

# THE RULES OF POWER AND THE POWER OF RULES: THE INSTITUTIONALIZATION OF THE MULTILATERAL TRADE REGIME AND ITS IMPLICATIONS FOR TRADE NEGOTIATION STRATEGIES

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The article aims to analyze and explain how the institutionalization of the multilateral trade regime affected international trade regulation and created incentives for countries to integrate it and to direct their trade negotiation strategies to it. To accomplish this, I will examine some factors related to the way the negotiating agenda is set, according to a country's economic and political clouts, the rules of power; and those which encourage the political participation of less powerful countries by using coalitions and enforcement mechanisms created at the multilateral trade regime, denoting the power of rules. Two dimensions of the multilateral trade regime are taken into account: first, the legal-diplomatic dimension, focusing on changes in dispute settlement mechanisms and their effects on the politics of the trade disputes at the regime; and second, the political-negotiating dimension, related to the creation of new coalitions among developing countries in the new context negotiations at the multilateral trade regime. Finally, some concluding remarks are presented on the implications of the institutionalization of the multilateral trade regime for trade negotiation strategies.

**Keywords:** multilateralism; trade policy; WTO; international regime; institutionalization.

## AS REGRAS DO PODER E O PODER DAS REGRAS: A INSTITUCIONALIZAÇÃO DO REGIME MULTILATERAL DE COMÉRCIO E SUAS IMPLICAÇÕES PARA AS ESTRATÉGIAS DE NEGOCIAÇÃO COMERCIAL

Este artigo tem como objetivo analisar e explicar como a institucionalização do regime multilateral de comércio impactou na regulação do comércio internacional e gerou incentivos aos países para se integrarem ao regime e direcionarem a ele suas estratégias de negociação comercial. Para tanto, examinar-se-á elementos relativos à formatação da agenda negociadora segundo as capacidades de articulação política e de poder econômico e político dos países, às regras do poder; e aqueles relacionados a estímulos à participação política de países com menor capacidade de barganha e influência por meio de coalizões e de mecanismos de enforcement criados no regime multilateral de comércio, denotando o poder das regras. Consideram-se ainda duas dimensões do regime multilateral de comércio: uma primeira, a dimensão diplomático-jurídica, com foco nas mudanças ocorridas nos mecanismos de solução de controvérsias e seus efeitos sobre a política de disputas comerciais no regime, e uma segunda, a dimensão político-negociadora, relacionada à formação de novas coalizões entre países em desenvolvimento no novo contexto negociador do regime multilateral. Por fim, algumas considerações finais são apresentadas sobre as implicações da institucionalização do regime multilateral de comércio para as estratégias de negociação comercial.

**Palavras-chave:** multilateralismo; política comercial; OMC; regime internacional; institucionalização.

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## 1 INTRODUCTION

Almost fifty years after the Havana Conference and the attempt of creating the International Trade Organization, the bases for the edification of a “new” international trade order were multilaterally built, based on law and with mechanisms that gave a bonding character to decisions taken multilaterally. In 1995, the creation of the World Trade Organization (WTO), which has now about 159 members and accounts for about 95% of the international trade in goods, represented an international diplomatic and legal landmark and played an important role in the world, characterized by a substantial increase in economic interdependence.<sup>1</sup> So the multilateral trade regime, created after the Second World War, gained strength as an institution for international trade regulation.

This article uses the concept of international regime presented by Krasner (1982). According to this author, regimes are: “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”. Therefore, regimes coordinate the action of States and other international actors through the convergence of expectations aiming to fulfill the purposes desired for specific issues. As an international regime, the multilateral trade regime is sustained by principles, norms, rules, and decision-making procedures around which actor expectations converge in the international trade relations.

The *institutionalization* of the multilateral trade regime, since the Uruguay Round, must be understood as the result of a process of institutional change which granted more authority, strength and stability to the multilateral trade regime, extending its enforcement power and stimulating the participation of its members, mainly the developing countries, in negotiating mechanisms for new multilateral rules.<sup>2</sup> It should be emphasized that institutionalization process may occur in an incremental manner or in the context of critical junctures, with more or less continuity. The Uruguay Round can be analyzed as a critical juncture in which opportunities arouse for implementing institutional reforms with important changes regarding the negotiating agenda and enforcement rules of the trade regime. The change can also be understood as a reproduction through institutional adaptation, marked by the increase and the continuity in an institutional trajectory, now with better defined features of a strong institution.

