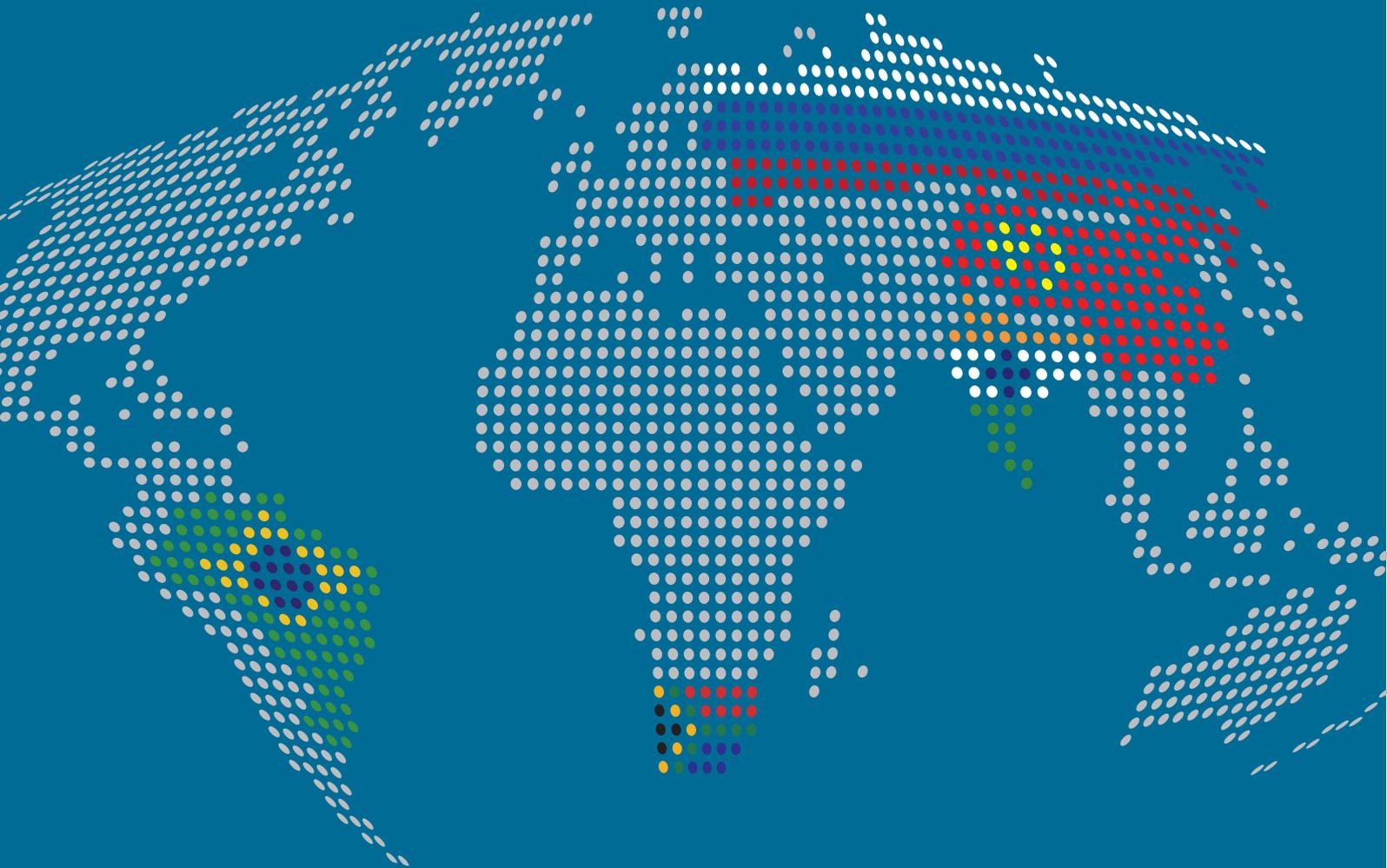


BRICS in the World Trade Organization: Comparative Trade Policies

Brazil, Russia, India, China and South Africa



EDITED BY VERA THORSTENSEN & IVAN TIAGO MACHADO OLIVEIRA

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Contents

| | |
|---|----------|
| Acknowledgements and research team | 7 |
|---|----------|

| | |
|---------------------|----------|
| Introduction | 9 |
|---------------------|----------|

| | |
|--|-----------|
| CHAPTER 1 | |
| Brazil, Russia, India, China and South Africa (BRICS) as Players in the World Trade Organization | 13 |
| 1.1 Evolution of the political articulation of the BRICS countries | 13 |
| 1.2 From political co-operation to acting as new international players | 18 |
| 1.3 The role of the general agreement on tariffs and trade and of the WTO in the trade policies of the BRICS countries | 19 |
| 1.4 Conclusion | 20 |
| Endnotes | 21 |
| References | 21 |

| | |
|---|-----------|
| CHAPTER 2 | |
| Brazil, India, China and South Africa's (BICS) Participation in the Doha Round | 23 |
| 2.1 Introduction | 23 |
| 2.2 Agriculture | 24 |
| 2.2.1 Market access | 26 |
| 2.2.2 Domestic support measures | 31 |
| 2.2.3 Export subsidies and export competitiveness | 34 |
| 2.3 Non-agricultural market access | 35 |
| 2.3.1 Tariffs | 35 |
| 2.3.2 Non-tariff barriers (NTBs) | 38 |
| 2.3.3 Deadlock in the Doha Round | 39 |
| 2.4 Anti-dumping | 40 |
| 2.4.1 Proposals | 41 |
| 2.4.2 Package of December 2008 | 46 |
| 2.5 Subsidies | 47 |
| 2.5.1 Proposals | 47 |
| 2.6 Regional trade agreements | 50 |
| 2.7 Intellectual property | 50 |
| 2.7.1 Proposals | 51 |

| | | |
|------|--------------------|----|
| 2.8 | Services | 52 |
| 2.9 | Trade facilitation | 54 |
| 2.10 | Conclusion | 54 |
| | Annex A | 55 |
| | Endnotes | 63 |
| | References | 66 |

CHAPTER 3

BRICS in the WTO: In Search of a Positive Agenda 73

| | | |
|------|--|----|
| 3.1 | Introduction | 73 |
| 3.2 | Tariff profile | 75 |
| 3.3 | Agriculture | 76 |
| 3.4 | Agreement on Technical Barriers to Trade (TBT) and the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures | 78 |
| 3.5 | Trade defence | 80 |
| 3.6 | Services | 81 |
| 3.7 | Intellectual property | 83 |
| 3.8 | Investments | 84 |
| 3.9 | Plurilateral agreements | 85 |
| 3.10 | New themes | 87 |
| 3.11 | BICS involvement in the DSB | 88 |
| 3.12 | BICS participation in the Doha Round | 89 |
| 3.13 | Final considerations | 90 |
| | Endnotes | 90 |
| | References | 91 |

Biographical notes 93

| | | |
|--|--|----|
| | Organisers | 93 |
| | Research team (for the papers presented in this version) | 94 |

Abbreviations 95

Tables

- 2.1 G-20 proposal for a reduction in agricultural products
- 2.2 The 2008 draft proposal for a reduction in agricultural products (December 2008)
- 2.3 G-20: proposal to reduce overall subsidy levels (OTDS) in developed countries
- 2.4 Proposed reduction in the final consolidated Total AMS for developed countries
- 2.5 Simulation of the bound tariff for each coefficient
- 2.6 Anti-dumping measures applied (1995–2010)

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Introduction

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In the light of the great uncertainties surrounding the current global political and economic situation, the role of emerging countries has been the focus of growing academic interest. The unfolding of the financial crisis in the late 2000s, which put into question the leadership role of the United States (US) and the European Union (EU) for political advances and as engines of economic growth, aroused interest in emerging countries, who succeeded in getting out of the crisis and becoming important drivers of global growth.

At the beginning of the past decade, Brazil, Russia, India and China, with large domestic markets and growing economies, stood out from the rest. A phonetically suitable acronym – BRIC – was then created with their initials as a promotional element of a portfolio with risky investments. Because of the stability of their political framework and their continued economic growth, already in the mid-2000s, an opportunity surfaced to explore the possibility of joint action between these countries in major international forums of global governance. The original idea was to create a politically cohesive group as a counterbalance to the major international players – the US and the EU. The first meetings date back to 2008 and the formalisation of the group as a new voice on the international stage took place in 2009, with the Summit of the Heads of State and Government in Yekaterinburg, Russia. In 2011 South Africa's entry was formalised, thereby completing the BRICS acronym. Starting in 2008, meetings between ministers of different areas and senior government officials multiplied, providing substance to a broad international agenda which included not only Group of Twenty (G-20), but also other international forums related to trade and the environment.

In this context academic research has intensified with regard to the evolution of the relations between these five countries in the main international political and economic forums as their relations have become further intertwined. A few pertinent questions began to arise: How do the BRICS countries, which often defended different positions, begin to co-ordinate proposals on themes reflecting different realities and interests among them? On the international agenda, what areas allow for co-ordination between the BRICS members, and at what point does such co-ordination seem unlikely? Will financial co-ordination be possible among these five countries with such different needs and practices? In the end, is BRICS merely a piece of propaganda or can it already be considered a relevant international actor?

One of the most important forums in the multilateral sphere, which provides a great opportunity for research on the role of the BRICS members as international players, is the World Trade Organization (WTO). The subject of trade policies, when dissected by its instruments of action, presents an interesting picture for examining the participation of each element of the BRICS group as players in the WTO. Additionally, the evolution of the Doha Round negotiations allows for an analysis of an important instance in the history of these countries which, throughout the course of the consolidation process of their political co-ordination, have revealed themselves as new players on the international stage. Although the world still thought of the BRICS countries as a risky investment portfolio, four of its members had already begun an intense exercise in cross-co-ordinating their interests in the complex arena of international trade.

The purpose of this book is to conduct a comparative analysis of the trade policies of each of the BRICS members, with the WTO as a frame of reference. Thus, the book examines the inclusion of each of them in international trade and their participation in the multilateral trade regime, both in terms of their diplomatic-juridical pillar (the dispute settlement system) and their political-negotiating pillar (the Doha Round negotiations), during which there was an important exercise of co-ordination between the countries of the group within the multilateral trade regime.

Every book has a story, and this one starts with the launch, by the Diretoria de Estudos e Relações Econômicas e Políticas Internacionais/Directorate of Studies on International Economic and Political Relations (DINTE) of the Instituto de Pesquisa Econômica Aplicada/Institute of Applied Economic Research (Ipea) of the Global Trade Regulation Project, which has as one of its lines of research a comparative analysis of the trade policies of the BRICS countries. As a preliminary result of the project, Ipea published discussion papers and technical notes, available on Ipea's website,¹ which reflected the analytical and research path of the group of researchers involved. The combination of the interests of the institute, which was also responsible for co-ordinating Brazil's participation in the think-tank seminar of the BRICS countries, and of the Centro do Comércio Global e Investimento/Centre of Global Trade and Investment School of Economics (CCGI), São Paulo, of the Fundação Getulio Vargas/Getúlio Vargas Foundation (FGV) School of Economics, resulted in fruitful co-operation which has broadened the research agenda, giving greater impetus to the project and thereby allowing for the

preparation of this book. As such, this is a collective work reflecting the dedication and work of researchers associated with the Ipea and the CCGI–FGV, which shares authorship and responsibility with its organisers for the analyses carried out herein. This is thanks to the efforts of the project research group: Abrão Árabe Neto, Daniel Ricardo Castelan, Daniel Ramos, Carolina Muller, José André Stucchi, Thiago Nogueira, Fernanda Bertolaccini, Fabrízio Sardelli Panzini, Frederico Arana Meira, José Luiz Pimenta Júnior, Jacqueline Spolador Lopes and Belisa Eleotério.

In the chapters that follow, a summary is presented of the trade policies of each of the BRICS countries, their similarities and contrasts, and the roles that they play as members of the WTO, through the usage profiles of the main instruments of trade. This analysis will indicate the areas where the interests of the BRICS members are convergent and where they are divergent, while providing a panorama of the possible co-operation between the groupings in terms of multilateral trade. The aim is to demonstrate that, even in the light of great commercial and political differences, there is room for strategic co-ordination in support of common interests, which are identifiable through a detailed analysis of the profile of their compared trade policies.

Chapter I presents the key moments in the development of BRICS's political interaction. The history of the participation of India, Brazil and South Africa (IBSA) in the General Agreement on Tariffs and Trade (GATT) and in the WTO is reviewed, and the stages of China and Russia's accession to the organisation are outlined.

Chapter II shows the participation of each of the BRICS members in the Doha Round by examining their main proposals and positions during the round. The chapter then proceeds with a detailed analysis of the first initiatives of political co-ordination on different issues, such as those discussed in G-20 Agriculture and in the Non-Agricultural Market Access Group (NAMA-11).

Finally, the book highlights the points of common interest and divergent points for each issue of trade policy analysed in this work in order to illustrate, in addition to the difficulties the countries faced when co-ordinating their positions, some aspects in which co-operation could be carried out more actively.

The researchers who participated in this project hope that the following pages will interest the reader in the trade policy agenda, in general, and in the BRICS countries, in particular, by raising awareness not only of the degree of political co-ordination between the members of the group, but also the fascinating area of international trade regulation.

We hope you enjoy your reading!

Vera Thorstensen & Ivan Tiago Machado Oliveira, The Organisers

1 See www.ipea.gov.br. The Ipea website is available only in Portuguese and provides further details about Ipea activities.

CHAPTER 1

Brazil, Russia, India, China and South Africa (BRICS) as Players in the World Trade Organization

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1.1 EVOLUTION OF THE POLITICAL ARTICULATION OF THE BRICS COUNTRIES

The term *BRIC* was coined, with apparent success, by Jim O'Neill (2001) – former Chief Economist and Chairperson of Goldman Sachs Asset Management – in order to attract the attention of investors to possible new opportunities in the global economy. In his article, O'Neill set out a few comparisons between Brazil, Russia, India and China and the economies of the so-called Group of Seven (G-7) – formed by the US, Canada, the United Kingdom (UK), France, Italy, Germany and Japan. Although Russia was included in the BRIC acronym, it had already been invited to the G-7, eventually joining with official status, resulting in the Group of Eight (G-8).

Initially, the evaluation presented projections about the growth of BRIC up until the year 2050 (Lawson and Purushothaman, 2003:2). The perspective was that BRIC, at that time, would represent the world's leading economies. It was predicted that in 2018 (pp. 2–3) the sum of the gross domestic product (GDP) of these countries would be higher than the GDP of North America. Thus, in 2050 China would be the largest economy in the world, followed by the US, India, Japan and Brazil (p. 2).

The interest sparked by the BRIC acronym, in large part driven by the economic growth of its countries, encouraged their governments to turn BRIC into a group which co-operated politically to address the great challenges of global governance. The first meeting to discuss such a possibility took place on 23 September 2006, on the occasion of the LXI Session of the General Assembly of the United Nations (UN), at which the members of the BRIC economic bloc informally met. The objective was to exchange views on the possible creation of a discussion forum that would be established by conferences starting in 2008.

The first formal meeting of Foreign Affairs Ministers of the BRIC countries occurred on 16 May 2008 at the Ministerial Meeting of Yekaterinburg, Russia. The Joint Declaration laid the foundations of common thought between these countries and the foundations for an agenda of political co-operation. First of all, the primacy of the rule of law and multilateral diplomacy were evoked, with a leading role for the UN (Brazil, 2008, § 2^o). In turn, Russia and China recognised and supported Brazil and India having a greater role in the UN (Brazil, 2008, § 3^o), reinforcing the claims for Brazil and India to become permanent members of the UN Security Council.

BRIC recognised that the solution to such issues as hunger, disease and the sustainability of the global economy should be handled through a fair global economic system (Brazil, 2008, § 4^o). They expressed support for political and diplomatic efforts for the peaceful resolution of disputes in the area of international relations, while condemning all forms of terrorism, and recommending the adoption and implementation of UN decisions regarding the fight against terrorism (Brazil, 2008, § 6^o).

They understood that energy security, socio-economic development, and environmental protection would all be interconnected. Lastly, they stated that ‘South–South co-operation is a key element behind international efforts in the field of development’ (Brazil, 2008, § 10). They maintained the initiative to continue co-operating with the G-8 and other traditional dialogue partners (Brazil, 2008, § 11).

In June 2009 the BRIC members issued the Joint Declaration on Global Food Security. This document does not propose any commitments, but does introduce a few foundations for understanding the issue. The first important aspect would be the exchange of experiences with bio-fuel technology in order to ensure sustainable production in accordance with the three pillars of sustainable development: (i) society, (ii) economy and (iii) the environment. Additionally, bio-fuel production should be crafted in order to achieve and maintain global food security. Finally, in addition to encouraging technical co-operation and innovation, the BRIC countries expressed support for the provision of technological and financial resources to equip developing countries with the necessary tools to implement measures to minimise the consequences of climate change regarding food security (Brazil, 2009a:2).

The 1st Summit of the Heads of State and Government of the BRIC countries took place again in Yekaterinburg on 16 June 2009, during which the members of the group reiterated the points agreed upon at the ministerial

meeting. Going one step further, it was determined that the summit of the G-20 should have a central role in order to deal with the financial crisis (Brazil, 2009b, § 1^o), and all countries were called to implement the decisions of said summit, reached in London on 2 April 2009 (Brazil, 2009b, § 2^o).

The BRIC members also reiterated their support for international measures already under way, such as Agenda 21 and the UN's Millennium Development Goals (MDGs). They recognised the important role of international trade and foreign direct investment for global economic recovery (Brazil, 2009b, 6^o–7^o). Finally, they established that the financial and economic system should be based on 'democratic and transparent decision-making and implementation processes on the part of international financial organisations; a sound legal basis; compatibility of the activities of effective national regulatory institutions and international bodies setting standards; and the strengthening of risk management and supervisory practices' (Brazil, 2009b, 4^o).

On 26 March 2010, the ministers of Agriculture of the BRIC countries signed a joint declaration in Moscow that established lines of action to pursue international initiatives on food security, the production of grain, an increase in the standard of living and the development of rural areas. Four lines of action were established, as outlined below:

- i Creation of an agricultural information base system of the BRIC countries;
- ii Development of a general strategy for ensuring access to food for the most vulnerable population;
- iii Reduction of negative impact of climate change on food security and adaptation of agriculture to climatic changes;
- iv Enhancement of agricultural technology, co-operation and innovation. (Brazil, 2010b:1–2)

The 2nd Summit of the Heads of State and Government met in Brasilia on 15 April 2010. The BRIC joint declaration stressed the values and foundations of previous documents, while also exalting the financial contribution of the BRIC countries to the International Monetary Fund (IMF), and backing the request to increase the quotas of these countries and their involvement in the choice of leaders for the IMF and World Bank (Brazil, 2010a, § 9^o–11^o). Article 14 of the BRIC joint declaration establishes a few points regarding international trade:

We stress the importance of the multilateral trading system, embodied in the World Trade Organization, for providing an open, stable, equitable and non-discriminatory environment for international trade. In this connection, we commit ourselves and urge all states to resist all forms of trade protectionism and fight disguised restrictions on trade. We concur in the need for a comprehensive and balanced outcome of the Doha Round of multilateral trade talks, in a manner that fulfills its mandate as a 'development round', based on the progress already made, including with regard to modalities. We take note and strongly support Russia's bid for accession to the WTO. (Brazil, 2010a, § 14)

The BRIC countries adopted a contrary stance to trade protectionism and the non-tariff barriers (NTBs) applied by several countries, mainly by developed countries. Lastly, they stressed the need for technical co-operation in various sectors, as already touched upon in previous declarations.

At the summit, the BRIC members signed a memorandum of co-operation between the National Bank for Economic and Social Development (NBESD); the China Development Bank Corporation (CDB); the Export-Import Bank of India (Exim Bank); and the State Corporation Bank for Development and Foreign Economic Affairs (Vnesheconombank) (India, 2010).

