forming a free trade area or a customs union pursuant to Article XXIV of the GATT 1994 or the Enabling Clause,[44] or an economic integration agreement pursuant to Article V of GATS.

measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.] CHL, NGA 45

[SECTION III *BIS*: TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES / FACILITATION OF THE ENTRY AND

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TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]

TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES

Information to be made publicly available

Each Member shall promptly publish or otherwise make publicly available, to the extent practicable via electronic means, information on the entry and temporary stay of business persons for investment purposes. Such information shall include, where applicable:

conditions to be met and documentation required;

categories of visas, permits or any similar type of authorization;

relevant forms;

explanatory material on requirements and procedures regarding the entry and temporary stay of business persons for investment purposes;

method of filling an application, and options on where to file, such as consular offices or online;

indicative timeframes for processing of an application;

[43] Paragraph 4.3 is based on text contribution submitted by the Discussion Group on Scope – firewall, discussed at the meeting held on 22 March 2021

[44] Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979 (L/4903).

[45] Following the meeting held on 16-17 November 2021, Nigeria has been added as co-proponent of the proposal submitted by Chile on non-discrimination in provision 4 on 'Most-Favoured treatment/Non- discrimination' of Section I on 'Scope and General Principles'.

i. available review and/or appeal procedures.[46]

[FACILITATION OF THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]

[1.1 This Section applies to measures affecting the entry and temporary stay of business persons of a Member engaging or seeking to engage in the conduct of investment activities in another Member.

1.2 This Section shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

1.3 Nothing in this Section shall prevent a Member from applying measures to regulate the entry of business persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of business persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Member under this Agreement.[47]

1.4 Members recognize the importance of temporary movement of business persons to facilitate investment activities and ensure that all measures of general application covered by this Section are administered in a reasonable, objective and impartial manner.

1.5 Each Member shall promptly publish, online where possible, information on requirements for entry and temporary stay under this Section, including explanatory materials, relevant forms and documents, that will enable interested persons of the other Members to become acquainted with those requirements.

1.6 The information referred to in paragraph 1.5 shall include, where applicable, the following information, *inter alia*:

a. categories of visas and work permits or any similar type of authorization regarding entry and temporary stay;

b. documentation and evidence required and conditions to be met;

c. method of filing and options on where to file, such as consular offices or online;

d. processing time;

e. application fees;

f. period of validity of the visas and work permits;

g. conditions for extensions or renewal;

h. reference to relevant immigration laws of general application;

i. review and/or appeal procedures, where these exist; and

j. [respective requirements referred to in paragraph 1.17 of this Section.] TUR

1.7 Members shall, in accordance with their domestic laws and regulations, ensure documents required for applications for the granting of entry and temporary stay to be relevant and commensurate with the purpose for which they are collected.

1.8 Each Member shall expeditiously process completed applications concerning entry and temporary stay under this Section, including extension application thereof.

[46] Text contribution submitted on the basis of the exchanges in the Discussion Group on 'Facilitation of the Entry and Temporary Stay of Business Persons for Investment Purposes', which was circulated to all Members on 21 September 2021 and discussed at the plenary meetings held on 23 September and 20-21 October 2021.

[47] The sole fact of requiring a visa for business persons shall not be regarded as nullifying or impairing benefits under the terms of this Agreement.

1.9 At the request of an applicant, the Member that has received a completed application shall inform the applicant of the status of the application. This information shall normally be provided free of charge.

1.10 In case of an incomplete application, Members shall inform the applicant of the information required to complete the application and provide opportunity to the applicant to correct deficiencies within a reasonable period of time.

1.11 If a Member requires additional information from an applicant in order to process the application for temporary stay, the authority shall promptly notify the applicant without undue delay and provide the applicant with the opportunity to supply that additional information within a reasonable period of time.

1.12 After a decision has been taken, the Member concerned shall promptly notify the applicant of the outcome of its application.

1.13 If an application is approved, the notification shall include, if applicable, the period of stay and any other terms and conditions.

1.14 Applicants shall be given an opportunity to apply for renewal or extension of authorisation for temporary stay. Each Member shall ensure that the procedures for application for the renewal or extension of authorisation for temporary stay are pre-established and clearly specified.