Therefore, the agreements by the end of the Uruguay Round represented a change in the framework of the international trade policy regulation. The WTO has the same principles and norms which supported the General Agreement on

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1. According to data from the World Trade Organization – WTO (2012).

2. For more information on the theoretical elements which are the base for the institutionalization concept, see Hall and Taylor (1996), True, Jones and Baumgartner (1999), Mahoney (2000), Streeck and Thelen (2005), Levitsky and Murillo (2009), Mahoney and Thelen (2010), and Mabee (2011).

Tariffs and Trade (GATT): non-discrimination (Most Favored Nation Clause – MFN), reciprocity and national treatment. Furthermore, the legal framework sustaining the Generalized System of Preferences (GSP), the positive discrimination concerning developing countries, was inherited and kept in the reformulated multilateral regime. To dialogue with the concept of change in international regimes by Krasner (1982), it can be said that the transformations observed and consolidated during the Uruguay Round represented a change within the multilateral trade regime, but not a change of the regime itself. According to Krasner (1982), the change of a regime only occurs with the modification of the principles and norms that support it. Revisions in the rules and decision-making procedures simply represent changes within a regime.

Considering the context and the concepts presented in this brief introduction, the purpose of this article is to analyze and explain how the institutionalization process of the multilateral trade regime impacted on the regulation of international trade and generated incentives for countries to integrate and direct their trade negotiation strategies to the multilateral trade regime. To analyze the institutionalization process of the regime after the Uruguay Round, two dimensions of the multilateral trade regime are considered: in section 2, the elements related to the *rules of power* that determine the negotiation agenda according to the political capabilities capacities and economic and political clouts of countries shall be examined. Therefore, I will analyze the legal-diplomatic dimension of the regime, focusing on the changes occurred in the dispute settlement body and its effects on the politics of trade disputes in the regime. Then, in section 3, I analyze the *power of rules* which stimulate the political participation of countries to bargain and influence through coalitions and enforcement mechanisms created in the multilateral trade regime. Thus, the analysis focuses on the political-negotiating dimension of the regime, related to the formation of new coalitions among developing countries in the new negotiation context of the multilateral trade regime. Finally, in section 4, some remarks are presented on the implications of the institutionalization of the multilateral trade regime implications for trade negotiation strategies.

## 2 INSTITUTIONALIZATION AND ITS EFFECTS ON THE LEAGAL-DIPLOMATIC DIMENSION OF THE MULTILATERAL TRADE REGIME

Regarding the legal-diplomatic dimension of the multilateral trade regime, it should be noticed that although the GATT had procedures for settling disputes, they did not have an effective enforcement, since the decision-making mechanisms were based on consensus and made it possible for the respondent country itself to block the progress of the process. Furthermore, the actual strenght of the system was precarious, which granted to the most powerful countries a bonus for

implementing trade measures in no compliance with the multilaterally agreed rules without effective constraints. Developing countries, by their turn, while receiving special and differential treatment in the multilateral system through the Enabling Clause, adopted at the end of the Tokyo Round (1973-1979), remained as free riders until the Uruguay Round (1986-1994), what gave incentives for them to keep a relatively marginal position in the dispute settlement mechanism of the regime by then. Furthermore, most of these countries used Escape Clauses, especially Article XVIII of the GATT, which allowed them to perform economic development policies using trade protection mechanisms.<sup>3</sup>

The Dispute Settlement Body (DSB) of the WTO, based on the rule of law, is essential for the analysis of the changes in the multilateral trade regime. This is so because of the creation of a dispute settlement mechanism which is distinguished for being rule-oriented, what brings more effectiveness and legitimacy to the regime itself. Based on the negative consensus rule<sup>4</sup> and improved enforcement mechanisms, such as the creation of the Appellate Body (AB), the regime got a decision system where the obstruction of process by a respondent member is not possible.

When dealing with the importance of the dispute settlement system of the multilateral trade regime, Fonseca Junior (2008) emphasizes that the WTO substantially reinforces the GATT, since the disputes settlement modalities reached jurisdictional standards, what makes it mandatory for the losing parties to repay the damages caused by the infraction of rules and standards of the regime.

Thorstensen and Oliveira (2011) stress to the *sui generis* character of the dispute settlement mechanisms in the institutionalized multilateral trade regime, since it applies Civil Law and Common Law principles and practices. Therefore, despite the fact that panel decisions and appeals are only applied to the matters in question, they become jurisprudence on the system and start to guide future DSB decisions. The current multilateral regulation of international trade is based not only on the analysis of trade agreements signed by the end of the Uruguay Round, but also on the interpretation of the Appellate Body on cases in dispute. For the authors, the Dispute Settlement Body must be understood as a unique mechanism in the international legal system, since the policies that are considered in non-compliance with the rules of the multilateral trade regime must be modified. This possibility grants power to the WTO, distinguishing it from other international organizations without such an enforcement capacity.