Article 1^o of the memorandum states its objectives as follows:

- i To develop comprehensive long-term co-operation between the Parties to facilitate and support cross-border transactions and projects of common interest;
- ii To strengthen and enhance trade and economic relations between BRIC countries and its enterprises;
- iii To set up a scheme designed to provide financing and banking services for investment projects that could be beneficial for the Parties as well as fostering the economic development of the BRIC countries.;
- iv To study the feasibility of setting up an interbank entity among the Parties in order to fulfil the objectives established herein.

The meeting of the 4th Summit of the Heads of State and Government took place in Sanya, China, on 14 April 2011, and marked the accession of South Africa to the group (Brazil, 2011a, § 1^o). In the BRICS Summit Declaration, the members expounded the view that the world was undergoing transformations and that relations between states would be multipolar, catalysed by economic globalisation and increasing interdependence among countries. In this sense, they urged the simultaneous participation of the members of the group in the UN Security Council as an opportunity to strengthen the dialogue on international peace and security, particularly with regard to the case of Libya, for which the countries expressed a desire to reach a common solution (Brazil, 2011a, § 7^o–9^o).

The document, in its Article 9^o, highlighted the position of the BRICS members that ‘the independence, sovereignty, unity, and territorial integrity of each nation should be respected’ (Brazil, 2011a, § 9^o).

The declaration brought new elements and reaffirmed the items addressed in other documents, extolling the prominent role of emerging countries in the global economic crisis, the role of the G-20 and the restructuring of the international financial system (Brazil, 2011a, § 15).

With regard to energy, the BRICS countries reaffirmed their common interest in developing clean energy and encouraging technical co-operation in this sector. Furthermore, they stated that the nuclear matrix should be expanded in the group and that they should pursue safe methods for producing nuclear energy (Brazil, 2011a, § 18).

In addition to the declaration, the countries established a plan of action to strengthen the existing co-operation programmes: meetings between representatives of international organisations with missions in these countries; meetings of experts in agriculture; meetings of the heads of national statistical institutions; discussion on the possibility of signing a co-operation protocol between agencies responsible for competition policy; financial co-operation between the BRICS Development Banks; letters of intent between the Supreme Courts of the BRICS countries; and the start of the joint publication of statistics on BRICS; among others. They also established new areas of co-operation: gathering of sister cities and local governments of the BRICS countries; meetings of Ministers of Health; and support for joint research on economic and commercial issues; among others. Additionally, new proposals were outlined for co-operation in the areas of culture, sport and the green economy; meetings of senior officials to promote scientific, technological and innovative co-operation among the BRICS members; and for the establishment of the BRICS–United Nations Educational, Scientific and Cultural Organization (UNESCO) group (Brazil, 2011a:10–12).

In a joint declaration on the occasion of the election of the new Director-General (DG) of the IMF, on 24 May 2011, BRICS members expressed their dissatisfaction with the method used to choose the new DG. They were particularly dissatisfied because they felt that a position of such importance – and in the light of the financial crisis – should be held by individuals possessing not only technical training, but who were also committed to the necessary changes to the international financial system, including the fair and proper involvement of all members (IMF, 2011, § 5^o).

The meeting of Ministers of Health, held on 11 July 2011, produced the Beijing Declaration, in which ministers from the BRICS countries expressed a desire to strengthen co-operation ties in the health sector, among others, thereby establishing a technical working group to discuss specific proposals, including the BRICS network of technological co-operation (Brazil, 2011b, § 16–18 and § 21–23).

On 24 November 2011, BRICS prepared the Joint Communication on the Situation in the Middle East and North Africa, recognising the legitimacy of the people of the region to enjoy greater political and social rights (Brazil, 2011c:1). The resolution of the crisis in Syria, according to the BRICS Deputy Ministers of Foreign Relations, would urgently require peaceful negotiations with the participation of all those involved. Finally, among other matters, BRICS reaffirmed their support for Palestine to join as a full member of the UN (Brazil, 2011c:1).

As regards trade, BRICS made the important Declaration of Ministers of Foreign Affairs and Trade on the occasion of the 8th Ministerial Conference of the WTO. On 14 December 2011, BRICS expressed their commitment to the trade regime of the WTO and with the Doha Development Agenda, stressing the need to 'strengthen the foundations of multilateral trade', thus establishing the 'pressing need to improve its rules and structure [WTO], in order to take account of the concerns and interests of developing countries in particular' (Brazil, 2011d:1).¹

The BRICS members also backed the need for the WTO to curb protectionist practices and made reference to co-operation with the Cotton-Four (C-4) economies (Brazil, 2011d:2), pledging to keep and expand them. They congratulated Russia on its accession to the WTO, stating that it was 'an important step in making the WTO even more representative and legitimate, and to further strengthen the multilateral trading system' (Brazil, 2011d:2). Finally, the BRICS members reaffirmed their willingness to conclude the Doha Round based on the draft modalities of the texts from December 2008, considering them to be a 'delicate balance of the mutual concessions made during the last ten years' (Brazil, 2011d:2).

The 4th Summit of Heads of Government was set for New Delhi, India, on March 2012.²

1.2 FROM POLITICAL CO-OPERATION TO ACTING AS NEW INTERNATIONAL PLAYERS

The summary of the activities of the BRICS countries clearly demonstrates that political cohesion has been accelerating between the countries and has resulted in concrete actions in specific areas. As can be seen from the long list of meetings already held – shown on the official sites of the BRICS countries – the development of the BRICS agenda has multiplied the number of meetings of ministers from different areas and senior government officials, showing that said co-operation is spreading to several areas besides politics, such as trade, finance, agriculture, health and culture.

Throughout the process of political cohesion between partners, who until recently rarely co-operated, the results have been impressive. With the weakening roles of economic leadership of the US and EU, which were seriously shaken by the financial and economic crisis of 2008, the BRICS members have become important participants in international meetings in which they discuss ways to overcome the current crisis.

The novelty on the international scene is the co-ordinated voice of five emerging countries, with clear objectives of being called to participate in the decision-making forums of the main international organisations and making themselves heard in order to identify solutions to the major problems everyone faces today. The main objective of this new player on the international stage is to strengthen a new structure of global governance.

In the light of the economic heterogeneity of BRICS, a comparative analysis of the international trade policies of its members – taking the WTO as a frame of reference – can become a relevant exercise to identify the areas where economic co-operation is possible and areas where the divergence of interests indicates unlikely points of co-operation in the field of international trade.

1.3 THE ROLE OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND OF THE WTO IN THE TRADE POLICIES OF THE BRICS COUNTRIES

For the five BRICS members, international trade has represented different priorities in their growth models. For China, for three decades international trade has been a central element of the economic policy based on capitalism with a strong state presence. China prioritised the export of goods via state and foreign enterprises, and liberalised its imports. Only at the beginning of 2011 did China signal that it intended to focus economic growth on its domestic market. For India, Brazil and South Africa (IBSA) the priority was the development of the domestic market, via the expansion of demand and controlling inflation, with international trade being less important. India and South Africa kept their economies closed and only since 1990 have they begun to open their activities, giving greater weight to international trade. India gave priority to service exports. However, even today there is a high level of protection, especially in the area of agriculture. Brazil opted for a model of internal development, but since the late 1980s, the country has opened its economy. More recently, it has transformed its agricultural sector into a major exporter. For Russia, which is transitioning from a planned economy to a market economy, trade came to represent the fastest way to reduce dependence on activities related to energy products, such as oil and gas: hence its interest in joining the WTO, as it aims to diversify its international trade and to boost its economy.

The participation of the five countries in the WTO also reveals different levels of priority.

IBSA were three of the 23 Contracting Parties to the GATT, which entered into force in 1948. China was also one of the contracting parties to the GATT but, with the Revolution of 1949, the Taiwanese government unilaterally decided to withdraw from the agreement. In 1986 the government of the People's Republic of China requested the status of contracting party. A working group was created in 1987 and the accession of China was negotiated for 14 years. China participated as an observer to the Uruguay Round and signed the Final Act in Marrakesh in 1994 but its status as a member of the WTO was not recognised. Negotiations for the accession of China and Chinese Taipei continued and were completed in November 2001, when a new round of WTO negotiations was launched: the Doha Round. Russia, after nearly two decades of negotiations, finally concluded its accession process to the WTO in December 2011. The ratification of the agreement by the Duma was expected for the first half of 2012.

As historical examples of planned economies, the entry of China and Russia into the WTO has attracted increasing attention from scholars on the economic and political reasons that justified the long and complex processes of accession to the organisation, and the balance between the estimated costs and benefits for such decisions.

The entry of China in the WTO was preceded by a profound process of adjusting its economy. This process represented an important political decision on the part of the Chinese government to reassert the country into the area of world trade, thus transforming trade into a driving force behind its economy. On the one hand, the accession was due to the decision by the Chinese Government to adapt an economic model based on the socialist principles of planned economy to a model of market economy, called the socialist market economy and to stabilise trade relations with other countries. On the other hand, it indicated the political will of WTO members to integrate China into the organisation, which has as its main goal trade liberalisation by means of trading rules and supervision of the application thereof. In this way, the interests of both sides were satisfied: China, by transforming international trade into a central point of its growth policy, needed the assurance that its exports would not be discriminated against, in accordance with WTO rules; and the other members of the WTO, attracted by the vast Chinese market in the process of opening up, felt that the existing rules would ensure that the influx of Chinese products could be controlled.

The objective was, and still is, to use WTO rules to prevent discriminatory measures against Chinese exports. The accession costs required of China were high, but its performance in recent years more than offset the adjustment process.

Russia, in turn, together with other countries of the communist bloc, did not adopt the GATT in 1948. Only in 1993, with the collapse of the Soviet Union, did Russia request the status of contracting party to the GATT. Negotiations were extended until November 2011, when an agreement was finally reached between Russia and Georgia, which opposed the accession of Russia since the war between the two countries in 2008. In December 2011, the Ministerial Conference of the WTO approved Russia's accession to the organisation. Its ratification, however, is still pending.

IBSA, having already been present during the initial discussions of the creation of the GATT, having participated in all of its negotiation rounds and, lastly, having been present at the negotiations for the establishment of the WTO, eventually assumed a leadership role within developing countries.

1.4 CONCLUSION

The activities of these countries in the WTO have shown various specificities, reflect the priorities of their international trade policies and identify the interests that they defend in the international arena. Some of these

priorities may be identified by analysing the evolution of the activities related to such a policy as the use of trade instruments mainly in the areas of tariffs, agricultural and non-agricultural goods, technical barriers, trade protection for goods, the areas of services and intellectual property, plurilateral agreements and new issues and, finally, with regard to trade disputes.

ENDNOTES

- 1 Benin, Burkina Faso, Chad and Mali (Note 28).
- 2 See Brazil (2006–2012).

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CHAPTER 2

Brazil, India, China and South Africa's (BICS) Participation in the Doha Round

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2.1 INTRODUCTION

IBSA have been active members in the multilateral trade regime since the establishment of the GATT in 1948 and the creation of the WTO in 1995. Historically, they have assumed a prominent role in defending the interests of developing countries, especially during negotiation rounds. Since its accession in 2001, China has also played a prominent role as a WTO member. In the early years, it maintained a discrete presence in the regular bodies, with the exception of the Anti-Dumping Committee, but since the beginning of the Doha Round in 2001, it has presented several proposals with other interest groups, or individually. Russia participated as an observer to the round and finished its own accession process in 2011.

Brazil, India and China (BIC) assumed a position of evidence in early 2003, when they jointly decided to reject the proposal of the US and EU regarding agriculture, which was offered as the last possible concession of these members to break the deadlock of the round at the Cancun Ministerial Conference. Under Brazil's co-ordination, these three countries created the group *G-20 Agriculture*, while rejecting the aforementioned

proposal. In the negotiations that followed, defensive countries adopted an intermediate position – the Group of Ten (G-10) – against the further liberalisation of the agricultural sector and in favour of the maintenance of agricultural subsidy levels; the Cairns Group was formed by more aggressive countries for agricultural liberalisation and was led by Australia. South Africa also became part of G-20 Agriculture.

With the success of G-20 Agriculture, due not only to its constructive approach but also its technical sophistication, Brazil and India were included in the Group of Four (G-4), the group of countries who took the lead in trying to conclude the round in 2008. The group changed the geometry of WTO negotiations. Until the Doha Round, the countries determining the pace and scope of the rounds were the US, the EU, Canada and Japan, or the *Quad*. At Doha, this configuration was formed by the US, the EU, Brazil and India, the *new Quad*.

China, having entered the WTO in 2001, claimed that it had already offered a high level of liberalisation for its international trade, and held a defensive position in the round as one of the recently acceded members (RAMs).

Brazil, India, China and South Africa (BICS) were not presented as a group with specific interests in the Doha Round. Nevertheless, they took part in several negotiating groups with positions that were in line with other developing countries, while also presenting joint proposals. Thus, during the agricultural negotiations, the four countries belonged to G-20 Agriculture, but India and China were also both members of the Group of Thirty-Three (G-33), co-ordinated by Indonesia, which advocated special safeguards for agriculture. Brazil was part of the Cairns Group, co-ordinated by Australia, and was a strong advocate of the full liberalisation of the sector. In the negotiating group on non-agricultural market access (NAMA) – co-ordinated by South Africa – Brazil and India were part of the NAMA-11, formed by emerging countries with expanding markets. China, on behalf of the RAMs group, presented defensive interests in the NAMA negotiations.

In the following sections, the participation of the BICS members in the main negotiating groups of the Doha Round will be presented: agriculture, non-agricultural market access, anti-dumping, compensatory measures, regional trade agreements and intellectual property. BICS countries played a prominent role in the progress of the negotiations.

2.2 AGRICULTURE

Given the sparse results achieved in the Uruguay Round, WTO members had committed themselves to a new stage of liberalisation of the agricultural sector, which was scheduled for five years after the Agreement on Agriculture in 1995 came into force. Owing to the importance of the sector, the agricultural theme became the central point of the Doha negotiations.

The Doha mandate established objectives for each of the elements of the agricultural pillars including (i) access to markets, with the aim of substantial improvement in access; (ii) export subsidies, with the purpose of obtaining a reduction and eventual elimination of these subsidies; and (iii) domestic support measures, aimed at substantial reductions by the major agricultural subsidisers. The results should include the principle of special and differential treatment for developing countries, with more favourable conditions for their commitments (WTO, 2001a: paragraphs 13 and 14).

The mandate of the round confirmed a new stage of liberalisation under the Agreement on Agriculture which, in the Uruguay Round (1986–1994), established the conversion of NTBs into equivalent tariffs; reduction of measures of domestic support and export subsidies; and greater market access by ensuring minimum access.

Brazil maintained a defensive position in the negotiations due to the fact that it is a major exporter, with interests in all parts of the mandate. Some of its demands had been made by the Cairns Group¹ since the Uruguay Round, in which South Africa participated. India and China, with predominantly family-based agriculture, adopted a defensive stance on many issues via the G-33.²

Despite the differences in their economic structure, BIC led the creation of G-20 Agriculture in 2003³ in pursuit of reforms in the agricultural policies of developed countries, which have high tariffs, numerous tariff quotas and an extremely distorting system of export subsidies and domestic production.

The actions of the G-20 faced resistance from the US, the EU and the G-10, in particular,⁴ the group led by Japan and Switzerland against the liberalisation of the agricultural sector and in favour of maintaining the levels of agricultural subsidies.

Since it was always able to maintain an intermediate and constructive position throughout the round, the G-20 managed to earn respect for its knowledge of the positions of all the countries involved, and for the depth of its understanding of the technical aspects of the issues raised. During the negotiations, the positions of the G-20 members were eventually incorporated into the documents of the President of the Special Agriculture Section and it should be noted that a large part of the proposals in the final paper of 2008 was derived from G-20 proposals.

In the Ministerial Meeting in July 2008, one of the issues in the DG of the WTO Pascal Lamy package that prevented the completion of the round was that of the special safeguards, which represented a particularly sensitive subject for India. This country could not accept the trigger proposal on imports, which would have been implemented to prevent import surges of agricultural goods. The proposals ranged from 40% from developing countries to 10% from India.

India feared that imports could destabilise its family-based agriculture, which included a significant portion of the population. Brazil had no problems with the proposal and was the first country to support the Lamy package, but the US found it difficult to support such a package, as it felt that the trade liberalisation the emerging countries offered in NAMA was unambitious.

The negotiations on agricultural market access were polarised around some points, such as

(i) the establishment of a cap for tariff peaks; (ii) definition of the tariffs applicable to quotas; (iii) treatment of special products, which received minor cuts; and (iv) a safeguard mechanism for developing countries.

Agricultural exporters of the Cairns Group and G-20 defended the maximum ceiling on agricultural tariffs, which the G-10 opposed. Special safeguards for developing countries were one of the central issues of the G-33, but they also faced opposition from developed countries. As regards tariff quotas, the EU argued that, for quotas, tariffs should be reduced to 15% and those lower than this value should be reduced to zero, while the G-20 and the Cairns Group advocated the adoption of zero tariffs for quota products.

The July 2008 package consolidated many of the negotiating positions of the WTO members and its December 2008 version is still considered the product of ten years of negotiations.

To enable a more comprehensive idea of the progress made, a summary of the main proposals from the start of the Doha Round and the Package from 2008 is presented below.

2.2.1 Market access

At the WTO, the term *market access* referred to tariff and non-tariff measures, and the deadlines for reductions to be implemented by its members for the importation of goods. The GATT, which was established with the objective of liberalising trade through successive rounds of tariff reductions, established the basic regulations for market access. After each round of negotiation, each member had to attach to the GATT and then to the WTO Agreement on Agriculture a list of its commitments, establishing a set of maximum tariffs that could be levied on imports of each product (GATT 1947, Art. 2^o) as bound tariffs. Each member could implement lower tariffs, if interested in doing so, such as applied tariffs. Bound tariffs could only be exceeded, in exceptional circumstances, by means of concessions to the affected members. The majority of the members consolidated their tariffs with the GATT and later the WTO. Members are free to apply tariffs lower than the bound tariffs, provided they do not discriminate against other members (GATT 1947, Art. 1^o) and, with some exceptions, such as in the case of regional agreements. The GATT also established that no measure, besides tariffs, would be used as a way to limit access to these markets (GATT 1947, Art. XI, paragraph 1^o), although there were

exceptions for agricultural products (GATT 1947, Art. XI, paragraph 2^a) expounded upon in the Agreement on Agriculture.

To reduce restrictions on international trade, the GATT established that members must engage in rounds of negotiation (GATT 1947, Art. XXVIII). A significant point of every round has always been to define the procedures of the negotiation, in which the method determining how bound tariffs should be reduced is established. In the early rounds of the GATT, the negotiations were carried out either based on supply and demand or on a tariff reduction formula. In the case of the formula, a mathematical equation sought to define the extent of the tariff reductions. The best-known example is the Swiss Formula, which determines the heaviest reductions for higher tariffs. As regards supply and demand, each member presented an initial list of offers for each product, then received requests from other countries and from this basis negotiated the final agreement that would be implemented later. For many years, the GATT was integrated primarily by developed countries and exporters of industrial goods. The lists hardly mentioned the market access for the agricultural goods sector which, moreover, was subject to other forms of protection in addition to tariffs, such as exceptions in the form of *waivers*.

It was the Uruguay Round (1986–1994) that finally outlined the agricultural sector within GATT regulations. The so-called old themes, which took into account the exceptionality of agricultural products, were included in the negotiating mandate. The mandate listed the points that should be discussed by the members in the round. At the end of the Uruguay Round, the members agreed that NTBs in agriculture would be converted into tariffs through a *tariffication* mechanism (AoA, Art. 4.2). However, in order to protect domestic producers from sudden increases in quantity and from significant price reductions of the imports, a safeguard mechanism was adopted for items subject to tariffication which, in turn, allowed for higher tariffs in the case of sudden changes in import levels (AoA, Art. 5^a). Some tariffs were consolidated to very high levels in order to maintain the same protection previously granted by NTBs. This led to the formation of several tariff peaks, which are understood as those tariffs that are three times higher than the overall average – about 15%. For products with prohibitive tariffs, tariff quotas were adopted and calculated as a percentage of the consumption of each product, which allowed access to an annual amount of tariffs lower than bound tariffs.