1.15 Each Member shall ensure application fees in respect of entry and temporary stay under this Section are reasonable, or in the principle of reciprocity.

1.16 Members shall endeavour to accept and process applications in electronic format.

1.17 [When a Member decides to grant entry and temporary stay to a business person of another Member, and when the respective requirements are fulfilled, the granting Member shall issue multiple entry visas in case the applicant requests that type of visa.] TUR

1.18 For the purpose of this Section, **business person** of a Member means:

a. a natural person who has the nationality of a Member; or

b. a permanent resident of a Member that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS that that Member accords substantially the same treatment to its permanent residents as it does to its nationals,

[who is in a supervisory or executive capacity at a senior level, or involves essential skills, and is responsible for setting up, developing or administering an investment for which a substantial amount of capital has been or will be invested.

Central, regional or local governments and authorities of a Member are encouraged to formulate specific eligibility criteria for business persons for investment purposes. Such criteria shall, to the extent possible, include business persons for investment purposes and their spouses and children.] CHN

[who is an employee of an investor of a Member transferred temporarily[48] to an investment in another Member or representative of an investment of a Member who enters the territory of another Member temporarily for the purpose of setting up an investment. Subject to each Member's legislation, the categories of business persons may include short-term business visitors, managers, executives, specialists and other employees of the investor.]TUR] CHN, TUR [49]

[6.1. This Section applies to measures affecting the entry and temporary stay of business persons of a Member engaging in the conduct of investment activities in another Member.

[48] "Temporarily" *means* "for a limited time" which is defined in accordance with the domestic legislation of the host Member.

[49] Joint proposal by China and Turkey (INF/IFD/RD/65), which replaces the previous proposals on this element submitted by each Member, respectively, in documents (INF/IFD/RD/48) and (INF/IFD/RD/49).

This Section shall not apply to measures affecting business persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent or temporary basis.

Nothing in this Section shall prevent a Member from applying measures to regulate the entry of business persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of business persons across its borders, provided that such measures are in the public interest and non discriminatory.

Each Member shall provide the necessary facilities and permissions for entry, exit, stay and work of natural persons of another Member who have a permanent or temporary relationship with the investment, such as administrators, experts and technicians, in accordance with the legislation in force in the Member country.

Members shall make available to business persons online information on the requirements and procedures for entry and temporary stay, including relevant forms and documents, and explanatory materials that will enable them to become acquainted with applicable requirements and procedures.

In case of an incomplete application, the Member shall inform the applicant without undue delay of the information required to complete the application.

Each Member shall process within a reasonable period of time complete applications for the grant of entry and temporary stay submitted by business persons of other Members covered by this Section and shall notify the applicant of the outcome of their applications, including the period of stay and any other terms and conditions.] MAR 50

[SECTION III *TER:*

TRANSFERS AND PAYMENTS][51]

[Each Member shall ensure that the measures relating to capital transfer and payment [, including when such a capital transfer and payment is made by a Member or its designated agency under an indemnity, guarantee or insurance contract pertaining to an investment,] are based on objective and transparent criteria. [GATS Article XII shall apply, mutatis mutandis, to this Article.] JPN

[SECTION IV *BIS*: SUPPLIER-DEVELOPMENT

PROGRAMMES]

[1. Each Member is encouraged to implement supplier-development programmes with the aim to strengthen the capabilities and competitiveness of local companies in light of FDI local sourcing demands and standards.

Such programmes should, inter alia, exhibit the following aspects:

be designed in close cooperation with domestic and foreign investors;

identify and select companies with potential to be long-term suppliers;

[50] This revised proposal by Morocco (INF/IFD/RD/71) replaces the previous proposal contained in document INF/IFD/RD/64.

[51] This revised proposal by Japan (INF/IFD/RD/89) replaces the previous proposal contained in document INF/IFD/RD/76.

support the development of formal relationships between suppliers and buyers;

engage in ongoing and advisory support to upgrade local suppliers;

conduct business reviews of individual SMEs and develop improvement plans;

facilitate access to financial instruments, as necessary, for firms to implement their improvement plans;

Technical assistance should be provided to the developing and least developed countries in establishing and operationalizing supplier-development programmes.