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3. Brazil, for instance, made frequent use of Article XVIII of the General Agreement on Tariffs and Trade (GATT) to justify market reserve policies during the whole period in which it was simultaneously part of the multilateral trade regime and implemented the import substitution industrialization model.

4. With the negative consensus, all WTO members, including the winner of the dispute, need to decide on the non-adoption of the Dispute Settlement Body (DSB) report.

The changes in the multilateral trade regime's dispute settlement mechanisms that took place during the Uruguay Round were introduced by the United States, which considered that their actions were in greater conformity with the multilateral rules than those of their commercial partners. Furthermore, the United States wished the rules to reflect the goals of their trade policy. However, as Barton *et al.* (2006) say, "By the middle of the Uruguay Round, it was not only the U.S. interests that fueled reform efforts but the perception by others that the reform would also constrain U.S. unilateral actions". So, at first, some developing countries, including Brazil, positioned themselves in a reactive and skeptic manner regarding the creation of mechanisms that would be more effective for solving trade disputes among members of the regime. Later on, they begin to understand it as an important element for the defense of their interests in the multilateral regime framework which was being reformulated.

It is important to point that a more efficient and powerful system for settling disputes does not completely eliminates illegal actions in non-compliance with multilateral commitments, what shows the complexity of the interaction among countries while trying to build rules to manage their exchanges and the permeability of the rules to power politics. The relation between a country's specific interest, conditioned by its international power position, and the multilaterally agreed rules is in constant tension, generally softened through diplomatic negotiation and the definition of bridges between those interests and multilateral rules. As Fonseca Junior (2008, p. 23) puts it,

the existence of rules does not dissolve particular interests, but limits them, offering coordinates to project them. But such constraints must be compensated by advantages. That's why, even though acting for their own interests, States developed multilateral interests which must be achieved through cooperation.

For Fonseca Junior (2008) the convergence between the rule and the particular interest, between the constraints and the gain through cooperation, defines the multilateral interest. Therefore, the essence of a multilateral regime should be in understanding how and when rules and interests converge. The tension between particular interests defended by the States and the multilaterally agreed rules shapes the DSB action and its capacity to change to behavior of its members.

According to Barton *et al.* (2006) "WTO procedural rules and processes have been operating to effectively permit powerful WTO members to strongly influence the establishment and enforcement of substantive rules, which is crucial to maintaining their political support for the organization". However, the increase in institutionalized cooperation among developing countries for the creation of a negotiation agenda for new rules at the WTO is analyzed by the authors themselves as the capital element for understanding the current dispute settlement system.



When analyzing the importance of the institutionalization process of the multilateral trade regime regarding the predictability and stability of international economic relations, Barral (2007) says that an analysis of WTO system for settling disputes allows us to conclude that it brought “(...) a higher level of predictability and stability for international economic relations.” (Barral, 2007, p. 82). Furthermore, according to the author, for developing countries, especially those with higher institutional and economic development, to have legal action as an alternative to trade disputes gives legitimacy trust to trade multilateralism, what reinforces its relevance in the international order.

An important aspect of the WTO dispute settlement system has to do with the possibility of cross retaliation, which reinforces its enforcement capacity and encourages the participation of developing countries. Cross retaliation allows the use of suspension of measures related to goods, services and/or intellectual property rights concessions that are not exactly those of the dispute. At the end of the process, the Appellate Body establishes in its report the possibility or not of retaliation regarding different sectors and agreements, taking into consideration the seriousness of the violations of multilateral rules.

Anderson (2002) highlights the unjust and harmful potential of retaliation for small and least developed economies which may win a dispute, considering it might have effects on the supply of imported products that can be capital to those economies. Cross retaliation increases the flexibility of a member's action, which will have a higher number of sectors to choose, being able to exclude the ones that are more dependent on the respondent economy's imports (see the example of cotton between Brazil and the United States in Box 1).