Since the beginning, Brazil had indicated that it would block an unambitious agreement on Agriculture (WTO, 2001b), but until then it was mostly in line with the Cairns Group, while India and China either presented individual proposals or subscribed to the initiatives of the G-33. Starting in 2003, the BICS members began to act in a co-ordinated manner with the G-20.

One of the first steps of the negotiations on market access was to define the method by which tariffs would be reduced. In the Uruguay Round, before the deadlock to agree on a formula, it was decided that tariff reductions in developed countries should lead to an average linear cut of 33.3% (Hoda, 2001). Therefore, there could

be some flexibility with above-average tariffs and others that were below average, provided that the average desired reduction was achieved. A certain percentage of sensitive products to be exempt from cuts by granting flexibilities, thereby accommodating any conflicting interests, was also permitted.

2.2.1.1 US and EU proposal

In 2003 at the Doha Round, the US and the EU proposed that tariff cuts in agricultural negotiations should occur through the use of three formulas: (i) part of the lines would be zero-rated, (ii) part would be subject to linear cuts, while (iii) the rest would be reduced by the Swiss Formula. Since the document did not propose any flexibilities or coefficients for the formulas, the definition of the percentage of tariff lines subject to each formula; the average and minimum reduction, and the coefficients of the Swiss formula (WTO 2003a) were left for future negotiations.

The US and the EU proposal opposed the linear approach the President of the Special Section proposed (WTO, 2003b). Both documents sought to define the modalities for the Cancun Ministerial Meeting, which took place in September 2003.

Several countries initially endorsed the proposal, albeit with reservations about certain points (WTO, 2003c), but they changed their position after the discussions raised by the G-20. According to the G-20 evaluation, if each country could elect which lines would be subject to each formula, it would be possible to maintain tariff peaks. This is because the linear reduction, which only establishes the average and minimum cut, would allow cuts for lesser important lines to outweigh the small reduction of products of interest to developing countries. Therefore, in the light of the G-20, the formula the US and the EU proposed would be a 'meticulously structured approach to accommodate the interests of the proponents and detrimental to the interests of the majority of the Membership' (WTO, 2004a).

After the stalemate in Cancun, negotiations continued in Geneva and a framework was agreed upon in August 2004. The framework established that the reductions should occur in tiers (*tiered formula*), by which higher tariffs would have larger cuts. The reduction tiers, as well as the percentage of cuts and flexibilities, would be subject to negotiations (WTO, 2004b).

2.2.1.2 G-20 proposals and the RAMs

In 2005 the G-20 submitted a proposal on market access for agricultural products. The tariffs of developed countries should be subject to an average cut of 54%, by means of tiered linear reductions ranging from 45% to 70%. To reduce tariff peaks, a cap of 100% should be adopted. The tariffs of developing countries, in turn,

should be subject to an average reduction of about two-thirds of those of developed countries, with a cap of 150%, but in different tiers (Table 2.1). In addition, specific tariffs should be converted into *ad valorem* and an additional formula should be negotiated to address tariff escalation.⁵

Table 2.1: G-20 proposal for a reduction in agricultural products

| Developed countries | | Developing countries | |
|---------------------|----------------|----------------------|----------------|
| Tiers (AVEs) | Linear cut (%) | Tiers (AVEs) | Linear cut (%) |
| 0 ≤ 20 | 45 | 0 ≤ 30 | 25 |
| > 20 ≤ 50 | 55 | > 30 ≤ 80 | 30 |
| > 50 ≤ 75 | 65 | > 80 ≤ 130 | 35 |
| > 75 | 75 | > 130 | 40 |
| Cap: 100% | | Cap: 150% | |

AVE = ad valorem equivalent.

Source: WTO (2004a).

On the topic of flexibilities, the G-20 proposed that the greater the deviation of sensitive products from the average, the greater should be the compensation via quotas and tariff reductions. The group also proposed that the safeguards provided for in Article 5o of the Agreement on Agriculture should be eliminated at the beginning of the implementation period; an open point in the 2004 Framework which generated strong opposition from the G-10 (WTO, 1994c).

The G-20's attempt to reduce selective protection in developed countries was accompanied by the defence of the right of developing countries to protect the agricultural market due to issues of food security. This was one of India's major demands in the group which, at the beginning of the round, along with the G-33, had proposed the creation of a specific category of agricultural products known as the *Food Security Box*, which should be exempted from more commitments regarding market access and domestic support.⁶ The creation of a special safeguard mechanism for developing countries, in addition to granting more flexibility in terms of agriculture, would also be important for protecting domestic producers from agricultural subsidies granted by developed countries.

China, although a member of the G-20, further strengthened its co-ordination with the RAMs.⁷ This group required an implementation period five years greater than the one given to other developing countries; a tariff reduction 50% smaller than the one stipulated for other developing countries; exemption from tariff reduction equal to or below 10%; exemption from commitments to small, low-income countries or transitioning economies; and greater flexibility in the selection of sensitive products or the adoption of safeguards (WTO, 2007).

2.2.1.3 Draft of 2008

As the negotiations progressed, the proposals were adjusted to the interests defended. After years of discussions and consultations between members, the final draft the chairperson of the negotiating group proposed, which was based on the progress achieved at the Mini-Ministerial Meeting held in July 2008, maintained the reduction tiers proposed by the G-20, but incorporated higher cuts for developing countries and for products from developed countries with lower tariffs (WTO, 2008e).⁸ Some items were still unresolved before the Mini-Ministerial meeting had been finalised after the consultation with members (Table 2.2).

Table 2.2: The 2008 draft proposal for a reduction in agricultural products (December 2008)

| Developed countries | | Developing countries | |
|---------------------|----------------|----------------------|-----------------|
| Tiers (AVEs) | Linear cut (%) | Tiers (AVEs) | Linear cut1 (%) |
| 0 ≤ 20 | 50 | 0 ≤ 30 | 33 |
| > 20 ≤ 50 | 57 | > 30 ≤ 80 | 38 |
| > 50 ≤ 75 | 66 | > 80 ≤ 130 | 44 |
| > 75 | 70 | > 130 | 47 |

AVE = *ad valorem* equivalent.

Note: 1 For developing countries, the proposal established a cut by two-thirds of the original amount set for developed countries.

Source: WTO (2008a; 2008b).

The document also proposed that up to 4% of tariff lines from developed countries could be defined as sensitive and subject to differential reductions of one-third, half or two-thirds lower than the amount predicted by the formula. The greater the deviation, the greater should be the compensation through quotas, as demanded by the G-20. Developing countries could indicate one-third more products as sensitive, which would, in turn, be subject to special treatment, unlike the one applicable to developed countries.

The draft also incorporated a new category of sensitive products for developing countries: the so-called special products. These lines would be subject to an average cut of 10% – far below the reduction expected from the formulas – and up to 5% would be exempted from cuts, provided that the average reduction of 10% was maintained (WTO, 2008b, paragraphs 129–131). The RAMs could exempt a larger number of products from the cuts. The G-33 was the main advocate of this category of flexibility.

After the creation of the G-20, advances in market access for non-agricultural products became conditioned to market access for agricultural products in co-operation with the NAMA-11, co-ordinated by South Africa and including Brazil and India.

2.2.2 Domestic support measures

Under the terms of the Agreement on Agriculture, established in 1994, domestic support measures considered to distort production and trade, known as *Amber Box*, should be reduced (AoA, Art. 6^o). At the end of the Uruguay Round, countries pledged to limit their use to a minimum (*de minimis*), which was considered 5% of the value of agricultural production for developed countries and 10% for developing countries (AoA Art. 6.4). As regards certain members (about 30) who presented greater support measures than the minimum agreed upon, individual reduction schedules were adopted, as detailed in Part IV of the member's individual commitments.

Subsidies were calculated by means of the Aggregate Measurement of Support (AMS) (AoA, Art. 1^o, § a). The sum of the measures granted by governments to all agricultural products was called the *Total AMS* (AoA, Art. 1^o, § h). The lists defined the maximum value in the Total AMS, which may be granted as follows: (i) each year of the six-year implementation period and (ii) each year after the implementation period.⁹ If the value of the domestic subsidies granted in a particular year was greater than the commitments, the member may be subject to compensatory measures.

The Agreement on Agriculture allowed members to exclude from the Total AMS in a given year any support for a specific product, provided that it corresponded to less than 5% of the value produced in that period in the case of developed countries, or 10% for developing countries; values considered *de minimis* (WTO, 1994c, Art. 6.4).

The so-called *Blue Box* subsidies should not be counted as part of the Total AMS, since they are support measures linked to reduced production. Included in this category were direct payments made under production-limiting programmes, provided that they were (i) based on fixed areas or yields; or (ii) were made on 85% or less of the base production level; or (iii) were with respect to a fixed number of livestock in the case of cattle (WTO, 1994c, Art. 6.5). This category is deemed important for agricultural reform programmes, because the payment is linked to reduced production. In this way, Blue Box subsidies, not being counted in the Total AMS in a year, were not subject to the annual limits set by the Final Total AMS.

Members who reported their use to the WTO, such as the EU, Norway, Japan, Slovakia, Slovenia and the US, argued that the instrument should be maintained because its effect on trade would be smaller than the others, and such initiatives would be important for agricultural reforms. However, the G-20 and the Cairns Group advocated the elimination of this category of support measures (WTO, 2003c).

The Total AMS commitments, while still significant, left room for each country to allocate more resources for products considered sensitive. One of the controversial points of the negotiations was the adoption of limits on domestic subsidies for specific products, and not just on the total amount.

The Agreement on Agriculture also establishes regulations for the application of subsidies that are considered to have a lesser impact on trade, the so-called *green subsidies*. These subsidies were excluded from the reduction commitments and are linked to government activities of support for rural communities; research and development; pest and disease control; training; inspection and promotion; infrastructure; buffer stocks; food aid; income support; structural adjustments; and environmental programmes (Annex II: Anti-Dumping Agreement). The Doha mandate called for the renegotiation of the annex.

2.2.2.1 Proposals of the G-20 and RAMS

In 2004, in the July package of framework agreements, WTO members reached a provisional agreement on the modalities for reducing domestic support measures. There would be greater cuts for countries with more subsidies through the use of a tiered formula. General limits should be stipulated, because later reductions in Consolidated Total AMS and *de minimis* values would be suited to the general commitments.

In 2005 the G-20 presented a new proposal in which the Blue Box category should be eliminated and its programmes would be factored into the Total AMS calculation and would be subject to limits if higher than the *de minimis* value. Thus, the negotiated cuts should focus on domestic subsidies, regardless of their classification and whether or not they are linked to production reduction programmes.

Under the proposal, general reductions for developed countries should be between 70% and 80%, depending on how much each country uses. The Consolidated Total AMS, in turn, should be reduced by between 60% and 80%, and the *de minimis* values of developed countries, currently at 10%, should be reduced as much as necessary, so as to conform to commitments on general levels. In all categories, commitments should be adopted for specific products so that members may not freely allocate resources between different productions.

For developing countries, general reductions and the Total Consolidated AMS would be two-thirds of the original amount set for developed countries, but in different tiers, and the *de minimis* values should be adjusted enough to be suitable for general levels. Developing countries who do not possess lists of commitments would not be subject to the *de minimis* reduction.

The G-20 also proposed more flexibility for developing countries. Those who do not have lists of Consolidated Total AMS commitments, or who allocate nearly all *de minimis* values in support of subsistence production or low-income producers should be exempt from cuts. This proposal was important for the G-20 in order to accommodate the interests of India, which did not have Consolidated Total AMS commitments. The proposal submitted by the country early in the round also advocated the creation of a specific category of subsidies for sensitive products, known as the *Food Security Box*, which would not be subject to limitations (WTO, 2001c).

China, although a member of the G-20 in 2007, endorsed the proposal along with the RAMs. The group demanded that small transitioning economies with low income should be exempted from Total AMS and *de minimis* reductions, and investment subsidies should be excluded from the Total AMS and *de minimis* calculation. As well as market access, the group also pushed for an implementation period for RAMs that would be five years longer than that for developed countries.

2.2.2.2 Draft of 2008

The G-20 proposal was partially incorporated into the final draft prepared by the chairperson of the special section on agriculture in December 2008. The document suggested a new category to serve as the basis for reductions in overall levels, known as *Overall Trade Distorting Domestic Support* (OTDS). This category should include (i) Consolidated Total AMS – annual cap after the implementation period specified in Part IV of the members' commitment lists; added to the (ii) *de minimis* of 10% of the production value for developed countries and 20% for developing countries; and added to (iii) the highest average of the payments of Blue Box subsidies during the base period, or 5% of the value of agricultural production. The initial proposal of the G-20 was similar to that of the chairperson's in items (i) and (ii), but in item (iii) only the first criterion was taken into account when calculating the base value.

As regards the 2008 proposal, the negotiated reductions should focus on the OTDS. The proposed cuts were significantly lower for countries spending between \$0 and \$10 billion than originally demanded by the G-20. However, the document kept the proportion of two-thirds cuts for developing and developed countries, and the differential treatment given to RAMs (Table 2.3) (WTO, 2008b).¹⁰

Table 2.3: G-20: proposal to reduce overall subsidy levels (OTDS) in developed countries

| Tiers (\$ billions) | Cut proposed by the G-20 (2005) (%) | Cut proposed by draft (December 2008) (%) |
|---------------------|-------------------------------------|---|
| 0–10 | 70 | 55 |
| 10–60 | 75 | 70 |
| More than 60 | 80 | 80 |

Source: WTO (2008a; 2008b).

According to the chairperson's proposal, the Total Consolidated AMS should undergo cuts ranging between 45% and 70%. The upper tier, which in the G-20 proposal should include countries with a Consolidated Total AMS greater than US\$25 billion and subject to an 80% cut, was increased to \$40 billion, with cuts of 70% (Table 2.4).

Table 2.4: Proposed reduction in the final consolidated total AMS for developed countries

| G-20 Proposal | | Draft (December 2008) | |
|--------------------|---------|-----------------------|---------|
| Tiers (\$ billion) | Cut (%) | Tiers (\$ billion) | Cut (%) |
| 0–15 | 60 | 0–15 | 45 |
| 15–25 | 70 | 15–40 | 60 |
| More than 25 | 80 | More than 40 | 70 |

Source: WTO (2008a; 2008b; 2004a).

The draft also proposed that the average value of the Total AMS reported to the WTO between 1995 and 2000 should be adopted as an upper limit for the concession of subsidies for specific products from developed countries. Thus, besides the overall levels defined by the OTDS, developed countries would adopt subsidy commitments for specific products, as requested by the G-20. For the US, the value would be calculated in the 1995–2004 period. Developing countries, in turn, could choose between three alternative calculation formulas.

The proposal did not suggest the complete elimination of the Blue Box category, but did support the adoption of total limits for specific products. The Blue Box subsidies should be limited to 2.5% of the total average value of agricultural production during the base period from 1995 to 2000; and support for specific products should not be higher than the average value given to the individual product level during said period. Exceptions were, once again, made for the US.

Finally, the document proposed that the *de minimis* values of developed countries should be reduced by half on the first day of the implementation schedule and additional cuts should be made, if necessary, to achieve the total reduction set by the base commitments of the OTDS. For developing countries, the implementation period would be three years, with cuts of two-thirds that of developed countries and exception for developing countries without prior AMS commitments or who have allocated most of their resources to subsistence or low-income producers. Net food-importing developing countries (NFIDCs)¹¹ would be exempt from OTDS commitments, AMS and *de minimis* reductions, and the RAMs were also exempted from some commitments.

2.2.3 Export subsidies and export competitiveness

The Agreement on Agriculture provided for the elimination of agricultural subsidies contingent upon export performance – export subsidies – both in relation to the budget and the quantity exported. The exceptions correspond to four specific situations, which are (i) within the limits defined in the members' lists of commitments (WTO, 1994c, Art. 9.1); (ii) in accordance with the adjustment timeline provided for by the Agreement (WTO, 1994c, Art. 9.2, § b); (iii) if the subsidies are consistent with the provisions of special and differential treatment (WTO, 1994c, Art. 9.4); or (iv) the programmes are not subject to the reduction

commitments, nor do they violate the principles of anti-circumvention (WTO, 1994c, Art. 3.3, 8 e 10). The reduction defined in the Uruguay Round should occur during a period of six years for developed countries and 10 years for developing countries.

In 2001 the negotiating mandate of the Doha Round determined that export subsidies should be reduced with a view to their eventual elimination. This part of the negotiation pillar included not only the reduction of export subsidies – as practised by the EU – but also the adaptation of export financing, with the elimination of credits, guarantees and insurance of more than 180 days – as practised by the US. The mandate also covered new rules for export state companies and for the conditioning of food aid.

The part concerning the elimination of subsidies was agreed to at the Ministerial Meeting held in Hong Kong in 2005, where members set 2013 as the deadline for compliance (paragraph 6) for developed countries – 50% reduction by 2010 – and 2016 for developing countries, though there was no agreement on modalities. With regard to this matter, members of the BICs did not submit substantive proposals.

The 2008 draft concluded the negotiation of the modalities and made progress on other related matters, such as the elimination of cotton subsidies – mainly from the US – in order to encourage growth in the production and export from African countries. Another important point was the negotiation of a monitoring and supervision mechanism for export subsidies (WTO, 2008a).

2.3 NON-AGRICULTURAL MARKET ACCESS

The Doha negotiating mandate on non-agricultural goods (i.e., fishing, minerals and manufactured goods) establishes (i) a reduction in, or the elimination of, tariffs, peak tariffs, high tariffs and tariff elevation; (ii) a reduction in NTBs; and (iii) special and differential treatment for developing countries by the less than full reciprocity principle. The mandate on trade and the environment provided for a reduction in, or the elimination of, tariff and NTBs for environmental goods and services.

In the Doha tariff negotiations, China maintained an offensive stance in the light of its high degree of competitiveness, but IBSA adopted more cautious positions through the NAMA-11,¹² led by South Africa. The BICS members played an important role in the design of a mechanism for solving the issue of NTBs, intended as part of the Ministerial Declaration.

2.3.1 Tariffs

Concerning the discussions on modalities, one of the most important issues was how the tariff cuts would be implemented. The developed countries presented a proposal to reduce tariffs by means of the Swiss Formula,

in which the coefficient of the formula establishes the maximum tariff rate, with greater reductions for higher tariffs.

Argentina, Brazil and India presented an alternative proposal for tariff reduction, known as the *Argentina–Brazil–India (ABI) Formula*. The proposal was derived from the Swiss Formula, but with a reduction coefficient based on the average tariffs of each country, unlike the fixed coefficients used by the Swiss Formula.¹³ Argentina, Brazil and India argued that this formula would include the Doha mandate of *less than full reciprocity*, since different coefficients would be adopted for developed and developing countries.

China, despite having supported the ABI formula, proposed its own formula for tariff reduction, which was also a variant of the Swiss Formula, but with a specific coefficient to reduce tariff peaks.

Throughout the negotiations, the members determined that the reductions should be achieved through the Swiss Formula, with different coefficients for developing countries and developed countries. The negotiations, therefore, should establish the coefficients and flexibilities for developing countries and developed countries in accordance with the framework adopted in June 2004.

At this stage, the BICS members sought greater openness from developing countries through two main groups: (i) the NAMA-11, which included IBSA, and other emerging countries, and (ii) the RAMS. China defended its position along with RAMs, because under its Accession Protocol it assumed significant tariff reduction commitments and, therefore, wished to make fewer cuts and have more flexibility than other developing countries.

2.3.1.1 NAMA-11 and RAMS proposals

The NAMA-11 argued, after the interim agreement on modalities, that the coefficients presented by the developed countries, with a value of 10 for developed countries and 15 for developing countries, which were to be incorporated into the Swiss Formula, would not be enough to fulfil the Doha mandate of less than full reciprocity.

As the Swiss Formula provided for greater cuts for countries with higher tariffs, the developing countries would have to implement greater reductions than those of developed countries if they were to adopt the coefficient values proposed by said developed countries. With these coefficients, the bound tariff rate of NAMA-11 would be reduced by 69% on average, compared to a 40% reduction in developed countries – a result that would reverse the principle of less than full reciprocity.¹⁴

In 2007 the group proposed the existence of at least 25 points of divergence in the coefficient applied in the Swiss Formula for developed and developing countries. With these coefficients, the percentage reduction of the tariffs would be similar to that of developed countries – 40.4% bound and 25.5% applied – and NAMA-11 – 49.5% bound and 25.9% unbound – (Table 2.5) (WTO, 2007f, p. 2).