Technical assistance for the establishment of supplier-development programmes should be provided within a year from the date of entry into force of this Agreement.] LAO

[SECTION IV *TER*: HOME STATE OBLIGATIONS]

[1. Members recognize the important role of Home States in facilitating outward [foreign direct] investment which contributes to sustainable development.

2. Members are encouraged to adopt or maintain appropriate measures to facilitate outward [foreign direct] investment, including through:

   a. legal frameworks;

   b. investment guarantees;

   c. investment insurance;

   d. technical assistance;

   e. investor support services, such as feasibility studies, business missions and matchmaking;

   f. financial and fiscal measures, such as loans, equity, tax exemptions, tax deferral; and

   g. the provision of information.

3. Members shall endeavour to publish or otherwise make publicly available, to the extent practicable via electronic means, their facilitation measures for outward [foreign direct] investment.

4. Subject to Article X (Disclosure of Confidential Information), Members shall endeavour to share information on the operations of investors from their territories, including with respect to their history of responsible business conduct and sustainable investing. In this regard, each Member shall endeavour, on request, and in a timely manner, to provide to another Member such information as is requested and available.

5. Members shall share experiences and information in the Committee on Investment Facilitation on policies, strategies and practices to facilitate outward investment for sustainable development.] DMA, GRD

SECTION VII: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS

34 FINANCIAL EXCEPTIONS

[POSSIBLE ANTI-CIRCUMVENTION CLAUSE]

[…

Where such measures do not conform with the provisions of this framework, they shall not be used as a means of avoiding the Member's commitments or obligations under the framework.

Nothing in the framework applies to non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies.[52]] CHN

[…

12.2 Nothing in the framework applies to non-discriminatory measures of general application in

35 DISPUTE SETTLEMENT

[NON-VIOLATION COMPLAINTS]

[Article 31.1: The provisions of the Dispute Settlement Understanding (DSU) and those of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the DSU shall apply to consultations and the settlement of disputes under this framework, except for Articles XXIII:1(b) and (c) of the GATT 1994 and Article 26 of the DSU concerning non-violation complaint and those as otherwise specifically provided herein.] TPKM

[36 FINAL PROVISIONS]

[Members shall implement this framework from the date of its entry into force. Developing country Members and least-developed country Members that choose to use the provisions of Section [V] shall implement this framework in accordance with that Section.]

[Nothing in this framework shall be construed as diminishing the rights and obligations of Members under the Marrakesh Agreement Establishing the WTO.]

[Notwithstanding the general interpretative note to Annex 1A to the Marrakesh Agreement Establishing the World Trade Organisation, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994 and GATS. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Trade-Related Investment Measures.] EU

[Nothing in this framework shall be construed as diminishing the obligations of Members under the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"). In addition, nothing in this framework shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement.] JPN

[4. This Framework is without prejudice to the terms, limitations, conditions and qualifications

[52] For greater certainty, measures of general application taken in pursuit of monetary and related credit policies or exchange rate policies do not include measures that expressly nullify or amend contractual provisions that specify the currency of denomination or the rate of exchange of currencies.

GATS for investment activities in services sectors and the List of Reservations of each Member specified in Annex XX of this Framework for investment activities in non-services sectors.] [TUR]

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Given its ascendant role in global politics, Brazil led on critical issues, particularly in international institutions such as the World Trade Organization (WTO). How the country shaped policy agenda and formed coalitions with the aim of pursuing it is a topic worthy of well-researched analysis, by both policymakers and scholars.

Written by a diplomat who witnessed the negotiations surrounding investment facilitation first-hand, this book is a well-argued testament to the growing significance of developing countries in the world economic system. Entire chapters and sections on the coalitions of diverse states which have taken part in the investment facilitation negotiations give an inside look into how policymaking has been irrevocably changed as fast-growing economies attempt to change the rules.

Through each of these chapters, the book successfully paints a portrait of Brazil as it exists today: a complex economic giant which has sought to modernize and reform the international system.

The global trade landscape and Brazil's history are intertwined to illustrate how contemporary negotiation and policymaking shapes the world we inhabit today.

Alexandre Guido Lopes Parola

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