According to the WTO, from a total of over 420 cases, cross retaliation was authorized in five opportunities by the DSB, the most recent dispute being that of cotton, brought by Brazil against the United States.<sup>5</sup> Regarding the counter-measures authorized in this case, the decision of the judges did not limit them to the trade in goods and involved other areas, such as intellectual property rights. According to the Appellate Body, the cross retaliation instrument, in addition to being legally adequate, was justified due to the nature and seriousness of the violations performed by the United States, including the insistence in keeping the programs activated despite WTO's decision against it. Therefore, it can be observed that this action contributed to strengthen the credibility of WTO's mechanism for solving disputes, showing that the system is able to acknowledge existing symmetries among developed and developing countries, supplying, through international law, means for compensating the losses caused and increasing the bargain capacity of developing countries (Spadano, 2008).

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5. Data from January, 1995 to November, 2011.

Since the creation of the WTO, and with the consequent institutional improvement of the system, we can observe an increase of the participation of developing countries as complainants in trade disputes in the DSB, mainly regarding issues such as agriculture, beverages, textile, steel, and other manufactured products.

For Cardoso (2008, p. 53): “Countries that are newcomers in the globalization process learned how to use the WTO to defend their interests against the protectionism of rich countries and to use the rules of intellectual property rights protection treaties in order to defend specific interests of their people”.

Furthermore, the dispute settlement in the WTO must be understood as a dimension connected to the political logic and the legitimation of rights agreed upon the multilateral regime. When analyzing the importance of multilateral mechanisms for solving disputes, Azevedo and Ribeiro (2009, p. 8) say:

Activating a mechanism for settling disputes is not only an exercise in obtaining – or losing – economic advantage. It is equally about the political pressure mechanism and legitimation of rights. The disputes brought to WTO uncover protectionist behaviors, violations to commitments assumed in the multilateral plan and the incorrect application of freely-negotiated agreements among sovereign countries. In many cases, the disputes inspire the review of these same agreements or even the discussion on the need for filling out existing void spaces in multilateral disciplines.

From 2001 to 2011, developing countries were important complainants in WTO dispute settlement system.<sup>6</sup> Regardless of the increase of developing countries’ participation in the WTO dispute settlement system, the leadership of the United States and European Union (EU) at the DSB, the two largest global trade players, continues to be eminent when analyzing data gathered from disputes. Brazil has been an active participant of WTO dispute settlement system, being prominent among developing countries as the one with the higher number of dispute participations as a complainant.

China’s minor participation, if compared to its increasing weight in international trade, is due to the process of adaptation of its rules and policies to the multilateral agreements, as determined in its WTO accession protocol. Regardless of that, the number of disputes with China as the respondent party is already substantial, surpassing the number of demands against other developing countries, as well as its participation as a third party, showing a strategy to learn from the disputes and to have a preventive defense on issues which might potentially affect Chinese interests. The effects of China integration to the international economy on competition in many sectors (such as shoes, textile and manufactured products) explain the increase of trade disputes at the WTO.

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6. In 2010, for example, developing countries initiated more than 70% of WTO disputes, according to data from the organization, available at: <[http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)>.

TABLE 1  
Participation at WTO's Dispute Settlement Body (1995-2012)

Country	Complainant	Respondent	Third party
United States	100	115	94
European Union	86	70	118
Brazil	25	14	67
India	21	21	74
Argentina	15	17	39
China	8	26	89

Source: WTO (data until May 22, 2012).  
Elaborated by the author.

In table 1, one can see that Brazil participated in 25 disputes as a complainant, a number that is much lower than the one observed for the United States and the European Union, but relatively high considering the weight of the country in international trade and even in comparison to other developing countries. In the cases where Brazil was the respondent in the DSB, the country is involved in a lower amount of disputes than developing countries with similar features regarding the participation in international trade and activity in the multilateral trade regime, such as India or Argentina. Brazilian participation in the dispute settlement system is rooted in its strategy to foster trade multilateralism.

The strengthening of institutions and enforcement of multilateral rules with higher stability and predictability of rules are highlighted as an important element for Brazil's foreign trade policy framework, reinforcing its strategy in the multilateral trade regime. This issue is equally connected to Brazilian strategy for creating coalitions with developing countries in order to influence the negotiating agenda so that the creation of new international trade rules takes place in a more democratic manner.

#### BOX 1

##### The cotton dispute – Brazil *versus* the United States

Brazil has diligated against the United States ten times at the DSB of the WTO, the highest number for a country among those where Brazil was the complainant. However, during the past ten years, a specific case called the attention of the international trade community, and society as a whole: the dispute where the United States was questioned, considering the rules agreed on WTO, for its domestic support and subsidies given to North American cotton producers. The attention given to the case is justified in the sense that the United States kept distortive programs for domestic support for cotton exports, in non-compliance with the determinations of the DSB for the dispute. Furthermore, the case shows elements that emphasize the importance of the mechanism for settling disputes in the multilateral trade regime and its relation with the legitimacy and consistence of the system itself, mainly connected to the performance of developing countries.