Table 2.5: Simulation of the bound tariff for each coefficient

| | Group subject to reduction | Swiss Formula coefficient | Average initial tariff | Average resulting tariff | % reduction | Reduction in percentage points |
|--------------------|----------------------------|---------------------------|------------------------|--------------------------|-------------|--------------------------------|
| DCs/NAMA-11 | DCs | 10 | 6.8 | 4.0 | 40.4 | 2.7 |
| DCs | NAMA-11 | 15 | 34.4 | 10.4 | 69.6 | 23.9 |
| NAMA-11 | NAMA-11 | 35 | 34.4 | 17.3 | 49.5 | 17.0 |

DC = developed country.

NAMA-11 = Non-Agricultural Market Access Group.

Source: WTO (2007f).

RAMs, who were also critical on the positions of the developed countries, submitted a proposal to NAMA in 2007. In the document, the majority of the group, including China, requested a treatment called *developing plus*, which consisted of a coefficient 1.5 times greater than the one granted to other developing countries and greater flexibility, and which should be implemented within a five-year schedule – a period that is longer than the one applied by developing countries. With greater flexibility, the group proposed lesser reductions than those provided for in the formulas with 15% tariff lines, provided that the cuts did not represent less than half of the other lines, or the exemption of 10% of the tariff lines from the cuts planned by said formulas. It also proposed that tariffs that had already been reduced would be exempted from cuts.

Yet even among the RAMs there were differences in the treatment of countries with different levels of openness or economic development. Armenia, Moldova and Kyrgyzstan requested greater exemption from commitments than the rest of the coalition, a request that was accepted by the majority. Saudi Arabia, Macedonia and Vietnam also demanded greater exemption from cuts than the other RAMs, given their recent accession to the WTO: consensus regarding this has not been reached.

To justify the *developing plus* treatment, the RAMS argued that (i) they consolidated 100% of their lines upon accession to the WTO; (ii) the average bound tariff rate was 10.75%, while that of other developing countries was 28.9%; and (iii) in 77.1% of their lines the import tariff was less than 15%, with 16.77% of them exempt from tariffs (WTO, 2007b).

In July 2008, on the eve of the Mini-Ministerial Meeting, the president of the NAMA negotiating group drafted a proposal for the meeting that recommended coefficient values between seven and eight for developed countries, while developing countries would be able to choose between three coefficients ranging between 19 and 26. Developing countries with smaller coefficients would have greater flexibilities (WTO, 2008c). In December, after the Mini-Ministerial Meeting, the president revised the document and proposed a coefficient of eight for developed countries and 20, 22, or 25 for developing countries, depending on the chosen flexibility (WTO, 2008d).

The document left open the sectoral negotiations zero for zero – a point that has polarised NAMA negotiations since its very beginning. The sectors identified by the developed countries to be included are textiles; cars and auto parts; chemicals; and stone and granite; among others.

At the Ministerial Conference in 2005, the participants had established that the reduction procedure would provide for further cuts from the formulas, but some developed countries argued that it should be mandatory, otherwise the round would not promote the necessary liberalisation for emerging countries, thereby linking their advancement to negotiations in other areas. NAMA-11 (WTO, 2008e) and China (WTO, 2002a), in turn, argued that participation should be voluntary and supplemental. Even so, some members, such as the EU, the US and Japan (WTO, 2008d, Annex 7), announced their participation in this modality.

A key point in the negotiation was achieved in the Hong Kong–China Ministerial Meeting, in 2005, where both developed and developing countries agreed to seek a comparable level of ambition between the agricultural and non-agricultural areas (WTO, 2005, paragraph 24). This principle ultimately became the central point of the round, since the developed countries continued to seek further concessions on market access for non-agricultural goods in emerging markets, such as BIC, and these countries conditioned a response to the new concessions in the area of agriculture.

2.3.2 Non-tariff barriers (NTBs)

NAMA-11 also had an important role in the negotiations on the elimination of NTBs. In 2006 the group submitted a proposal for the creation of a mechanism for resolving NTBs (WTO, 2006a; NAMA, 2006). The initiative, which was initially signed only by NAMA-11, was redefined until a consensual format was achieved, with the support of the African group, Canada and the EU; the less developed countries, New Zealand, Norway, Pakistan and Switzerland followed in 2008 (WTO, 2008f, 2010a, 2010b).¹⁵

The last document included as an annex to the 2008 proposal of the president of the negotiating group created a means for its members to seek resolutions to issues relating to NTBs when identified. The proposal asserts that the removal of barriers would be negotiated with the participation of a facilitator appointed by the WTO

Goods Council, if there is consensus among the parties involved and it stipulated a period of 60 days to reach a final decision. As the process should be notified to the WTO, other members could be included as third parties. The proposal distinguished the duties of the facilitator from those of the panellists of the Dispute Settlement Body (DSB) and determined that the opinions presented would not judge the consistency of the measures with the understanding of the WTO, but only seek a solution for the case. The mechanism did not provide for the treatment of measures covered by the Agreement on Agriculture, as advocated by Switzerland, the EU and Japan in adherence to the proposal.

The BICS members contributed, albeit with less emphasis than the US, Japan, Switzerland and the EU, in defining the sectoral mechanisms for eliminating NTBs, which was also taken into account in the 2008 document. India and Brazil adhered to the Argentine proposal for an agreement to facilitate the adoption of the Agreement on Technical Barriers to chemical products (WTO, 2010c), and China submitted a document to be applied to fireworks (WTO, 2008g; 2008h) and lighters (WTO, 2008i). The *framework* that served as the basis for the sectoral negotiations on technical barriers included contributions from Brazil, India and the EU (WTO, 2010d).

Concerning the environmental sector, the discussion was focused on the definition of environmental goods. Brazil first advocated a conceptual definition in the Committee on Trade and the Environment, and later bilateral negotiations based on supply and demand. Brazil's major interest in the area was the inclusion of sugarcane ethanol as an environmental good, which was not included in the list of developed countries because it is seen as an agricultural good.

India advocated that negotiations should be held through environmental projects that specified the goods in question. The developed countries' proposal consisted of a list compiled by the World Bank which presented only the export products of developed countries' interest, resulting in the impracticability of the nascent industry of developing countries in this sector.

2.3.3 Deadlock in the Doha Round

Since 2008, the main point of conflict between developed countries and developing countries has been the negotiation of zero-for-zero tariffs on a number of products, such as cars and auto parts, textiles and chemicals proposed by developed countries as an alternative to the deadlock in the group.

The US and the EU reiterated that the participation of emerging economies would be necessary for the approach to result in significant liberalisation in the light of the flexibilities applying to such emerging countries. The position held by the BICS members was that involvement in sectoral negotiations should be voluntary and not mandatory, as requested by the developed nations, only in order to supplement the tariff cuts included

in the general formula. Therefore, BICS resumed the 2005 Hong Kong Declaration, which established that 'sectoral initiatives have been accepted by Members to be a supplementary modality to be voluntarily adopted for meeting ambition levels beyond those achieved by the formula' (WTO, 2008j).

In reality, since the stalemate created in 2003, with the rejection by the countries of G-20 Agriculture and the consequent repositioning of the development paradigm as a central point of the Doha Round, the multilateral negotiations became polarised: on the one hand, there were the efforts of developed countries to ensure greater openness of the emerging markets for manufactured goods; and, on the other hand, the claim by developing countries that any opening up should necessarily come with consideration of trade liberalisation in the agricultural sector.

The reaffirmation in the Hong Kong Declaration in 2005 of the principle of *less than full reciprocity* and the association of progress in the NAMA negotiations for increased negotiations on agricultural products is the defining point of this impasse and the fruit of the co-operation between the developing countries (WTO, 2005a).

This conflict of interests eventually became the central point of the current impasse of the Doha Round. Despite important differences in almost every sector under negotiation, the discussions focused on the issue of market access. Developing countries seek to improve the coefficient of the Swiss Formula in order to ensure flexibility in the liberalisation of trade and request greater access for agricultural products, whereas developed countries attempt to liberalise specific sectors of emerging countries through sectoral negotiations.

2.4 ANTI-DUMPING

The aim of the Doha Mandate for negotiations on the WTO's Anti-Dumping Agreement (ADA) is to clarify and improve the disciplines of the agreement. The debates would be conducted in the rules negotiating group, in which subsidies, compensatory measures and regional trade agreements would be addressed.

The interests of the BICS members in this area were quite diverse. Brazil, through the group, Friends of Anti-Dumping (FANs),¹⁶ presented proposals on nearly all subjects, with the aim of establishing more stringent criteria for the application of said measures.

China, the country that has become the target of most anti-dumping measures applied by developed and developing countries, had a particular interest in the negotiations, but maintained a discrete participation in the group (Table 2.6). Its proposals criticised the application of the non-market economy clause, by which a third country could be used in calculating the value of the national product and the methodology of zeroing by the US and the EU, which did not compensate for positive and negative values in the calculation of the dumping

margin. China was also opposed to the introduction of anti-circumvention rules, which imposed duties on products that elided anti-dumping by a third country or assembly in the destination country.

India and South Africa, in turn, participated less actively in the negotiating group. India ruled against the practice of *zeroing* and in favour of the *lesser duty* rule, which required the choice of the lesser value between the margin of damage and the dumping margin for the application of the anti-dumping duty. In the negotiating group, the criticism of the zeroing done by the US was the theme of greatest convergence among the BICS members.

Table 2.6: Anti-dumping measures applied (1995–2010)

| Country | Applied against | Applied in favour |
|--------------|-----------------|-------------------|
| Brazil | 80 | 105 |
| India | 91 | 450 |
| China | 590 | 145 |
| South Africa | 128 | 39 |
| US | 130 | 292 |
| EU | 55 | 272 |

Source: WTO (2011).

2.4.1 Proposals

According to Article 2.1 of the WTO's ADA, a product is to be considered being dumped if it is introduced into the commerce of another country at less than its normal value, which is understood as the price of a like product in the domestic market of the exporting country. Article 6^o of the GATT, to which the ADA refers, condemns dumping if the practice causes or threatens to cause material injury to the domestic industry or significantly delays the establishment of a domestic industry (WTO, 1994b). When it is demonstrated that the injury to the domestic industry is being caused by dumped imports, as established by Article 3^o of the ADA, the importing country may apply a duty to offset or neutralise it, provided that this does not exceed the difference between the normal value of the product and the dumped price of the similar exported product.

2.4.1.1 Normal value

An anti-dumping investigation must first estimate the normal value of the product, taking into account the selling price of the like product in the ordinary course of trade in the domestic market of the exporting country (WTO, 1994b, Art. 2.1). If there are no sales of the like product in the domestic market because of the particular market situation or the low volume of sales, the normal value may be calculated from the price

of the like product when exported to a third country or even from the cost of production in the country plus a reasonable profit margin (WTO, 1994b, Art. 2.2).

At this stage of the investigation, it may be difficult to determine the normal value in countries who are not considered market economies. In such economies, the price of the product, both the practice in the domestic market and the practice for the purposes of exportation, may be affected by states' decisions, which prevents the calculation of the margin of dumping. Interpretative Note number 2 of Article VI of the GATT provides that, in cases in which all domestic prices are fixed by the state, their use may not be appropriate for calculating the margin of dumping. This provision was applied to the transitional economies of the former Soviet bloc and was included in China's Accession Protocol to the WTO.

In the Doha Round China had stressed, since the beginning, that the non-market economy clause should be revoked, given that in the WTO there were no economies in which all domestic prices were set by the state. According to China, these members tended to choose third countries at more advanced development levels, with higher labour costs and, therefore, with much higher domestic prices, potentially leading to an overestimation of the normal value of the product (WTO, 2003d).

A second difficulty in calculating the price of exporting to third countries occurs when there is an association or compensatory agreements between the exporter and the importer or a third country, which makes prices unreliable. Article 2.3 of the ADA establishes that in situations in which there are affiliated parties, the normal value may be estimated by means of the constructed value, but does not provide a definition of associations or compensatory arrangements between the parties (WTO, 1994b).

In 2005 Brazil submitted a proposal (WTO, 2005b)¹⁷ for the parties to be considered affiliated when one party was directly or indirectly under significant influence from the other, or if both were under the significant influence of a third-party.¹⁸ The proposal defined the expression 'significant influence' as the power of one party to make decisions about the operations and financial policies of another, evaluated, among other things, by the ownership of shares, contractual relationships and agreements with investors. The president of the negotiating group has not as yet incorporated the subjects that received proposals from Brazil into the draft, due to a lack of agreement between the members (WTO, 2008l).¹⁹

2.4.1.2 Export value

A second step in the anti-dumping investigation consists of determining the value of the exported product, which is then compared to the normal value in order to determine the dumping margin (WTO, 1994b, Art. 2.4).

In the Doha Round BICS members and other developing and developed countries repeatedly criticised the methodology used to calculate the export value as used by the US, a process known as *zeroing*, which deducts from the calculation of the average export price values that are greater than normal and only incorporates lower values, thereby increasing the dumped value. With this feature, the estimated export price becomes skewed, thus increasing the dumping margin and the value of the duty to be applied as compensation.

In order to solve this problem, several members proposed a revision of Article 2.4 of the ADA, which governs the calculation of the export value and of Articles 9 and 11, which regulate the application of anti-dumping duties and review processes, so that values that exceed the normal rate can be considered in the investigations (WTO, 2008m).

Members severely criticised the first version of the draft presented by the president of the negotiating group because it still allowed for several possibilities for the use of *zeroing* and was considered to be unbalanced in favour of the interests of the US (WTO, 2008n). The question remained open in following discussions.

It is worth noting that the DSB had the opportunity to position itself in compliance with the use of *zeroing* in relation to the ADA. In many cases²⁰ involving the US and the EU, the DSB decided that the practice was irregular under current multilateral regulations.

The WTO also seeks to rule cases in which a product is not imported directly from the country of origin, but rather is exported from an intermediate third country. In this case the investigation should compare the export price to the equivalent price charged in the exporting country. However, if there is simply a transfer of the product in the exporting country, or if the product is not produced in the exporting country, or if there is no comparable price for the product in the exporting country, the comparison may take into account the price offered in the country of origin (WTO, Art. 2.7).

In 2005 the US presented a proposal for the ADA to define the issue of circumvention more stringently so that, once identified, the anti-dumping measure could be extended to countries/products that were not initially investigated (WTO, 2005c).²¹ China criticised the proposal (WTO, 2008o),²² whereas Brazil, although partial to the adoption of regulations, suggested that the concept of origin, as included in the ADA, should not be the same as defined in the WTO Agreement on Rules of Origin (WTO, 2006b).²³ This issue was part of the discussions of the Committee on Rules of Origin and was one of the controversial points of the work of the committee that prevented the conclusion of the negotiations on rules of origin as established by the Agreement on Rules of Origin negotiated in the Uruguay Round which, in fact, remains open to the present date.

2.4.1.3 Damage to the domestic industry

Pursuant to the ADA, once the margin of dumping is defined, whether or not injury occurred should be analysed; injury is defined as (i) material injury or the threat of material injury to a domestic industry and (ii) material retardation of the establishment of a domestic industry. In order to assess said injury, the agreement provides for the examination of dumped imports and their effect on the price of the like product in the domestic market (WTO, 1994b, Art. 3.2), the subsequent impact on domestic producers (WTO, 1994b, Art. 3.4), and the causal relationship between the dumped imports and material injury (WTO, 1994b, Art. 3.5). The domestic production of the like product should also be assessed (WTO, 1994b, Art. 3.6) and the threat of material injury should be determined (WTO, 1994b, Art. 3.7 and 3.8).

Brazil, along with the FANs, presented a proposal on the definition of 'dumped imports' (WTO, 2005d), a question the US (WTO, 2003e) and Venezuela (WTO, 2003f) had previously introduced on the agenda. The document criticised the interpretation of the concept by some members, who were calculating the damage based on a country's total volume of imports and not just the volume of imports with affirmative evidence of dumping. The DSB condemned this interpretation in the cases of *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil* (short title: *Argentina – Poultry*) and the *European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India* (short title: *EC – Bed Linen*).

As a solution, the FANs proposed the inclusion of a footnote to the agreement, in which it determined that dumped imports should not include imports of producers/exporters (i) for which there were no signs of dumping or (ii) for which the authorities determine that the dumping margin is *de minimis*. In 2007 the proposal by the president of the negotiating group considered the initiative, suggesting dumped imports should not be included in the imports attributable to any exporter or producer for which the authorities had determined a dumping margin of zero or *de minimis*. The solution was well received by the other members (WTO, 2008p).

In turn, Article 5.8 of the ADA establishes that an investigation should be carried out if the dumped import volume in a given country is negligible, that is, less than 3% of the total amount imported, unless the dumped imports from all negligible sources amount to more than 7% of the total imports. The investigation should also be closed if the dumping margin is less than 2% of the export price (*de minimis*).

The purpose of this article is to exclude import sources that are too small to have an adverse effect on the domestic industry. In 2005 FANs presented a proposal regarding the test of the negligible volume, which should not be based on the share of dumped imports over the *total import volume*, but rather on their share within the *domestic consumer market*. This assessment would be a more accurate indicator of the impact of

dumped imports on the domestic industry (WTO, 2005e). India, in turn, suggested that the negligible volume and the *de minimis* volume should be raised to 5% (WTO, 2002b),²⁴ but due to a lack of consensus, none of the proposals was incorporated into the document prepared by the president of the group.

The FANs also presented a proposal to amend Article 3^o of the ADA in order to clarify the notion of *material injury*, which, according to the agreement, must be demonstrably caused by the dumped imports in order to impose anti-dumping measures. The proposal suggested that the determination of material injury should be based on all relevant economic factors demonstrating that there was a *significant* and *measurable* deterioration of the *operational performance* of the domestic industry, taking into account the indicative factors in Article 3.4. The initiative sought to exclude from the investigations any losses caused by poor company management. The proposal could be addressed by an amendment to footnote no. 9 of the ADA (WTO, 2005f). Owing to a lack of consensus, the issue was not included in the document presented by the president of the negotiating group in November 2007 (WTO, 2007c).

Brazil, Switzerland and Thailand also submitted a proposal to clarify the cumulative damage analysis in cases in which dumped imports originating from different countries affected the performance of the domestic industry. Currently, the ADA allows for a cumulative analysis under the following conditions: (i) if the margin of dumping is greater than the *de minimis* value or if the volume is not negligible – as defined by Article 5.8 – and (ii) if such assessment is appropriate in the light of the conditions of competition between the imported products and the similar domestic products (WTO, 1994b, Art. 3.3).

Brazil's proposal suggested that Article 3^o should state the indicators of the competition conditions based on the characteristics of the product – technical specifications and quality – and the market – use, substitutes, price levels and distribution channels (WTO, 2005g). The suggestions on the matter were not included in the president's document due to a lack of consensus.

In order to obtain an objective analysis of the injury caused to the domestic industry, the ADA establishes that the investigation should consider the effect of said imports on all producers, or at least on those whose collective production accounts for a major part of the domestic production (WTO, 1994b, Art. 4.1). However, in the *Argentina – Poultry* panel (WTO, 2003g) the DSB determined that the term *major part* did not refer to more than 50% of the domestic industry, but rather an important, serious or significant portion of the industry. In 2004 the FANs submitted a proposal for Article 4.1 to indicate that under no circumstances could the analysis of the damages be made with producers representing less than 50% of production. The reference to the majority of production is made in Article 5.4, for the initiation of an investigation, but is not repeated in the causality analysis. The negotiating group also did not reach consensus on the matter.

2.4.1.4 Application

Once the dumping, the injury and the causality have been determined, it is up to the country to decide whether or not to apply anti-dumping measures, as well as the type and the amount thereof. The ADA recommends that the compensation should be less than the dumping margin if this value is sufficient to compensate for the damage, which is known as the *lesser duty rule* (WTO, 1994b, Art. 9.1). In the Doha Round Brazil and India argued that the adoption of the lesser duty rule should be mandatory,²⁵ though there was no consensus on the issue.