(Continues)



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Since the beginning of the process, with the opening of consultations in September 2002, it took two and a half years until the adoption of the report by the Appellate Body. Even with the end of the deadline legally granted to remove the subsidies considered as forbidden or that caused a great harm to Brazil, the United States kept its intransigent posture and did not perform the changes indicated by the DSB. Only one year after the deadline for the removal of subsidies, which was not complied by the United States, Brazil requested the opening of a panel for implementation, what denoted an open position to negotiate from Brazil, not finding support from the United States to do so.

Through an arbitrary procedure, demanded once more by Brazil in 2008 and with the decision disclosed in August, 2009, the amount and suspension measures for concessions through arbitral decision were taken. Brazil was authorized to adopt countermeasures with an amount composed by two payments: *i*) a fixed amount of US\$ 147.3 million per year, relative to subsidies that caused great loss regarding the suppression of international cotton prices, "actionable" subsidies; and *ii*) regarding the forbidden subsidies, a variable amount calculated each year, updated based on data relative to North American exports of many products that benefited from the GSM-102 credit insurance program.

Regarding the authorized countermeasures, the arbitrators' decision did not limit them to the trade in goods and involved other areas, such as intellectual property rights. So, cross retaliation was authorized. The instrument of cross retaliation, in addition to being legally appropriate, was justified considering the nature and the seriousness of the United States violations, including the insistence in keeping the programs at issue even with the DSB decision against it. This action contributed to strengthen WTO mechanisms for settling disputes, showing that the system is able to recognize existing asymmetries among developed and developing countries, providing countervailing means for the losses caused using international law. Brazilian government established, in February 2010, procedures to be used in case of suspension of intellectual propriety rights against the United States. In March, the Brazilian Chamber of Foreign Trade (Camex), after publically consulting the private sector and other Government institutions, revealed a list of goods for retaliation, which hits one of the highest values of retaliation in the history of the WTO: US\$ 591 million. Based on data from 2008, the total amount is US\$ 829 million, with US\$ 238 million reserved for cross retaliation. After the pressure exerted by Brazil to put in practice cross retaliation, the United States tried a negotiated solution for the case, giving funds for the Brazilian cotton sector and easing trade in areas of the country's interests.

From a total of over 420 cases initiated by now, the retaliation of the cotton dispute against the United States is the fifth to be authorized by the DSB. Only the United States, the European Union, Canada, and Japan, as complainant, have already retaliated, with the United States or the European Union being the respondents in the cases. Some members were authorized to retaliate, but did not do it, basically due to the negotiation of an agreement with the respondent party: Brazil, Chile, India, South Korea, Mexico, Ecuador, and Antigua and Barbuda.

Source: World Trade Organization (WTO) and the Ministry of Development, Industry, and Foreign Trade (MDIC), adapted from Oliveira (2010).

On domestic actors' perceptions about the impact of multilateral rules and the efficacy of WTO for settling disputes, Jackson (2002) states that when companies start to accept the efficiency of a system guided by rules and start to consider it in their strategic planning, one can see that, generally, these companies see value in the system, even if they feel that they could miss opportunities in their own countries. For this author, the way the rules are implemented, also have an impact on citizens and such an impact gets higher when the domestic regulation policies starts to be under the rules of the multilateral trade regime.

While analyzing the multilateral trade regime, referred by him as system, Moore (2003) reiterates that: "This is a precious system, the jewel in the crown of multilateralism. However, it is vulnerable and can only thrive with the continued support of Member governments, who must be willing to abide by the rules they agreed upon". As the author emphasizes, the fact is that the multilateral trade regime, with all its imperfections, gives more power to negotiate to countries with smaller economies than they would have outside the regime. Multilateral negotiations allow weaker countries to add their influence and common interests, as opposed to bilateral or even regional negotiations, where the weaker economies do not have any real influence in the negotiating process.

### **3 THE EFFECTS OF INSTITUTIONALIZATION ON THE POLITICAL-NEGOTIATING DIMENSION OF THE MULTILATERAL TRADE REGIME**

The institutionalization process in political-negotiating dimension of the multilateral trade regime, related to the formation of new coalitions between developing countries in the new negotiating context of the multilateral regime, can be observed in the fact that developing countries accepted the challenge received by them during the Uruguay Round to actively position themselves in the negotiations of new rules and agreements, basically by pressure from the United States, leaving a free rider position in the context of institutional change gave important incentives for developing countries to give a new structure to their regime integration strategies and to reposition themselves in multilateral trade negotiations.

According to the analysis of Das (2007), the Uruguay Round was a turning point in the participation of developing economies in multilateral trade negotiations, which reflected extensive consolidation of tariffs, participation on agreements on measures to liberalize restrictions on different types of trade and general acceptance of rights and obligations with full adhesion to the newly-created WTO.

According to Baldwin (2010b), two unintentional consequences of the Marrakech Agreement are fundamental to examine the institutionalized multilateral trade regime. The first consequence is relative to the constitution of the single undertaking and the reinforcement of the dispute settlement system and

its effects on the formation of groups and coalitions of interest among developing countries. Regarding this aspect, Baldwin (2010a) says that due to the single undertaking and the Dispute Settlement Understanding (DSU), developing countries would have to oblige the rules negotiated. Consequently, they would object to the issues that threaten their interests. Since the final package of the Uruguay Round included deeper rules on barriers relative to domestic regulation themes, and DSU gave them enforcement capacity in the regime institutionalization process, new interest groups were politically activated.

A second unforeseen consequence from the Uruguay Round, considered as a critical juncture from which the institutionalization of the regime took place, is referred to the principles of reciprocity and consensus and its relation with the limited size of many developing economies. For Baldwin (2010a), in this context, an incentive for building defensive blocks was created, as already observed in the Uruguay Round, with disincentives for offensive positions due to the reduced bargain power from developing countries. The principle of reciprocity and the size of most developing markets limited their capacity of demanding the opening of markets in other countries. Therefore, there was little to gain with offensive coalitions. In Baldwin's analysis (2010a), the principle of consensus, on the contrary, gave an increased block and bargain power to the coalitions of developing countries and increased their defensive clout.

Although the creation of coalitions is not new to trade negotiations, a proliferation and formalization of these coalitions took place since the creation of the WTO, and particularly after the launch of the Doha Round in 2001. The informality that marked the GATT's coalitions gave place to the formation of coordinated, formalized, and publically visible groups. According to Patel (2007), the building of coalitions emerged as a capital element of WTO's consensus construction process. Under the rule of GATT, coalitions of developing countries were discouraged and seen as a threat to the multilateral trade regime. During the Doha Round, some members and the secretariat of WTO deliberately included the coalitions in the decision-making process, acknowledging its representative function. For Patel (2007), the institutionalized coalition construction network became a dominant means for managing the complexity that surrounds the search for a consensus in multilateral negotiations with over 150 countries.

While highlighting the changes in the format of developing countries negotiating coalitions at the WTO and the GATT, Patel (2007) identifies four factors of differentiation.

- 1) While during the GATT era developing country groups worked for the re-creation of the whole trade system and for the establishment of a new international order, in the period after the creation of the WTO, coalitions

are worried about working in the existing trade structure, being proactively involved in negotiations.

- 2) The bargain scheme through coalitions became more formal, with many groups sharing technical capacity and developing common negotiating platforms, differently from previous coalitions, which were basically structured from informal exchange of information.
- 3) The coalitions performed a more prominent role, with public visibility through declarations, press conferences and media campaigns.
- 4) While under the auspices of the GATT, coalitions of developing countries were positioned in an apprehensive and reticent manner regarding the role of civil society, at the WTO they have made attempts to get close to civil society actors in order to develop complementary analysis and to be part of campaigns and advocacy networks.

With the proliferation of simultaneous alliances among developing countries and the engagement of coalitions for exchanging information and coordinating positions have increased the political negotiation in the multilateral trade regime, mainly since its institutionalization (Narlikar, 2003). For Damico (2007, p. 1), “Coalitions act as an efficient counterweight that allows developing countries to better face the challenges of negotiation and to combine their technical knowledge in an efficient manner that offer competent answers to an increasingly sophisticated debate”.

Among the negotiating coalitions created in the multilateral trade regime since the Tokyo Round, the G-20 can be mentioned as an interesting example, created in 2003 by developing countries.<sup>7</sup> The group is characterized mainly as an anti-subsidy-defensive coalition aiming to pressure for the reduction of agriculture protections in developed countries, mainly the United States, Europe and Japan. Considering the importance of agriculture and the development agenda for the Doha Round, as well as the political articulation of its members, especially Brazil and India, the G-20 gained first order status in the new WTO's negotiation table (Narlikar and Tussie, 2004). On the importance of the G-20 for the organization and actions of positions of developing countries in the agriculture negotiations at the WTO, Lima and Hirst (2009, p. 14) say that:

(...) the formation of the G-20, in the Doha Round, was the first movement for returning to the themes of the development agenda of the post-Cold War period,

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7. G-20 gathers 23 members of WTO: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Philippines, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, South Africa, Thailand, Tanzania, Uruguay, Venezuela, and Zimbabwe.