Even when the investigations preliminarily determine the existence of dumping and damage, governments may opt not to apply measures if the exporter voluntarily agrees to raise the price or suspend further sales so that the damage is nullified (WTO, 1994b, Art. 8.1 e 8.2). Article 8.3 defines the general reasons for which price arrangements may be considered impractical and, thus, rejected by governments.

The FANs submitted a proposal in which the number of exporters should not be a criterion for rejecting an agreement, and that governments should be required to accept price arrangements provided the adjustment made is sufficient to cancel out any damage caused by the dumped imports (WTO, 2003h).

2.4.2 Package of December 2008

The package of December 2008, which consolidated the negotiations of the Doha Round, based on the proposals of the DG of the WTO, Pascal Lamy, includes issues that were not discussed at the Mini-Ministerial Meeting of July 2008 and that were absent from the July package. The text incorporated a few consensual changes to the ADA, while leaving open many controversial points.

Consensus was reached on a few points in the agreement, such as the exchange rate used for the conversion of currencies in order to assess the export price, as provided for in Article 2^o. It was also agreed that the interested parties in the investigation should be heard when there are differences in the product being investigated, such as model or type, which allow for differential pricing. Furthermore, it was established that, under the same circumstances, an investigation of a product and member should not be started if there has been a negative determination of dumping practices in the period of one year before the request.

Polarised points of the negotiations remain under discussion, such as how to determine the causality between dumping and injuries; the practice of zeroing; the definition of material injury; affiliated parties; products under investigation; the lesser duty rule; public interest; anti-circumvention; the *sunset clause*; the revision process; dumping from third countries; and special and differential treatment.

2.5 SUBSIDIES

The Doha Mandate also established as one of its objectives the further clarification and improvement of existing concepts in the Agreement on Subsidies and Countervailing Measures (ASCM).

The interest of some developed countries during the negotiation was to extend the concept of prohibited subsidies, with regard to the role of central governments, particularly China and Russia. Developed countries also seek to maintain the differentiation of subsidies when applied to the agricultural and non-agricultural sectors, which was affected by the decision of the Appellate Body in the cotton dispute brought by Brazil against the US.

In the Doha Round Brazil submitted proposals with the aim of reducing the burden of proof on developing countries during disputes against the subsidies of developed countries. It also presented a proposal in defence of the interests of developing countries exporting goods with a higher aggregate value with regard to the definition of profit, serious damage and export subsidies.

Brazil, with the support of India, defended the application of the concept of *benchmarking*, which defined the subsidy limit for developing countries when there were no private financial investors, but only state funds for long-term financing. The aim would be to recognise the need for financial support from the state, in the long term, in sectors with low liquidity of private capital. Such support would not be recognised as an actionable subsidy if it were restricted to a certain limit.

In the negotiation Brazil also put forth the definition of subsidies and export credits, which are considered prohibited. Some of the items in the illustrative list of prohibited subsidies were negotiated decades ago, at a time when developing countries did not export products of higher aggregate value, such as aircraft, which require long-term financing. In this case the subsidy funding limit is defined by the Organisation for Economic Co-operation and Development (OECD), in which Brazil does not fully participate, but acts as a guest on some of its committees. Likewise, the list does not take into consideration the conditions under which developing countries raised funds abroad and since they presented greater risk, they received higher rates than financing for developed countries. India proposed several changes to the rules for developing countries, including the elimination of its ban.

2.5.1 Proposals

The ASCM of the WTO considers there to be a subsidy if the following conditions are met: (i) if there is a financial contribution from the government or any public body, or (ii) if there is any form of income or price support; and (iii) with it, a profit is conferred.

Financial contribution, in turn, is understood as the direct transfer of funds by the government – donations, loans and capital contributions – the concession of credit guarantees, government debt relief, such as tax incentives, and the provision of goods or services by the government and payments made by a public body or determined by the government (ASCM, Art. 1.1). A subsidy will be considered prohibited (subject to a *fast track panel*) or actionable (subject to compensatory measures and/or a panel), if it is granted specifically for certain companies or industries (ASCM, Art. 1.2 and 2).

Subsidies that are either *de jure* or *de facto* contingent on export performance are considered specific and are prohibited (ASCM, Art. 3.1 sub-§ a). Annex I of this agreement presents a list indicating export subsidies. Brazil submitted a proposal to the Doha Round to restrict the use of subsidies when granted only with the purpose of allowing the signing of export contracts with certain companies, even when the programme was not legally contingent on export performance. The granting of subsidies that are *de facto* contingent on export performance is prohibited, but the proposal sought to clarify that this procedure should not be accepted (WTO, 2005h).

Annex I of the ASCM, in turn, provides an illustrative list of export subsidies.²⁶ Among other measures, the annex considers subsidies to be the provision by governments of export credit guarantee or insurance programmes: '(j) at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes or (k) at rates below those which they actually have to pay for the funds so employed'. These provisions seek to establish standards of competition so that governments do not offer their exporters guarantees, credits, or insurance under conditions that are more favourable than those available on the market.

However, the risk premium paid by different governments to their creditors is affected by the level of economic development and by risk assessment agencies. Countries with higher sovereign risk receive funding at a higher cost than others. A loan granted at a single interest rate could be interpreted as a subsidy if offered by the governments of less developed countries, which have higher borrowing costs, but not if offered by developed countries with low sovereign risk.

The DSB, in its interpretation of item (k) of Annex I in the case of *Canada – Aircraft* (Art. 21.5 – *Brazil*), understood that the interest rate set by the OECD²⁷ should not be considered a prohibited subsidy according to the provisions of the ASCM. The DSB stated that the OECD agreement was the only international agreement at that time whose a *priori* reference rate should not be considered a subsidy, in compliance with the conditions specified in the second paragraph of item (k).²⁸

Brazil presented a proposal on export credits at the beginning of the negotiations. At first, the understanding of the DSB would have given carte blanche for the definition of subsidies to the OECD, composed of a few countries, which required a revision of the second paragraph of item (k). Secondly, Annex I of the ASMC would

have put governments of developing countries in unfavourable conditions, with less capacity to finance their activities. One of the proposed solutions was to eliminate from item (k) the comparison between the interest rate paid by the exporter and the rate of return paid by the government in raising funds. Instead, a credit programme should be considered a prohibited subsidy if it is granted *at rates below those available in the capital market for financing under the same terms and maturity and if granted in the same currency*. This would eliminate the disadvantage faced by governments with a higher risk premium (WTO, 2002c, 2005i).

A second part of the solution was proposed by the amendment to Article 14 of the ASMC, which sets guidelines for calculating the benefit. In general terms, the calculation is based on the difference between the amount paid by the company to the government and the amount the firm would pay (i) on a comparable commercial loan which the firm could actually obtain on the market (Art. 14, sec. b) or (ii) on a comparable commercial loan absent the government guarantee (Art. 14, sec. c).²⁹

Brazil presented its proposal for the calculation of the benefit when there are no private financiers, but rather only state financiers for long-term financing. In these cases a comparison should be made with financial transactions under compatible conditions, namely (i) those made in the same currency; (ii) those made under the same terms and structure; (iii) those made with explicit and implicit guarantees of the same nature and scope; and (iv) those granted within the same country (WTO, 2006c).³⁰

India submitted a proposal for the comparison to use as its *benchmark* the average interest rate of a government bond with a maturity as approximate as possible to that of the export credit in question, plus a fixed margin of 100 basis points (WTO, 2010e).

Both initiatives tried to prevent interest rates in more favourable conditions than those existing in developing countries from being considered in the comparison, which would lead to a skewed estimate of the benefit granted.

India also presented a proposal for capital and consumer goods to be able to be covered by schemes for indirect tax reductions and the reduction or refund of taxes on imports – with *drawback mechanisms*.

Currently, the ASCM allows for the return of indirect taxes and import taxes when incurred only on input physically incorporated into production and energy, fuels and catalysts used in the production process (Art. 1^o of Annex II), but not on capital or consumer goods (WTO, 2011). India and Brazil also advocated flexibility in the use of fishing subsidies on the basis of socio-economic criteria – amendment to Article III.2 (WTO, 2010f).

Other important concepts for the application of compensatory measures, such as the definition of damage, causation and domestic industry, were discussed in the negotiations on the rules for applying anti-dumping measures.

2.6 REGIONAL TRADE AGREEMENTS

The Doha mandate also included further clarification of the rules on regional agreements as expressed in Article XXIV of the GATT.

BICS advocated proposals in favour of clearer rules for the formation of Regional Trade Agreements (RTAs), as well as the definition of old concepts that had not been defined in the GATT nor by the WTO and that were complicating the interpretation of the GATT article relating to regional trade agreements.

Among these concepts, the most sensitive are those concerning the significance of trade which should be integrated into each agreement, or *substantially all the trade*; the deadlines for the notification and finalisation of the implementation period of the agreement; and the meaning of trade restrictions that must be dismantled between the parties, namely anti-dumping, compensatory measures and rules of origin should also be included.

BIC came out against the initiative proposed by Africa, the Caribbean and the Pacific (ACP), inspired by the EU, to create a new category of developing countries in the process of integrating with developed countries, which would benefit agreements focused on the EU. It was argued that another classification besides that of least developed countries, provided for by the WTO, would not be authorised thereby and would not be economically feasible, and would be politically risky. They also stated their support for the Enabling Clause for developing countries, which was specifically designed to give flexibility to the integration process between them, but not between developing countries and developed countries.

BICS have worked intensively in discussions for the creation of the Transparency Mechanism for RTAs which became the main activity of the Committee on RTAs. Such a mechanism, based on reports prepared by the Secretariat, allows for monitoring of the evolution of the agreements between all WTO members. Brazil led the discussion so that preferential agreements related to the Generalised System of Preferences would also be incorporated into the exercise.

Given the lack of consensus, the other themes of the mandate have made little progress in the negotiations.

2.7 INTELLECTUAL PROPERTY

The Doha Declaration provided for the negotiation of two issues regarding intellectual property: (i) the implementation of a multilateral system for the notification and registration of geographical indications for wines and spirits, provided for in Article 23.4 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and its extension to other products; and (ii) examination of the relationship between the TRIPS

Agreement, particularly Article 27.3 (b) and the Convention on Biological Diversity (CBD). Issues would be addressed in the TRIPS Council, which has been discussing the planned revision of the agreement since 1999.

The co-ordination of the BICS members on intellectual property and their opposition to the US refer to the rift created in the Uruguay Round. In this round the US pressured developing countries into expanding the scope of the GATT in order to include rules on intellectual property. In the current round the US is reluctant to incorporate into the organisation's agenda any negotiations on the relationship between TRIPS and biodiversity. In the Uruguay Round, however, China was not a contracting party, Brazil and India had weak positions due to their fiscal crisis and the balance of payments, and much of the developed world was in line with the US. Currently, the BICS members lead the coalition to negotiate the relationship between the TRIPS agreement and public health and biodiversity, and the pendulum has swung in favour of supporting developing countries and the major developed countries.

2.7.1 Proposals

Geographical indications are place names, or words associated with those names, that indicate the origin of certain products and, therefore, define their quality, reputation and other characteristics. Article 22 of the TRIPS Agreement provides that geographical indications should be protected so that consumers are not misled and to prevent unfair competition. In some cases, even if there is no danger of consumer deception and unfair competition, geographical indications can be protected (Articles 23 and 24).³¹ The Doha mandate provides for negotiations on the installation of a system for registering geographical indications for wines and spirits, but its extension beyond these products was not agreed upon by the members of the round.

The negotiations on the first topic emphasised the legal implications of the implementation of the system, especially for countries who have not adopted it. The extension of protection, in turn, was supported by India, the EU, and other developing and developed countries, without support from Brazil and China, and it faced opposition from a heterogeneous group composed of the US, Argentina and other members.

Though they had only discrete participation in the negotiations on geographical indications, the BICS members used the first item of the mandate to leverage discussions on the patentability of plant varieties, in which their interests were more pronounced.

The proposal of the BICS members and other developing countries gained wide acceptance so that at the time of filing the patent, the origin of the genetic resource would be notified or the traditional knowledge used in the development of the product or process would be known (WTO, 2008q). The US, a major depository of patents, has been opposed to the inclusion of the matter in the WTO, while the group known as the *W-52 Sponsors*, which included the BICS members, the EU, ACP countries and the African group, supported discussions on the issue.

The procedure for the declaration of origin advocated by the BICS members would make it possible to claim a share of the profits from the patent between the depositary and the country of origin, a question which, in the view of the W-52 Sponsors group, the CBD would conflict with the TRIPS Agreement.

In Article 27.3 (b) the TRIPS Agreement establishes that plant and animal varieties are not patentable, though it considers biological processes and micro-organisms that lead to their production to be patentable. Plant varieties should also be protected by patents, by an effective *sui generis* system, or a combination of the two. In turn, Article 3^a of the CBD recognises the country's sovereignty over its natural resources. Thus, members of the BICS argued that the legislation on patents, by restricting the use of the benefits of the depositary, currently prevents the enjoyment of the rights provided for in the CBD. Countries with a large variety of plants and animals are the most affected.

Although a large number of countries support the notification of the origin of the patent, specific proposals were presented on how the process should be regulated. BICS members argued with other developing countries that the TRIPS Agreement should condition the registration of patents regarding (i) the declaration of origin; (ii) the prior agreement of the national authority; and (iii) the equitable distribution of the benefits (WTO, 2002d). The EU, even though it has supported the notification, suggested that the legislation of the TRIPS Agreement on patents should be maintained, while Switzerland proposed addressing the matter before the World Intellectual Property Organization (WIPO).

After numerous consultations over the years, the members remained divided on the interpretation of the Doha mandate on intellectual property.

2.8 SERVICES

The Doha mandate marked a new stage of the liberalisation of trade in services, which began in 2000, with: (i) new access to markets; (ii) negotiations on domestic regulation – rules on transparency and licensing conditions for providers; and (iii) rules on safeguards, subsidies and government procurement. Negotiations were held for the following four types of services and service delivery: (i) cross-border transactions; (ii) consumer transactions; (iii) commercial presence of the supplier; and (iv) the physical presence of service providers. The negotiation process is one of requests and offers among members.

The BIC members stood up for more open markets in different service areas on the basis of specific commitments in the different sectors. India and China were also interested in reducing or eliminating exceptions to the non-discrimination clause between countries, provided on a temporary basis of 10 years in one of the appendices of the Service Agreement but which is still in effect. Its elimination would mean further

liberalisation in the area of cultural goods and services, such as music, films and videos, which is of great interest to Bollywood film producers in India, as well as in Mexico.

As for the special and differential treatment for developing countries in the area of services, the BICS members defended the GATS objectives in increasing the participation of developing countries by means of negotiating specific commitments in order to promote economic growth and development. These countries proposed the extension of the commitments in Mode 4 – the movement of people for the provision of services – a point that was defended by a large number of developing countries, based on the possibility of temporary migration of skilled and more competitive labour to developed countries, but that encountered strong resistance from the latter countries in the light of the problem of illegal immigration.

BICS members defended the balanced degree of negotiations between commitments in all sectors and in the four ways through which services could be supplied internationally, as well as in the negotiations regarding domestic regulation, which sought to establish rules for accessing the service market and licensing providers in the local market. China and India participated in the joint proposal of several developed and developing countries, in support of further liberalisation of maritime transport services.

The interests of India and China were more offensive than those of Brazil and South Africa. The four had interest in Mode 4 (i.e., civil construction and software specialists), with India also being interested in Mode 1 (i.e., audiovisual media and medical examinations) and Mode 2 (i.e., tourism).

India has few consolidated commitments in Mode 4 (i.e., physical presence), while in Mode 3 (i.e., commercial presence) a large part of the commitments is limited to participation in joint ventures. During the round, India made a significant horizontal offer in Mode 4 on the provision of services – physical presence – previously restricted to sectoral commitments. However, service providers from various sectors would be subject to economic needs tests, especially those with the minimum qualifications relevant to the post. Sectoral offers from India included the sectors of transport; architecture, engineering and urban planning; civil construction; distribution; education; environment; insurance; recreation, culture and sports; tourism; and veterinary services. Improvements were also made on prior commitments in the sectors of non-banking financial services; banking services; data processing; construction; engineering; research and development; and telecommunications.

China's service offer presented advances with respect to what was until then bound in the WTO. As provided for in the adherence schedule, there was a significant reduction in the national capital requirement in joint ventures established in the country, a reduction of regional restrictions for certain sectors and a small reduction of quantitative limitations of certain sub-sectors.

2.9 TRADE FACILITATION

The BIC members worked actively in negotiations for an agreement in order to make the measures applied by customs authorities less complex and discretionary. These measures were related to the free movement of goods between countries (Article V), rates applied for customs services (Art. VIII), and the transparency of laws and procedures related to international trade (Art. X). These measures ended up becoming significant costs and, as such, barriers to international trade (GATT, 1994a).

Negotiations on trade facilitation progressed over the years and the conclusion of an agreement is considered possible if there is consensus on approval in isolation from the rest of the round.

2.10 CONCLUSION

The first successful exercise of co-ordination between the BICS members was undoubtedly the Doha Round and, in particular, the consolidation of G-20 Agriculture, which was formed in 2003 to prepare a response from several developing countries to the proposal submitted by the EU and the US to unblock the Doha Round on the eve of the Cancun Ministerial Meeting.

The participation of the BICS members not only reversed the negotiating situation with regard to agriculture, as it transformed the group leading the trade rounds, it introduced BIC as participants in the new decision-making group. Another example of co-ordination is the NAMA negotiations, during which the BICS members adjusted their interests in defence of their markets for industrial goods and put pressure on developed countries to reduce their tariffs.

The participation of the BICs members in the Doha Round, however, demonstrated the limits of said co-operation. Despite having converging interests, due to their common condition as developing countries and, not uncommonly, the fact that they had advocated joint proposals (especially Brazil and India), the BICS members have not managed to overcome the differences in their commercial interests as a cohesive negotiating group. Such a framework is apparent in the anti-dumping and subsidy negotiations.

The successful experience of G-20 Agriculture, in part reproduced by NAMA, represents opportunities for a possible cohesion between the BICS countries. When the interests of developing countries were widely affected by the multilateral negotiations on development, the BICS members were able to overcome major differences in specific sectors of negotiation and co-ordinated a front in opposition to the direction the round was taking. As a relevant example of positive results for their common interests, there was a resumption of the development paradigm, after the 2003 stalemate, as a guiding point in the multilateral negotiations. The defence of the *less-than-reciprocity* principle could also be considered the results of BICS co-operation in the round.

By co-ordinating their positions, starting with their common interests and taking into account the interests of the other participants, the G-20 Agriculture experience, as well as that of NAMA-11 in the WTO Doha Round, became the first relevant exercise in co-ordination between BICS members in the multilateral area.