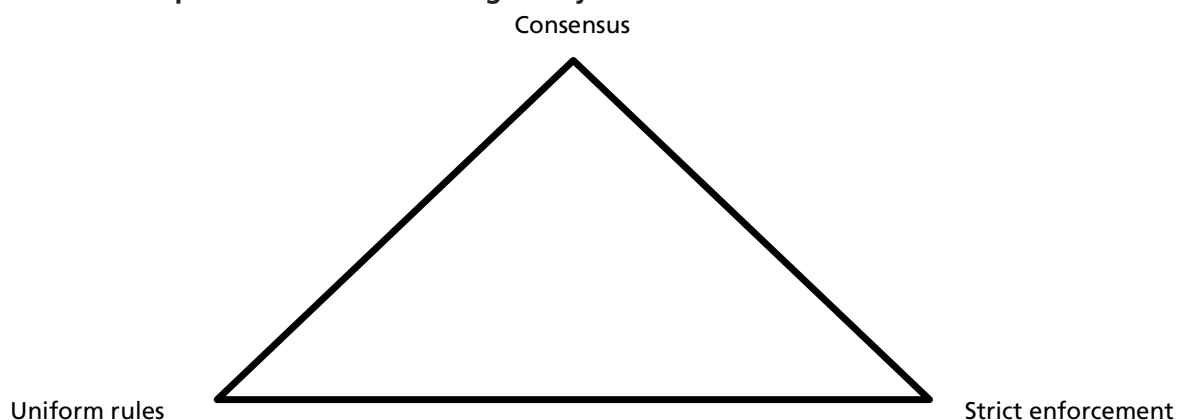
after the debt and fiscal crises of the Third World, as well as the loss of political dynamism of the G-77. Its activities were crucial for the renewal of the India-Brazil partnership in the coordination of the collective action regarding agricultural interests in developing countries.

One should also notice that the G-20 coordination gathers countries with very different agricultural production and competitiveness, which are based in equally distinctive interests and negotiating positions even in agriculture itself. Brazil, China, and India, for example, leaders of the coalition and new guests for the Green Room agreements with great trade powers, have different interests in many points of the negotiation agenda, as it was made clear in the last important impasse of the Doha Round, in 2008, when China and India did not accept the agreement on agriculture safeguards that would limit the use of this protection mechanism. Therefore, the G-20 is marked by an important heterogeneity among their members, and it finds a converging agenda of interests almost exclusively in demands for reducing agricultural subsidies in developed countries, what limits the group's action.

Considering the negotiation agenda in the new configuration of the multilateral trade regime, Baldwin (2010b) sees in some strong elements of the institutionalized regime also as one of its weak points: the difficulty in getting to a conclusion of multilateral trade negotiations, as seen in the Doha Round, negotiated for almost ten years. Baldwin (2010b) presents the impossible decision-making trinity of the WTO: to reach a consensus on the negotiations among its 159 members, to be able to create uniform and universal rules and to ensure the strict enforcement of the existing rules. Figure 1 shows the triangle formed by Baldwin's impossible trinity (2010b).

FIGURE 1

**The impossible decision-making trinity of WTO**



Source: Baldwin (2010b).  
Elaborated by the author.



According to Baldwin (2010b), the “steamroller mechanism” and the “do-not-obey-do-not-contest MFN principle” that existed at the GATT ensured an efficient and easy functioning as a negotiating forum. The regime would work, considering the rearrangement of political economic forces present in each country, so that the protection that was previously seen as great in a country could be removed. On the other hand, the fact that few developed countries defined the agenda, based on their interests and developing countries were able to benefit from the liberalization measures adopted by the other members without having to open their market themselves, made a consensus easier at the negotiating table.

Applying Baldwin’s argument on the impossible trinity for the analysis of the impasses of the Doha Round, the general picture shows that to ensure the maintenance of a strict enforcement, either non-uniform rules would have to be created, which would make the universal aspect of the regime fragile, or the necessity of consensus (an important element for a more democratic characterization of the trade regime) would have to be eliminated to allow the conclusion of the negotiations. No matter what the choice is, the active participation of developing countries in the context of changes of the international order, both in the economic and the political terms, brings complexity to the possibility of an eventual reform of norms and rules of the multilateral trade regime, if really it would be seen as politically necessary by its members.