ANNEX A

BICS proposals at the Doha Round

| Document | Date | Countries | Main proposals |
|------------------------|------------|--|--|
| NAMA | | | |
| TN/MAW/68/ Add.1 | 8/5/2006 | India, Brazil and South Africa (IBSA), Argentina, Venezuela, Egypt, Indonesia, Namibia, Philippines and Tunisia | Proposal for a non-tariff barrier (NTB) resolution mechanism. |
| TN/MAW/88 | 23/7/2007 | NAMA-11, the African group, Canada, least-developed countries (LDCs), New Zealand, Norway, Pakistan, Switzerland | Proposal for a NTB resolution mechanism that incorporated new countries and replaced previous ones. |
| TN/MAW/86 TN/MAW/87 | 8/6/2007 | India, Brazil and South Africa (IBSA), Argentina, Venezuela, Egypt, Indonesia, Namibia, Philippines and Tunisia | <p>Discussion of the Swiss Formula coefficient. Proposal: coefficient of 10 for developing countries and 35 for Non-Agricultural Market Access Group (NAMA-11) (at least a 25% difference should exist, according to the proposal). With this formula, the reduced rate would be similar for developed countries (40.4% consolidated and 25.5% applied) and for NAMA-11 (49.5% and 25.9%).</p> <p>Criticism about the imbalance between NAMA and agriculture:</p> <ul style="list-style-type: none"> (i) NAMA: Specific tariffs would be consolidated by the equivalent tariff, unlike Argentina; (ii) Argentina: Countries could exclude the tariff lines from their offerings, without taking into account the trade volume of such lines, unlike NAMA, in which the trade volume would be considered; (iii) Tariff quotas on agricultural trade; (iv) Argentina: Special safeguard mechanism is an obstacle to market access. |
| TN/MAW/108 | 31/10/2008 | Brazil, India, South Africa (BICS), Venezuela, Egypt, Indonesia, Namibia, Philippines and Tunisia | Criticism of the sectoral negotiations. |

| Document | Date | Countries | Main proposals |
|----------------------------|-----------|--|--|
| TN/MAW/135 | 4/2/2010 | Argentina and Brazil | Draft for the regulation of technical barriers to chemical products. |
| TN/MAW/136 | 15/3/2010 | Brazil, India and the European Union (EU) | Framework for sectoral proposals in NTB. |
| TN/MAW/83 | 26/2/2007 | Recently acceded members (RAMs) | Proposals: (i) Larger exemptions than for other recently acceded members (RAMs) for Armenia, Moldova, Kyrgyzstan, Saudi Arabia, Macedonia, Vietnam; and (ii) Developing plus treatment for the other RAMs, that is, a coefficient 1.5 times higher than the one established for developing countries, greater flexibility –they should be able to apply smaller reductions than those contained in the formulas to 15% of the tariff lines, provided that the reductions are not less than half of that established in the formulas; or waive 10% of the tariff lines from cuts provided for by the formulas; reduced tariffs should be exempted from cuts; small, vulnerable economies (SVEs) should be treated preferentially. |
| TN/MAW/89 | 21/9/2007 | China | Proposal for harmonisation of, and certification for, fireworks. |
| TN/MAW/90 | 21/9/2007 | China | Proposal for harmonization of, and certification for, lighters. |
| Agriculture | | | |
| GIAGING/W/139 GIAG/W/50 | 21/3/2001 | Brazil, India, Argentina, Paraguay, Uruguay Chile, Bolivia, Costa Rica, Guatemala and Malaysia | Proposal on export credits, export guarantees and insurance: (i) Definition of <i>officially supported export credit</i> ; (ii) Identification and listing of the various forms of subsidised credit; (iii) Identification and listing of the types of institutions and programmes covered by such institutions; (iv) Terms and conditions for the use of export credits; (v) Notification requirements; and (vi) Special and differential treatment. |
| GIAGING/W/35 | 22/9/2000 | Brazil, South Africa, Argentina, Australia, Bolivia, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, Thailand and Uruguay | Proposal on domestic means of transport, reduction formulas for Aggregate Measurement Support (AMS) and special and differential treatment. |

| Document | Date | Countries | Main proposals |
|---------------|-----------|--|---|
| TN/AG/GEN/9 | 7/5/2004 | Brazil, India, China, South Africa (BICS). Argentina, Bolivia, Chile, Cuba, Egypt, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, Thailand, Tanzania, Venezuela, Zimbabwe | Criticism of the formula proposed by the European Union (EU) and the United States (US) 13 August 2003, regarding market access. Main criticisms: (i) Insufficient formula for completing the Doha mandate; (ii) It will allow the maintenance of tariff peaks; (iii) It will allow countries to exclude items of interest to developing countries; (iv) In the proposal made by the EU and the US there is no clarity about the increased market access in the tariff-rate quotas; and (v) The special and differential treatment was not considered. |
| G/AG/NG/W/102 | 15/1/2001 | India | Proposals on special products and food safety: (i) Steps to ensure food safety (Annex II from the Agreement on Agriculture (AoA)) must be maintained for developing countries, with the exception of the provisions of paragraphs 5, 6 and 7; (ii) Measures taken by developing countries to alleviate poverty, rural development and diversification of production should be exempt from reduction commitments; (iii) Developing countries should have more flexibility in the provision of subsidies for agricultural input; (iv) Developing countries should be allowed an appropriate level of consolidation due to distortions caused by the trade policies of developed countries; (v) Defence of a special safeguard mechanism (AoA, Art. 5 ^o), regardless of pricing, to ensure protection against declining prices and to maintain the safety of the rural population; (vi) Developing countries should be exempt from minimum access commitments; and (vii) The products covered by the Anti-Dumping Agreement (ADA) should be revised. |
| G/AG/NG/W/114 | 15/2/2001 | India | Criticism of the Group of Ten (G-10) proposal: (i) <i>De minimis</i> AMS should be regulated; (ii) <i>Blue Box</i> should be eliminated; and (iii) Reduction formula proposed by the EU will not reduce tariff peaks or price escalation. |

| Document | Date | Countries | Main proposals |
|---|----------------------------|---|--|
| TN/AG/GEN/24 | 13/3/2007 | China, Albania, Armenia, Croatia, Ecuador, Macedonia, Jordan, Kyrgyzstan, Moldova, Mongolia, Oman, Panama, Saudi Arabia, Taiwan, Penghu, Kinmen and Matsu, Vietnam | <p>Proposals by RAMs on market access:</p> <ul style="list-style-type: none"> (i) Implementation schedule should be differentiated; (ii) Reduction of bound tariffs should be 50% lower than that of developing countries; (iii) Bound tariffs equal to, or lower than, 10% must be exempt from reduction; (iv) RAMs should not have an average reduction commitment; and (v) textual proposal on modes. <p>Proposals on support measures:</p> <ul style="list-style-type: none"> (i) Implementation schedule should be differentiated; and (ii) Calculation of the AMS should be different from other countries. |
| Anti-dumping and countervailing measures (ADCM) | | | |
| TN/RL/W/233 TN/RL/W/224 TN/TL/W/214/ Rev. 3 TN/TL/W/215 | 8/7/2008 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Statement against zeroing (refer to TN/RL/W/215). |
| TN/RL/W/224 TN/RL/W/189 TN/RL/W/119 | 12/3/2008 13/6/2003 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal for the mandatory application of the lesser duty rule. |
| TN/RL/GEN/32 | 22/3/2005 | India | Mandatory support for the least developed countries (LDRs), provided that the criteria for damage estimation are specified. |
| TN/RL/W/200 | 3/3/2006 | Brazil | Proposals on circumvention: The concept of 'origin' should be different for the purposes of the ADA and the Agreement on Rules of Origin. The ADA should be based on the criteria of substantial transformation and add value in order to determine the origin of imports subject to <i>dumping</i> . |

| Document | Date | Countries | Main proposals |
|---|-------------------------------------|---|---|
| TN/RL/W/181 | 26/5/2005 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal for the sample used for the determination of <i>dumping</i> to be justified. |
| TN/RL/W/146 TN/RL/GEN/67 | 11/3/2004 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal on affiliated parties, which should be considered as a party which, directly or indirectly, has a significant influence on, or is significantly influenced by, another party, or which is under the influence of a third party. Influence: Proposal on the definition of 'significant influence'. |
| TN/RL/GEN/67 | 12/10/2005 | Brazil | Proposal on affiliated parties. Support for previous proposals. |
| TN/RL/W/118 TN/RL/W/10 | 12/6/2003 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal on price undertaking. The authorities of the importing country may not require all exporters, or a majority thereof, or even a specific proportion to offer a price agreement as a condition for the acceptance of a price agreement of one or a limited number of exporters. Authorities must publish the criteria for refusing offers according to price and should not refuse them if they are sufficient for combating damage. |
| TN/RL/W/93 TN/RL/GEN/20 | 2/5/2003 15/9/2004 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal on 'available facts'. The ADA should clarify that they can only be used if the information is unavailable or their supply is refused. |
| TN/RL/W/83 TN/RL/W/76 TN/RL/GEN/117 | 25/4/2003 19/3/2003 21/4/2006 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Comments on the review of anti-dumping measures and the sunset review. |
| TN/RL/GEN/102 | 3/3/2006 | India | Proposal on preliminary determination. The preliminary determination of dumping and damage should occur between 60 and 240 days after the start of the investigations, regardless of the adoption of provisional measures. |

| Document | Date | Countries | Main proposals |
|-------------------------|-----------|--|---|
| TN/RL/GEN/65/ Rev. 1 | 28/9/2005 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | <p>Proposal on the determination of damage. Although Article 3.1 of the ADA establishes that the determination of damages should be based on positive evidence and involve an objective examination of the volume of 'dumped' imports, some members have examined all exports of the product from the country under investigation.</p> <p>Proposal to amend Article 31 to establish that dumped imports should not include imports from producers/exporters for whom (i) <i>dumping</i> was not found; and (ii) authorities have determined that the <i>dumping</i> is <i>de minimis</i>.</p> |
| TN/RL/GEN/51 | 10/7/2005 | Brazil, Switzerland, Thailand | Proposal on the determination of cumulative damage. |
| TN/RL/GEN/28 | 2/12/2004 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal on the determination of damage. |
| TN/RL/GEN/27 | 2/12/2004 | Brazil, China, Chile, Colombia, Costa Rica, Hong Kong, Indonesia, Israel, Japan, South Korea, Malaysia, Mexico, Norway, Pakistan, Singapore, Switzerland, Taiwan, Thailand, Vietnam | Proposal on the definition of <i>domestic industry</i> . This industry should be understood as the portion of producers representing more than 50% of domestic production. |
| TN/RL/GEN/149 | 29/6/2007 | China | Initial proposal on the sunset review. Agreement on antidumping from the World Trade Organization (WTO) ADA should not last more than five years. Request for review by the domestic industry should be done at least seven months before the finalisation date. |
| TN/RL/W/66 | 6/3/2003 | China | Criticism of the 'non-market economy' clause, which should be revoked. |
| TN/RL/W/216 | 12/2/2008 | China, Hong Kong, Pakistan | Proposal on circumvention. Criticism of the test proposed by the board, which would open up space for products outside the scope of the investigation to be subject to anti-dumping duties. |
| TN/RL/W/4 | 25/2/2002 | India | Proposal to increase the <i>de minimis</i> export price from 2% to 5%. The <i>de minimis</i> should also be applied in the reviews; in the volume of dumped imports regarded as negligible it should increase from 2% to 5%; and the lesser duty rule should be mandatory. |

| Document | Date | Countries | Main proposals |
|-------------------------|------------|-----------|---|
| TN/RL/GEN/66 | 11/10/2005 | Brazil | Proposal on the government credits and guarantees for exports. The Dispute Settlement Body (DSB) has interpreted item (k) of the Agreement on Subsidies and Countervailing Measures (ASCM) as the interest rate in effect at the time of granting the guarantees and not at the time of signing the agreement. Items (j) and (k) benefit <i>low risk</i> countries, since the resources allocated for export credits are obtained at lower interest rates. This favours developed countries. |
| TN/RL/GEN/79/ Rev. 4 | 13/3/2007 | Brazil | <p>Fishing subsidies. Proposal on prohibition, except for: subsidies that integrate the social safety net for fishermen; research subsidies; subsidies related to the improvement of storage capacity; subsidies related to improving the safety of ships; subsidies to reduce the capacity of the vessels; other subsidies indirectly linked to fishing activity – ports, processing stations.</p> <p>Special and differential treatment: Developing countries (DCs) may offer subsidies to maintain the livelihoods of fishermen; modernisation and repair of ships, if the operation is limited by international quotas or domestic jurisdiction; input subsidies for fishing activities.</p> <p>Special and differential treatment should not take place if there is damage to the environment.</p> |
| TN/RL/GEN/88 | 18/11/2005 | Brazil | Proposal for the clarification of subsidies contingent <i>de facto</i> on export performance. |
| TN/RL/GEN/101 | 3/3/2006 | Brazil | <p>Calculation of the prevailing interest rate in the market for the determination of the subsidy should take into account loans:</p> <ul style="list-style-type: none"> (i) with the same terms, structure, guarantees, nature and scope; (ii) made in the same currency; and (iii) taken out in the same country. |
| TN/RL/GEN/153 | 30/11/2007 | India | Proposal on drawbacks and the introduction of consumer goods and capital in the definition of input, with rates that can be deducted from the export, provided this does not allow for the adoption of compensatory measures for the affected countries. |

| Document | Date | Countries | Main proposals |
|-------------------------------------|------------------------|--|--|
| TN/RL/GEN/166 | 22/4/2010 | India | <p>Proposal on a 'benchmark' for subsidy calculation. Reference to proposals TN/RL/W/120 and TN/RL/GEN/101/Rev. 1 by Brazil.</p> <p>The comparable commercial loan should be calculated from the remuneration of government insurance bonds with a maturity closer to that of the credit than to the export, in addition to 100 basis points.</p> |
| Regional agreements | | | |
| TN/RL/W/185 | 22/7/2005 | China | <p>Proposal for Article XXIV: 8: Defines the quantitative criteria for defining 'substantially all trade', based on the number of tariff lines and the trade volume. Furthermore, the concept of a 'reasonable period' (Art. XXIV:5) should be discussed, which is required for the implementation of the regional agreement; and the rules should be retroactive – in opposition to the suggestion of India for the grandfather clause.</p> |
| TN/RL/W/114 | 6/6/2003 | India | <p>Proposal for a redefinition of the condition for which the regional trade agreements (RTAs) incorporate a 'substantial part of the trade'. There should be a six-digit requirement for the number of tariff lines; trade volume, since some products are systematically excluded (i.e., agriculture).</p> <p>Proposal for defining the rules of origin: The RTAs should not contain fast track schemes for NTB analysis when the imports originate in the block, because they end up creating barriers to non-participants.</p> <p>Free-trade agreement (FTA) members should not have special safeguards and measures to protect trade, since they generate an exception to the most-favoured nation (MFN). A grandfather clause should be contemplated in the Doha negotiations.</p> |
| Intellectual property | | | |
| TN/CW/52 TN/CW/49 e Add.1 e 2 | 19/7/2008 28/5/2008 | Brazil, China, India, the African Group, Albania, Colombia, the European Union (EU), Iceland, Indonesia, Kyrgyzstan, Liechtenstein, Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the Asia, Africa, Caribbean and Pacific (ACP) Group | <p>Proposal for an amendment to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) for the inclusion of a declaration of origin requirement for genetic resources or traditional knowledge associated with patent applications.</p> <p>Support for the protection of geographic indications for other products.</p> |

| Document | Date | Countries | Main proposals |
|-----------------|------------|---|--|
| Services | | | |
| S/CSSM/80 | 4/5/2001 | Brazil, Argentina, Paraguay, Uruguay | Communiqué on the distribution of services, the protection of which it has when accessing markets of foreign goods, which cannot be distributed, especially in the agricultural, textile, pharmaceutical and cosmetic sectors, and food, drinks and tobacco. |
| S/CSSM/99 | 9/7/2001 | Brazil | Communiqué on audiovisual media, calling for flexibility for developing countries and the liberalisation of the subsectors of interest thereto. |
| S/CSSM/113 | 5/10/2001 | Brazil | Communiqué on construction services, calling for flexibility for developing countries and the liberalisation of the subsectors of interest thereto. |
| S/CSSM/130 | 30/11/2001 | Brazil, Colombia, Cuba, Ecuador, Dominican Republic, Guatemala, Honduras, Indonesia, Malaysia, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Senegal, Uruguay and Venezuela | Developing countries should have credit due to their unilateral liberalisation programmes. |
| S/CSSM/139 | 20/3/2002 | Brazil, Argentina, Paraguay, Uruguay | Economic needs tests should be eliminated. |
| TN/SW/31 | 18/2/2005 | Brazil, India, Argentina, Bolivia, Chile, Colombia, Mexico, Pakistan, Peru, Philippines, Thailand, Uruguay | Communiqué on Mode 4, for there to be clearer definitions of intra-corporate transferees, business visitors, contractual service suppliers and independent professionals. |

ENDNOTES

- 1 The Cairns Group was created in 1986, in Australia, with the purpose of liberalising agricultural products. Currently, 12 members of the WTO make up the group: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Uruguay.
- 2 The G-33, also known as *Friends of Special Products*, consists of 46 members of the WTO who advocate for more flexibility in agricultural liberalisation in developing countries. Its members include Antigua and Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, the Ivory Coast, China, Congo, Cuba, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Korea South, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, the Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe.

- 3 The G-20 seeks to regulate the use of subsidies and measures for market access in developed countries and is composed of South Africa, Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, the Philippines, Tanzania, Thailand, Uruguay, Venezuela and Zimbabwe.
- 4 The G-10 defends agricultural protection at the WTO and is composed of Japan, Switzerland, Taiwan, Iceland, Israel, Liechtenstein, Mauritius and Norway.
- 5 The G-20 proposal for market access is found in document *Elements for Discussion on Market Access*, 7 July 2005. Previous criticisms were presented in the document *Communication from the G-20*, document TN/AG/GEN/9, 7 May 2004.
- 6 The initial Indian proposal on market access, food security, domestic support and export competition was presented in WTO document entitled *Negotiations on WTO Agreement on Agriculture*, n. G/AG/NG/W/102, 15 January 2001. In said text India elaborates on the *Security Box* concept and proposed the special safeguard mechanism.
- 7 The group of recently acceded members (RAMs) is composed of recently incorporated members into the WTO who require more lenient commitments in various areas of negotiation. It currently consists of Albania, Armenia, Cape Verde, China, Taiwan, Croatia, Ecuador, Macedonia, Georgia, Jordan, Kyrgyzstan, Moldova, Mongolia, Oman, Panama, Saudi Arabia, Tonga, Ukraine and Vietnam.
- 8 The Lamy document of April 2011 (TN/AG/26) was put together based on the consultations carried out with the members on the items in brackets. The few proposals presented since then can be found at <http://www.wto.org/english/tratop_e/agric_e/negoti_tnc_21apr11_e.htm#fnt1>.
- 9 The 34 countries who were considering the EU as a single agent were Argentina, Australia, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Cyprus, the Czech Republic, the EU, Hungary, Ireland, Israel, Japan, Korea, Lithuania, Mexico, Moldova, Morocco, New Zealand, Norway, Papua New Guinea, Poland, Slovakia, Slovenia, South Africa, Switzerland, Liechtenstein, Taiwan, Thailand, Tunisia, the US and Venezuela. The Secretariat conducted a survey of the subsidy levels at the beginning of the Doha Round, which is available at <http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd08_domestic_e.htm>.
- 10 The document proposed by the DG Lamy package of April 2011 (TN/AG/26) was prepared based on the consultations carried out with members on the items in brackets in the document of December 2008. The few proposals presented since then can be found at <http://www.wto.org/english/tratop_e/agric_e/negoti_tnc_21apr11_e.htm#fnt1>.
- 11 The NFIDCs, mentioned in WTO document OMC G/AG/5/Rev.8, of 22 March 2005, are defined as least-developed countries (LDCs), as established by the Economic and Social Council of the UN (ECOSOC), in addition to Barbados, Botswana, Côte d'Ivoire, Cuba, Dominica, the Dominican Republic, Egypt, Gabon, Honduras, Jamaica, Jordan, Kenya, Mauritius, Mongolia, Morocco, Namibia, Pakistan, Peru, Saint Kitts and Nevis, St. Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia and Venezuela.
- 12 The NAMA-11 is a number of major emerging markets with defensive interests in the round consists of Argentina, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa, Tunisia and Venezuela.
- 13 The ABI proposal can be found in the WTO document entitled *Communication to the Negotiating Group on Non-Agricultural Market Access* (TN/MA/W/54), 15 April 2005, prepared by IBSA.
- 14 In document TN/MA/W/79, of 2006, NAMA-11 expressed the view that the mandate was being reversed. However, it did not submit a counterproposal. A coefficient proposal would be presented in document TN/MA/W/86, in 2007.

- 15 Proposal initially presented by the EU can be found in JOB (07)/44; while the *draft* prepared by NAMA-11 is found in JOB (07)/39. Other documents addressed the matter and prepared specific definitions for certain sectors.
- 16 The FAN group, which seeks more severe rules for the application of *anti-dumping* measures, is composed of Brazil, Chile, Taiwan, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Thailand and Turkey.
- 17 Other mentions of this matter can be found in TN/RL/W/66, TN/RL/W/81, TN/RL/W/86 and TN/RL/W/130.
- 18 During the previous year, Brazil had presented a proposal with the FANs group, but referred to the 'control' of one party over another and not 'significant influence' (WTO, 2004c).
- 19 Comments from the President of the Board regarding the proposals can be found in TN/RL/W/232. A declaration from Lamy on the group, which is essential for a timeline, can be found in TN/RL/W/246. A list of documents submitted in the initial phase is available in TN/RL/W/143.
- 20 See, among others, the cases EC – Tube and Pipe Fittings (DS219), US – Softwood Lumber V (DS264), US – Zeroing (Japan) (DS322), US – Zeroing (EC) (DS294), US – Stainless Steel (DS344) and US – Continued Zeroing (DS350).
- 21 Presented by the US.
- 22 Presented by China, Hong Kong and Pakistan.
- 23 Presented by Brazil.
- 24 Presented by India.
- 25 The FAN proposal was presented in document TN/RL/GEN/43 and by India, in document TN/RL/GEN/32. There is a series of communiqués on this matter by Brazil and India.
- 26 Information about Annex I of the ASCM is available at <<http://www.itamaraty.gov.br/o-ministerio/conheca-o-ministerio/tecnologicos/cgc/solucao-de-controversias/mais-informacoes/texto-dos-acordos-da-omc-portugues/1.1.11-acordo-sobre-subsidios-e-medidas-compensatorias/view>>.
- 27 Organisation for Economic Co-operation and Development (OECD) Arrangements on Officially Supported Export Credits contains guidelines for setting the commercial interest reference rate (CIRR),
- 28 Second paragraph of item (k): 'Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.'
- 29 Information about Annex I of the ASCM is available at <<http://www.itamaraty.gov.br/o-ministerio/conheca-o-ministerio/tecnologicos/cgc/solucao-de-controversias/mais-informacoes/texto-dos-acordos-da-omc-portugues/1.1.11-acordo-sobre-subsidios-e-medidas-compensatorias/view>>.
- 30 There were comments from the President of the Board regarding this proposal on page B-4 of document TN/RL/W/232.
- 31 For more information, see the TRIPS Agreement at <http://www.cultura.gov.br/site/wp-content/uploads/2008/02/ac_trips.pdf>.

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WTO see WTO.

CHAPTER 3

BRICS in the WTO: In Search of a Positive Agenda

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3.1 INTRODUCTION

The international economic scene in the early 2000s was being transformed by the increasing presence of emerging countries. These countries not only acted as elements of support for the global economy after the financial crisis of 2008 by maintaining significant growth rates, but also became centres of international trade growth through increased exports and imports.

The interest aroused by the BRIC acronym, driven by the economic growth of these countries, encouraged their governments to transform it into a politically cohesive group in order to face the great challenges of global governance, with the aim of becoming an active voice in discussions on major international issues. A series of meetings was held. The first of these, which was at the level of the Heads of State and Government, took place in Yekaterinburg in 2009; the second occurred in Brasilia in 2010; the third in Sanya, in 2011; the fourth in New Delhi in 2012; and the fifth was planned for Durban in 2013.

One of the best examples of political cohesion, co-ordination of interests and joint proposals at international forums between four of its members was seen at the WTO throughout more than ten years of negotiations in the Doha Round. IBSA were already part of the GATT and were members of the WTO, opportunities in which historically they have shown their positions in defence of the interests of developing countries. With the accession of China to the WTO in 2001, at the beginning of the round and with the recent entry of Russia into the organisation, BRICS finally became an interest group with significant power within the multilateral trade system.

The Doha Round and the successful political co-operation within the G-20 on NAMA-11 show the possibilities of co-operation between them and the important results achieved. However, the different trends of the political co-operation between the BRICS members, in the context of the WTO, will face significant and complex challenges, since the foundation of this co-operation – their policies regarding international trade – is based on different priorities for their economic policies and is in different stages in terms of economic growth.

It is thus important to have a comparative analysis of the trade policies of each of the BRICS countries, based on their objectives and policy instruments, as set out in the WTO reference framework, as well as their involvement in the dispute settlement mechanism of the organisation, in which the differences of interpretation of the main trading rules and compliance with various practices are judged. To give prominence to the first major joint exercise between BICS, the participation of these countries has also been analysed in the context of the negotiations of the Doha Round.

For the five BRICS members, international trade has represented different priorities in their respective growth models. For China, for three decades this was the central element of its economic policy. For IBSA, the priority was the development of the domestic market through demand expansion and inflation control, with international trade being of less importance. This framework has changed in the past decade, with China giving greater importance to its internal market and the other members giving greater importance to international trade. For Russia, its accession to the WTO is the result of its desire to diversify its exportable products, primarily from the energy sector.

A summary of the main policy instruments analysed in this investigation reveals a few interesting aspects, showing points of convergence and divergence. This analysis allows one to identify the areas in which the co-operation among the BRICS countries can grow further and the areas in which said co-operation will require greater efforts.

3.2 TARIFF PROFILE

When one considers the degree of openness of the countries, Brazil has the lowest share of trade in relation to its GDP of all the BRICS countries. Between 2008 and 2010, foreign trade accounted for 24% of Brazil's GDP, in comparison with 52% for Russia, 48% for India, 55% for China and 61% for South Africa.

The common feature of the tariff policies of the BRICS is the recent liberalisation of their economies. They used to apply protectionist measures with the aim of encouraging industrialisation geared towards the domestic market. China was the only member of the group with an economic development strategy aimed at the foreign market.

Brazil and South Africa subordinate their tariff policies to a regional bloc which forms the Southern Common Market: Mercado Comum do Sul (Mercosul) and the South African Customs Union (SACU). They thus have restricted autonomy when it comes to changing their policies. Within the context of Mercosul, Brazil is taking on the difficult task of converging the common external tariff (CET) with various applied exceptions. South Africa recently underwent a process of subordinating its SACU tariff policy, which had an impact on simplifying rates and the classification of goods.

Russia and China share a common past in that they both experienced processes of transitioning from planned economies to ones that are gradually more open. The Perestroika of the former Union of Soviet Socialist Republics (USSR) and the reforms of Deng Xiaoping, in China, are both similar in their attempts to modernise their large socialist countries economically. The difference, however, is that China has achieved impressive results in terms of economic growth and territorial unity, while the USSR went towards political openness and territorial dismemberment.

The average tariffs applied by the BRICS members are quite close, ranging from 7.7% in South Africa to 13.6% in Brazil. However, there is a significant difference in the average bound tariffs. China, due to its recent accession to the WTO, has no relevant margin between applied and bound tariffs: 0.4 percentage points (pp) between the averages of said tariffs. India has a difference of 35.6 pp. between the averages of the two tariffs. Brazil is the only BRICS country with an average tariff applied to agricultural goods that is lower than that which is applied to non-agricultural goods. The other members have higher agricultural tariffs and this is particularly so in the case of India, whose applied and bound averages in the sector are 32.2% and 113.1% respectively.

India is the country with the lowest degree of tariff consolidation, with nearly 40% of its tariff items still unbound and it has one of the highest levels of bound tariffs, especially in the area of agriculture. Since its applied tariffs are also higher and the difference between the two is the most significant, the importance the

country gives to its political sphere can be clearly seen. A sector with high bound and applied tariffs is the textile sector, which is also the target of specific tariffs and import licences.

With the financial crisis starting in October 2008, the BRICS members sought to co-ordinate their positions so as to prevent an escalation of international protectionism. According to the WTO, the financial crisis had a diversified impact with regard to the tariff policies of the BRICS countries. BRICS maintained a balance between liberalising and restrictive measures.

In their joint declarations, BRICS reaffirmed the importance of obtaining a successful and balanced outcome in the multilateral trade negotiations of the Doha Round, including with regard to the development aspect. One can thus expect a continuation of joint actions from the BRICS members in the context of the WTO. In the light of this situation, it is possible to trace a few lines of co-operation between the BRICS countries.

As emerging countries, with large growing markets, BRICS have a convergence of interests with regard to accessing the market of non-agricultural goods. IBSA have defended their tariff policies and are interested in maintaining the political power they have achieved. China and Russia, which were required to make great concessions during the accession process, seem to be willing to preserve the existing situation. Developed countries must continue to put pressure on emerging countries and seek further concessions from the NAMA-11 group. However, this group should direct the discussion towards defending its treatment as developing countries, unless this is reciprocally negotiated in the Doha mandate.

This being the case, after Russia's entry into the WTO, the convergence of interests allowed for co-operation within BRICS on the subject of market access, thereby consolidating the group during multilateral negotiations.

3.3 AGRICULTURE

An analysis of the main agricultural indicators shows that the profiles and international objectives of the BRICS members are distinct and have specific characteristics.

Brazil is a self-sufficient country in terms of agriculture and an exporter of value-added agricultural products. With its competitive nature, the country uses its tariff policy moderately, with average applied tariffs. Brazil's potential as a major exporter of agricultural goods leads the country to seek greater access to the markets of developed countries during negotiations, advocating an end to agricultural subsidies and other NTBs.

China is a major importer of agricultural goods. Despite being a significant producer, its productivity is low and depends on government support, such as a fixed-price policy and export quotas, in order to keep small farmers employed and to ensure food at low prices. The main objectives are to ensure food security and protect rural

populations. It is in China's interest to maintain the subsidy levels allowed in the round. China understands that, along with other recently acceded members to the WTO, it has already amply opened its markets and it is unwilling to make any major concessions during the Doha Round.

India is a rural country, with more than half of its population working in the field, which is divided between subsistence agriculture and export production. For the purpose of protecting family agriculture from low productivity, India applies high tariffs and grants subsidies via minimum prices and credit at lower interest rates than the market. The best international scenario for India is the liberalisation of access to European and US markets, in addition to maintaining its bound tariffs.

South Africa has circumstantial problems arising from the lack of infrastructure and its land distribution. The main focus of the government is to include small- and medium-sized farmers into export production through land reform, infrastructure modernization and private investment incentives. It targets market expansion through the gradual reduction of contributions from the state in the agricultural sector. Despite showing limited agricultural potential, South Africa has a strong interest in exporting its products and pursues the liberalisation of international agricultural trade.

Russia is a strong agricultural economy focused on the export of cereals. It has an average tariff for agricultural products that is relatively low in comparison with the other BRICS members and makes use of credit subsidies to stimulate its economy, within the Green Box, and special and differential treatment granted to developing countries.

BRICS, according to the WTO, increased their agricultural subsidies during the period after the 2008 crisis, but also eased their positions and limits in the negotiations of the Doha Round, in an effort to contain the more protectionist attitudes of the developed countries.

There are also other points of convergence between the BRICS countries, which are the use of government assistance measures declared under the framework of special and differential treatment, as well as significant amounts of subsidies classified under the Green Box. Another consolidating point of the group is not using the Blue Box subsidies.

In the Doha Round negotiations, exporting countries such as Brazil adopted a more open stance in said negotiations, while countries such as China and India were interested in maintaining their tariff rates. However, the major BRICS landmark – without the participation of Russia, which was still in the process of accession – was the success achieved with G-20 Agriculture. The G-20, which was created in 2003 on Brazil's initiative against the joint offer of the US and the EU in order to free up negotiations, considered unacceptable by many participants, quickly became a centre for agricultural negotiations. As a group, it survived the harsh attacks

issued by more protectionist members with regard to agriculture, always offering mediating proposals between the extreme positions of liberalisation advocated by the Cairns Group and the strongly defensive positions presented by the G-10. The last project of the Agreement on Agriculture, presented in 2008, shows that many of the positions defended by the G-20 ultimately prevailed in the final text.

There are some lines of co-operation to be explored in the area of agriculture.

Brazil is certainly the member with the most offensive position within the WTO, acting as a major agricultural exporter. The experience of G-20 Agriculture demonstrated the interest of BICS to reduce domestic support that distorted agriculture, since the available budgets for that area could not compete with that of producers from developed countries. Another commonality is the interest in dismantling export subsidies that distort prices and affect the competitiveness of exports.

The entry of Russia, which is also a major exporter, may give even greater power to the positions of the G-20 in future negotiations on this subject.

The BRICS members internally established the foundations of their co-operation with regard to agriculture. According to the Declaration of the BRICS Ministers of Agriculture, issued in Moscow on 25 March 2010, the countries are interested in creating an agricultural information system, co-ordinated by China; reducing the negative consequences of climate change on food security, taking into account the need to adapt the agricultural sector to said changes; carrying out technological co-operation and innovation in the area of agriculture; and establishing an overall strategy to ensure access to food for the most vulnerable populations.

Within IBSA (VI IBSA Trilateral Commission, 2010), the co-operation of these countries goes one step further and addresses food processing; measures for food security; measures to facilitate the transfer of technologies; and the creation of research and development investments in the agricultural sector of the countries involved.

Thus, the convergence of interests would allow co-operation between BRICS countries with regard to agriculture, thereby further consolidating the group during multilateral negotiations.

3.4 AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT) AND THE AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY (SPS) MEASURES

With the fall in import tariffs over the past few years (2008–2013), technical standards and measures of sanitary and phytosanitary (SPS) control began to be used as barriers to control imports. Although its use is governed by the WTO, the complex measurement and constant appeal of importing countries to the health of

humans, animals and plants make it difficult to control this type of trade protection. The issues are discussed in the two committees responsible for these areas at the WTO, but there is no specific mandate for further negotiations in the Doha Round. Such issues have also been discussed in several disputes with the DSB, which may imply new interpretations or an expansion of items that were previously under-utilised.

Recently, BICS set technical and quality standards, expanding the number of mutual agreements based on international practices.

China recently modernised its health inspection system, its standardisation process and its technical standards. However, there is a long way between the adoption of legislation at the national level, its harmonisation with international standards and the modification of the production techniques of businesses. The rise of protectionism during times of crisis and the tendency to intensify the control over imports could accelerate the implementation of said measures.

India is far more advanced than China in this regard. The inspection of domestic production, both in terms of technical and health-related matters, is more common, which may, in turn, reduce the barriers faced by their products in markets such as Europe or the US, in addition to allowing control over imports when this becomes politically important.

Brazil has greater administrative capacity to implement technical and health controls, though only recently has it indicated that it would increase inspections as a way to ensure compliance with the imposed standards.

There is a clear difference between Brazil and China, on the one hand, and India and South Africa, on the other, in terms of their use of technical and SPS measures. Brazil and China have a much more extensive regulatory framework for such measures than the other countries and they participate more actively on the WTO committees, including for the purpose of protecting their interests against any protectionist measures imposed by other members.

A vast area of co-operation between the BRICS countries seems to be possible in this area.

On the one hand, all its members are implementing policies to strengthen two of its main areas: technical and SPS standards. As they all recognise the importance of such barriers on export activities, there is a clear interest in co-operating for the creation of mutual recognition agreements among them, which would most definitely streamline exports among the group. On the other hand, as they are all in the next phases of development in this area, the convergence of interests would allow for political co-ordination of their positions in multilateral forums regarding the issue.

3.5 TRADE DEFENCE

The comparative analysis among the BRICS countries, in relation to other WTO members with regard to trade defence policies, enables the authors to identify a few relevant points.

With respect to trade policies, the picture that unfolds is very revealing. In the period from January 1995 to December 2010, India aggressively implemented anti-dumping instruments, compensatory measures and safeguards. In the period from 1995 to 2010, it was the country that led the use of anti-dumping measures, initiating 637 investigations and applying four hundred and fifty measures – more than the US, which began 452 procedures and implemented three hundred and four measures; the EU, which began 428 investigations and applied two hundred and seventy-four measures; and Brazil, which began 227 investigations and applied one hundred and eleven measures. With respect to China, India also led the demand for, and application of, measures (144 investigations and one hundred and fourteen measures), followed by the US (106 investigations and eighty-nine measures), the EU (102 investigations and seventy-four measures), Argentina (85 investigations and sixty-two measures) and Brazil (48 investigations and thirty-two measures).

In the case of compensatory measures, the use of this instrument is less common for all other partners of the WTO. From January 1995 to December 2010, 262 cases were investigated and one hundred and sixty-four measures were applied. The largest users were the US, with seventy-two measures, resulting from 109 investigations; the EU, which required 60 investigations and applied thirty measures; and Canada, the author of 25 processes, which produced seventeen measures. As regards China, 46 investigations and thirty-three measures were applied against it, mostly from the US (29 investigations and twenty-two measures) and by Canada (10 investigations and nine measures). India was investigated 50 times and thirty-one measures were applied against it. The largest uses of compensatory measures against India were the EU, a requesting party in 18 investigations and the benefactor of twelve measures; the US, which began 13 investigations and obtained eight measures; South Africa, which filed 9 cases and applied four measures; and Canada, whose 5 investigations resulted in four measures against India.

With regard to safeguards – instruments that are applied in a non-discriminatory manner – India was also the country that used this measure the most, opening some 26 investigations and applying twelve measures. Next were Turkey (15 investigations and twelve measures), then Indonesia (12 investigations and three measures) and Chile (12 investigations and seven measures). India initiated 2 investigations for the use of transitional safeguards – instruments provided for in the Accession Protocol for China and applied parsimoniously by other members of the WTO.

Considering the total number of members of the WTO, the instruments of trade protection are being used aggressively by several of its members, both developed and developing countries. Over the years, China, as

a major exporter, became the target of anti-dumping measures not only by developed countries, but also by developing nations.

With regard to BRICS, during the period under analysis, Brazil's actions have been timid in comparison with India's and the other developing countries. Even against China, India has proven itself to be much more active than Brazil, despite the growing political co-ordination on international issues between these two Asian countries. This framework seems to have changed in 2011, when the strengthening of trade protection measures was incorporated into Brazil's industrial policy.

The implementation of political co-operation on the issue of trade protection seems less promising.

The aggressiveness of China's exports in recent decades, coupled with the fact that China is not considered a market economy, transformed it into the most frequent target of anti-dumping measures by developed and developing countries. This is changing the negotiating framework at the multilateral forum, in which China's interests converge against the discretionary nature of the laws and regulations of the US.

With the approach of the year 2016, which should mark the end of its treatment as a non-market economy under the status attributed to China in the Accession Protocol, which permits less rigid criteria for imposing trade protection measures against China, there may be a move towards a tightening of the regulations against Chinese practices, especially in relation to subsidies and companies under the control of the state.

The interests of the BRICS countries seem to be more diffuse. India and Brazil are keen to bend the rules of subsidies for long-term financing. Even before its accession to the WTO, Russia, in turn, was already a target of negotiations to impede it from subsidising its companies producing energy goods through differential pricing for local consumption and exportation.

A possible initiative would be the creation of a working group of technical experts from the five countries to explore points of co-operation, such as the requirement of consultation prior to the application of trade protection measures and the conclusion of price commitment agreements between the investigating authorities and exporters, as is already provided for in the ADA and which are rarely applied.¹

3.6 SERVICES

The BRICS members have also moved in the direction of liberalising trade in services. However, IBSA had different points of view in the negotiations that followed the Uruguay Round, which later introduced the service area of the WTO. China and Russia negotiated the liberalisation of services during their accession to

the WTO – China in 2001 and Russia in 2011. Both have committed to market access and national treatment in a larger number of sectors due to the negotiated agreements.

A comparison of the commitments assumed allows one to see that both in India and China there are common limits on foreign participation and the mandatory formation of joint ventures, even in sectors in which there are offers. Brazil is among the BRICS members that require fewer conditions and restrictions on the national treatment of service providers established in the country. On other procedures, South Africa places fewer restrictions on market access than Brazil and India, while still maintaining restrictions on important sectors, such as telecommunications.

China and India have been more forceful in the adoption of additional commitments. After its entry into the organisation, China advanced a few measures of openness as provided for in the accession schedule and it established a series of preferential agreements with its regional partners. In the 2000s India eliminated limits on market access in sectors traditionally controlled by state companies, such as finance, and it made substantive conditional offers in the Doha Round, as assessed by the WTO. Brazil did not ratify the commitments assumed under the additional protocols of the General Agreement on Trade in Services (GATS), which provide for the opening of the financial and telecommunications sectors. Finally, BRICS countries are equally closed to the entry of individuals to provide services, even in the sectors included on the WTO lists, because of their immigration rules.

In the area of services, attention should be paid to the growth in Indian exports, especially in the commercial services sector, as well as Chinese exports, particularly in the area of construction and engineering.

Russia, though having adopted greater commitments in its Accession Protocol than those for BRICS, maintained restrictions on the national treatment of foreigners which do not exist in the other countries.

Some points of converging interests seem possible in the area of services.

With different backgrounds of liberalisation in the area of services, the levels of commitments assumed are different, since for IBSA said commitments date back to the Uruguay Round and various specific protocols, while those of China and Russia are the result of more recent negotiations.

India is emerging as a major exporter in various sectors, while the positions of the other BRICS members are less aggressive, which makes co-operation in multilateral forums much more complex. The segment that can unite the five countries is linked to Mode 4, since they are all interested in exporting labour.

However, since the segments connected with infrastructure are capital-intensive, one can expect the entry of China, with significant volumes of reserves, in several BRICS markets as a service provider, which would press for more flexible positions of market openness.

The diversity of the area is such that, here again, the possible action is the creation of a working group to explore co-operation on technical matters and compliance.

3.7 INTELLECTUAL PROPERTY

In the area of intellectual property, the profile of BRICS participation has changed significantly.

Regarding patent registration, in 1990 BICS recorded less than 2% of the annual amount recorded by the US, whereas in 2010 the number of registrations notified by China to the WIPO was nearly half of that attributed to the US. IBSA have continued not to reach 1% of the North American total. In the early 1990s Russia recorded 21% of the US total and by 2010 it had risen to 12%.

The increase in Chinese registrations, which also occurred in trademarks and industrial design, was accompanied by changes in the profile of the depositaries, which are currently mostly private business and, to a large extent, foreign owned. This process – added to China's policy of attracting direct foreign investment and encouraging technological transfers – has increased the pressure from the US government to adopt more stringent standards for intellectual property protection and has fostered changes in the domestic laws of the US in this regard.

The change in China's position, for the time being, has not affected its convergence with IBSA in terms of multilateral negotiations. These countries continue to have a distinguished position in WTO discussions, be it in the defence of compulsory licensing of pharmaceutical patents, or on the Board of the Agreement on TRIPS, or in placing emphasis on the need to declare the origin of a patent at the time of its filing, which is under discussion in the Doha Round.

The external convergence has led to growing regulation in the domestic sphere with regard to multilateral decisions. China has regulated the exportation of pharmaceuticals with compulsory licensing and the registration of plant varieties, while Brazil regulates the suspension of intellectual property rights in cases of non-compliance with WTO agreements.

In the face of such a diverse framework, the task of identifying areas of co-operation between the BRICS countries is complex.

Their current interests, when compared to those of the Uruguay Round, show that the countries have come a long way.

With the growing interest of some of the BRICS members, such as China and India and now Russia, in strengthening their defences internally in the area of intellectual property, once linked to the entry of foreign investments, it is possible to foresee different positions in international forums in this area.

The BRICS members have close interests in the use of genetic resources, especially with regard to the regulation proposed by the Nagoya Protocol of 29 October 2010; indigenous and traditional knowledge; and cultural expressions. Brazil has indigenous communities affected by the use of this knowledge, as well as China and India, which, even with their remarkable industrial development maintain means of production and some products on the bases of traditional and indigenous populations. Co-operation for compliance with the rules and the protection of the rights of traditional communities may be a starting point in the complex relationship between the BRICS members in the sector.

Thus, one matter that deserves to be strengthened is the positioning of the BRICS in the Development Agenda of the WIPO in which several BRICS members have been involved, negotiating an agenda that allows for opportunities of technological progress in developing countries.

3.8 INVESTMENTS

BRICS, when analysed comparatively, have an interesting profile of foreign investment policies. As emerging countries, they are attracting increasing volumes of investment not only because they represent expanding markets, but also because they were able to resist the effects of the 2008 crisis successfully. Although the largest numbers pertain to China, the other BRICS members also represent significant values.

All the BRICS members have developed and implemented, with greater or lesser effectiveness, policies to encourage the entry of capital linked to the different strategies of their development policies in the industrial sector, and for infrastructure and services.

In an early phase, China conditioned the entry of foreign investments to certain regions and limited export activity. Over the years, it has been demanding greater technological content from investments, and restricting its areas of involvement and its localisation in less developed regions. Chinese investment abroad has also been directed to the area of infrastructure in which it can sell its engineering services or equipment, or in the areas of mining and exploration, in which it can export mineral resources or food necessary for the domestic Chinese market.

India established certain criteria for the entry of foreign investment, prioritising the information technology sector, and converting it into the centre of exports and job creation. In recent years, Russia has made investments to diversify its dependence on the energy sector.

Brazil, in turn, has a less defined policy in terms of attracting foreign investment, as it does not establish priority areas or technological advances. Some incentives have been given for the purchase of certain state enterprises, especially in relation to the area of oil and gas exploration. Both this area and various segments related to infrastructure have attracted increasing volumes of foreign investment. This could stimulate the co-operation between China, Russia and India with Brazil, with the aim of attracting investments not only in the production of energy, but also for infrastructure and the production of capital goods. Another area of co-operation that has been explored is that of renewable energies, in which Brazil has shown unique technological performance.

This area of investments could become one of the main themes of BRICS co-operation. Each of its members offers important comparative advantages. China is becoming an important source of investment, especially in the area of infrastructure, in which it provides engineering and competitive capital goods; in the agricultural sector, where its interests pertain to food security for its domestic markets; and in the area of basic input, which caters to its domestic production. India, which has been an investor in the area of information technology, has implemented policies to attract foreign investment in various other areas. Brazil has opened important areas related to oil, gas and infrastructure, such as the sector for ports and airports. Russia, with interests in diversifying its energy sector, has sought to attract foreign investment for other segments. Brazil has excelled in the area of renewable energy and agricultural innovation.

A common point between the BRICS members is their commitment to attracting investment within a policy of incorporating new technologies.

The phase of economic growth in emerging countries may encourage the identification of common interests and co-operation between BRICS members.

3.9 PLURILATERAL AGREEMENTS

Since the Tokyo Round, WTO plurilateral agreements have represented the possibility for advancing negotiations on controversial subjects.

An analysis of the topics included in such agreements demonstrates some disparity in the interests among the BRICS members.

With regard to the Information Technology Agreement (ITA), the numbers are significant, but very uneven. While India leads the market in software and services, China is becoming a major exporter of computers and telephone equipment. Brazil, Russia and South Africa defend industrial policies to support national companies in these sectors. The result is that not all the members are part of the ITA, indicating the existence of significant asymmetries in terms of their interests. As there are no converging interests, discussions on this issue have not begun among the BRICS members.

In the case of the Government Procurement Agreement (GPA), the BRICS members have disparate positions. Brazil is neither a member of, nor observer to, this agreement. The rationale adopted by the country has been to prioritise multilateral debates at the expense of plurilateral negotiations, while at the same time it gives priority to regional integration through Mercosul, the Union of South American Nations (UNASUL) and to other initiatives. However, Argentina is an observer to the GPA.

South Africa has a unique history which is reflected in post-apartheid legislation determined in a time when reparations for the black population were essential, including on matters relating to government procurement. It would be difficult for South Africa, therefore, to support the principle of national treatment if it were to accede to the GPA.

India, an observer to the GPA, was present at the negotiations on the new text of the agreement, which was approved at the VIII Ministerial Conference in Geneva at the end of 2011, and analyses the advantages and disadvantages of its adherence to the instrument.

Russia and China are distinct examples of economies that have left a planned regime in favour of market economies, which directly affects their concepts of state enterprises which, in turn, are key to the GPA. The points of disagreement with other parts are shown in the Accession Protocols, which address the obligations of Russia and China in order to be a part of the WTO.

The only common point between the BRICS countries would be the use of both government procurement as well as information technology as public policies for development and as means to generate employment.

It is worth noting that, in view of the current impasse of the Doha Round negotiations, there is strong pressure for the expansion of the negotiations for plurilateral agreements, such as a possible plurilateral agreement to liberalise trade in services, as advocated by members such as the US. In response, in a parallel meeting to the 2012 Davos Economic Forum, IBSA issued a joint statement against this initiative, arguing that 'plurilateral initiatives' would hurt the WTO principles of inclusiveness and multilateralism, in addition to 'not dealing with the development deficit inherited from previous rounds of negotiations'.²

In the light of such a framework, it would be less fruitful to try to find common interests.

The participation of the BRICS members with regard to plurilateral WTO agreements is an example of the diversity of interests held by these countries in the international arena. It may also serve to demonstrate the limits of the co-ordination between the positions of the members of the group in the arena of economic negotiation, since they all embrace distinct models of economic development. Owing to their asymmetrical interests, several of the possible co-ordination positions eventually restrict areas of co-operation.

3.10 NEW THEMES

The reaction of the developing countries, in general, and several members of BRICS, in particular, to the introduction of new issues in the WTO was one of resistance. Developing countries feared that the new rules could be used by developed countries as barriers to the importation of their products. Furthermore, there was a feeling that the alleged benefits from the introduction of new themes could overshadow the pursuit of greater access to the markets of developing countries, as in the case of government procurement. The progressive development of the themes in other international forums and the evolution of national rules on said themes have shown that these countries were not as averse to the questions proposed as they were in relation to how they would be implemented and applied.

After the stalemate at the Ministerial Conference in Cancun and the package from July 2004, only two new themes remained in the multilateral negotiations of the Doha Round: (i) the environment and (ii) trade facilitation. Both made important advances, with trade facilitation being one of the themes in which the possibility of consensus among the members was more consolidated.

However, developing countries managed to strengthen their positions and clear the round of new issues that were not of interest to them, thereby maintaining focus on the matters of development. One could consider this a turning point in the dynamics of WTO multilateral negotiations with developing countries, led by various members of the BRICS group, co-ordinating efforts and changing the direction of the organisation. The resistance to new themes, coupled with the agricultural issue, was a factor of convergence in developing countries and several members of the BRICS group.

With the impasse at the conclusion of the Doha Round, however, and the significant increase in the number of preferential agreements that create regulatory frameworks on new trade issues, there is a new impetus for the agenda of this round to be adapted to include pressing issues of modern international trade. Accordingly, there is interest in issues such as food security, energy, climate change and exchange rates being included in multilateral negotiations.

It would be possible to co-ordinate the positions of the BRICS countries on some of the new themes. It would not be improbable for BRICS, after the incorporation of Russia as a member of the WTO, to change their position regarding the introduction of a few new topics in the organisation, such as trade and the environment, trade and climate change, investment, competition, and trade and energy.

The discussion around new themes will provide the BRICS members with an opportunity to form a non-conventional alliance in favour of their common interests.

3.11 BICS INVOLVEMENT IN THE DSB

A comparative analysis of the activities of the BICS countries shows that three of its members, BIC, have assimilated the WTO dispute settlement mechanism as a strategic tool for the promotion of their interests in the multilateral trading system, while participating simultaneously in the Doha negotiations and pushing for a definition of any ambiguous points in the settlement of disputes.

Together, BIC participated directly in more than a quarter (26%) of the disputes recorded by the DSB. Therefore, they have obtained the position of major players in the main international forum for the settlement of trade disputes. The BIC group has proven itself to be quite successful in defending its sectoral and systemic interests. China, which in 2011 completed ten years with the WTO, has increased its activities within the group. The policies and practices of BICS, and in particular China, have attracted attention from their major trading partners. BIC have demonstrated a favourable stance towards the consensual resolution of disputes and, when defeated, adopted a position of compliance. Additionally, they explored the prerogative of intervening in disputes as third parties in order to accumulate experience and to influence decisions of the system.

Of all the BIC countries, Brazil seems to have found a more balanced and successful dynamic for participating in the system, relying on a triangle formed by the government, the private sector and businesses. India and China have developed similar models, but have allowed less interaction with the productive sectors, and have invested more in boosting the capacitation of the public and private sectors.

Brazil has incorporated the WTO dispute settlement system as a strategic pillar of its foreign trade policy, using it successfully to protect its key export sectors and to rely on the positioning of the DSB for questions of systemic relevance. In order to maintain this achievement, it is important for the country to return to acting aggressively in the system, by means of assertive actions against policies and practices that negatively affect Brazilian interests and that violate WTO rules.

In the light of this, it would be possible to identify a few points of common interest among the BRICS members.

One such point would be the joint analysis of the most relevant issues of the WTO Dispute Settlement Understanding, which is being negotiated in parallel with the Doha Round.

3.12 BICS PARTICIPATION IN THE DOHA ROUND

The first successful exercise in co-ordination between BICS was, without a doubt, the consolidation of G-20 Agriculture, which was formed in 2003 to develop the response of several developing countries to the proposal presented by the EU and the US to unlock the Doha Round on the eve of the Cancun Ministerial Meeting.

The participation of the BICS members not only reversed matters in the negotiations on agriculture, but also transformed the core group leading the trade rounds, which was formed by the US and the EU, while introducing BIC as participants of the new decision-making group. Another example of co-ordination was that which took place in the negotiations on market access for NAMA, co-ordinated by South Africa, in which the BICS members adjusted their interests to defend their markets of industrial products and to pressure developing countries into reducing their tariffs.

BICS's participation in the Doha Round, however, showed the limits of this cohesion. Despite having converging interest based on their shared condition as developing countries and, not infrequently, having defended joint proposals, especially India and Brazil, the BICS members have not managed to overcome the differences in their trade interests so as to stand as a cohesive negotiating group in all the rounds. This framework is apparent in the anti-dumping and subsidy negotiations.

The successful experience of G-20 Agriculture, in part reproduced in NAMA, presented opportunities for a possible co-operation between the BICS countries. When the interests of the developing countries were widely affected by the developments of multilateral negotiations, BICS were able to overcome significant differences in the specific sectors under negotiation and to co-ordinate a front in opposition to the direction the round was headed. A relevant example of positive results for their common interests was the resumption, after the stalemate in 2003, of the development paradigm as the direction of the multilateral negotiations. The defence of the principle of less than full reciprocity can also be considered one of the successful results of BICS co-operation.

It can be said that the involvement of the BICS members in the Doha Round was their first major example of political cohesion in international forums.

By co-ordinating their positions, starting with common interests and taking into account the interests of the other participants, the experience of G-20 Agriculture and NAMA-11 in the WTO eventually became the first relevant exercise in co-ordination between the BICS members in the multilateral area.

3.13 FINAL CONSIDERATIONS

The Doha Round, which began in 2001, turned out to be a unique example of co-operation between the BRICS members, consolidating their political presence on the international stage as a group of emerging countries with the clear objective of assuring that they had a relevant voice in discussions on the great issues of our time.

IBSA participated in the negotiations for the creation of the GATT in 1948 and were active players in all its rounds of negotiation. China became a WTO member in December 2001 and Russia signed its Accession Protocol in December 2011. Throughout the history of the GATT and the WTO, the BRICS members have adopted a position in defence of the interests of developing countries.

Over the past decade (2003–2013) they have distinguished themselves as emerging countries and as growing economies, even after the 2008 financial crisis. This situation consolidated BRICS's position as stakeholders in all major discussions on the international agenda.

Most recently, as a group, they have begun to co-ordinate their positions on relevant issues in the area of the global economy in the G-20, which brings together presidents and ministers of finance from the largest economies in the world. The BRICS countries have clear objectives to reform the international agenda on sensitive and complex issues, such as the UN Security Council, the decision-making power of the IMF and the World Bank, and agreements on climate change. The WTO, however, was the stage for effective co-ordination of their positions, primarily in the area of agriculture, throughout the many years of negotiations during the Doha Round.

This successful exercise shows the points of the international trade agenda in which their combined interests make co-operation possible. Yet it also raises several other points where their interests diverge and make said co-operation more difficult.

It will be co-operation in precisely these areas, in which greater efforts should be made, that will consolidate BRICS as a major actor on the international stage.

ENDNOTES

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- 2 See Brazil, Ministry of Foreign Affairs. 'Final Declaration of the India–Brazil–South Africa (IBSA) Ministerial Meeting on the Sidelines of the World Economic Forum'. Brasilia: Ministry of Foreign Affairs. 28 January 2012. <<http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/declaracao-final-do-encontro-ministerial-india-brasil-africa-do-sul-ibas-a-margem-do-forum-economico-mundial>>.

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Abbreviations

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| § | section |
| ABI | Argentina–Brazil–India |
| ACP | Africa, the Caribbean and the Pacific |
| ADA | Anti-Dumping Agreement |
| AMS | Aggregate Measure of Support |
| AoA | Agreement on Agriculture |
| ASCM | Agreement on Subsidies and Countervailing Measures |
| AVE | <i>ad valorem</i> equivalent |
| BIC | Brazil, India and China |
| BICS | Brazil, India, China and South Africa |
| BRICS | Brazil, Russia, India, China and South Africa |
| C-4 | Cotton-Four |
| CBD | Convention on Biological Diversity |
| CCGI | Centro do Comércio Global e Investimento/Centre of Global Trade and Investment |
| CDB | China Development Bank |
| CEPS | Centre for European Policy Studies |
| CET | common external tariff |
| CIRR | Commercial Interest Reference Rate |
| DC | developing country |
| DG | Director-General |
| DINTE | Diretoria de Estudos e Relações Econômicas e Políticas Internacionais/Directorate of Studies on International Economic and Political Relations |
| DSB | Dispute Settlement Body |
| EAESP | Escola de Administração de Empresas de São Paulo/School of Business Administration, São Paulo |
| EC | European Community |
| ECOSOC | Economic and Social Council |

| | |
|----------|---|
| EESP | Escola de Economia de São Paulo/School of Economics, São Paulo |
| EU | EU |
| FAN | Friend of Anti-Dumping |
| FGV | Fundação Getulio Vargas/Getúlio Vargas Foundation |
| FTA | free-trade agreement |
| G-4 | Group of Four |
| G-7 | Group of Seven |
| G-8 | Group of Eight |
| G-10 | Group of Ten |
| G-20 | Group of Twenty |
| G-33 | Group of Thirty-Three |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| GDP | gross domestic product |
| GPA | Government Procurement Agreement |
| IDB | Inter-American Development Bank |
| IBSA | India, Brazil and South Africa |
| IESP | Instituto de Estudos Sociais e Políticos/Institute of Social and Political Sciences |
| IMF | International Monetary Fund |
| IPEA | Instituto de Pesquisa Econômica Aplicada/Institute of Applied Economic Research |
| ITA | Information Technology Agreement |
| ITDS | overall trade distorting domestic support |
| LDC | least-developed country |
| MDG | Millennium Development Goal |
| Mercosul | Southern Common Market: Mercado Comum do Sul |
| MFN | most-favoured nation |
| NAMA | non-agricultural market access |
| NAMA-11 | Non-Agricultural Market Access Group |
| NBEDS | National Bank for Economic and Social Development |
| NFIDC | net food-importing developing country |
| NTB | non-tariff barrier |
| OECD | Organisation for Economic Co-operation and Development |
| OTDS | Overall Trade Disparity Support |
| PNPD | Programa de Pesquisa para o Desenvolvimento Nacional/Programme for National Development |
| pp | percentage point |
| RAM | recently acceded member |
| RTA | Regional Trade Agreement |

| | |
|--------|---|
| SACU | South African Customs Union |
| SPS | sanitary and phytosanitary |
| SVE | small vulnerable economy |
| TBT | Technical Barriers to Trade Agreement |
| TRIPS | Trade-Related Aspects of Intellectual Property Rights |
| UERJ | Universidade do Estado do Rio de Janeiro/State University of Rio de Janeiro |
| UK | United Kingdom |
| UN | United Nations |
| UNASUL | Union of South American Nations |
| UNCTAD | UN Conference on Trade and Development |
| UNESCO | UN Educational, Scientific and Cultural Organization |
| US | United States |
| USP | Universidade de São Paulo/University of São Paulo |
| USSR | Union of Soviet Socialist Republics |
| WIPO | World Intellectual Property Organization |
| WTO | World Trade Organization |

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