Regardless of the difficulty of getting to a consensus in the creation of uniform rules in the regime, with its institutionalization, especially in its legal-diplomatic dimension, there was an increase of interest in enlarging the multilateral trade agenda, under the auspices of the WTO. This particularity of the regime is seen as an important feature in the international economic agenda, reinforcing incentives for participation in the multilateral trade regime. In the new trade agenda, issues such as exchange rates and international trade, biofuels and environment, trade and labor, among others, should be present. For Mattoo and Subramanian (2009) “The trade agenda needs to be enlarged to include a discussion of all trade barriers – on imports and exports – and biofuel policies, including tariffs on imports”.

As analyzed by Thorstensen (2011), although there exists some WTO agreements that regulate the relation between exchange rates and trade, such as Articles XV and XXIII of the GATT, the Agreement on Customs Valuations and the Agreement on Subsidies, for example, the WTO and its members refused to go forth with the issue on the effects of exchange rate policies in international trade. Recently, Brazil has sent a proposal, partially approved, to a Working Group of the WTO in order to analyze the relation between international trade and exchange rates in that institution. As a result of the Brazilian proposal, the WTO hosted, in March 2012, a seminar to examine the relation between exchange rates and trade with experts, businessmen, and

representatives of member countries, starting an opening of the organization to the discussion on such important matter.

#### 4 FINAL REMARKS

As presented in this paper, the institutionalization of the multilateral trade regime helped create new negotiation schemes, new coalitions and ways for political actions on trade disputes, with an increased participation and responsibility of developing countries in its institutional and political structure, modifying the regulation of international trade and the incentives for a country's trade negotiating strategies.

A reinforcement of trade multilateralism can be observed in the past decades, specially based on its legal-diplomatic dimension, as the focus of foreign trade policy actions, especially for developing economies. Many of these started to rethink the role of multilateralism in their trade negotiating strategies and in their foreign trade policies in general, as reflected in their increased leadership both in the legal-diplomatic dimension, with participation in the DSB, and in the political-negotiating dimension, in the Doha Round negotiations.

However, one must remember that developed countries, especially the United States and the European Union, continue to have in the multilateral trade regime an important locus of their trade negotiating strategies, being the main players at the DSB and at the negotiations for the creation of new trade rules in the Doha Round. Therefore, it can be understood that the institutionalization of the multilateral trade regime generated incentives for developed and developing countries to increase the importance of multilateralism in their trade policy strategies.

On the one hand, the gain of power effectiveness with the DSB, based on international law, is seen as essential for change in the multilateral trade regime and had important effects on the increase of participation of developing countries in trade disputes. A rule-oriented dispute settlement system gives more efficacy and legitimacy to the regime itself. With the strengthening of its enforcement mechanisms, the interest in enlarging the multilateral trade agenda has equally increased, including with the initiatives of developing countries, as recently observed in Brazilian diplomacy attempts of bringing the debate on the effects of exchange rate fluctuations on international trade to the multilateral trade regime.

On the other hand, although political coalitions are not new in trade negotiations, a proliferation and formalization of these coalitions took place since the creation of WTO, mainly among developing countries, showing that the institutionalization process of the regime broadened the political fight and created an stimulating environment for the composition of joint strategies based on common interests. The G-20 may represent a synthesis of this movement,

despite eventual conflicts of interest and positions within the group, denoting a change in the negotiation table at the WTO which also reflects transformations of the world economy and politics. Therefore, the reinforcement of rules with the institutionalization process of the multilateral trade regime generated changes in coalition strategies and negotiations in the regime. However, power politics, the rules of power, continue to be important for the analysis of the negotiating dynamics of new agreements and trade disputes in the multilateral trade regime.

With global participation, extensive rules and a court to deal with international trade disputes, the WTO is more central than ever for international economic relations, as mentioned by Lamy (2010). The Doha round and its extensive and complex agenda of negotiations consolidates the institutionalization process of the multilateral trade regime, equally sowing the seeds of a new governance of the world trade order. The difficulties in concluding the negotiations of the Doha Round make it clear, however, that the increased interest of countries in multilateralism, reflects in their strategies of foreign trade policies, creates new challenges to the construction of consensus in multilateral negotiations and tends to reduce the rhythm of its expansion. Therefore, this aspect must be understood as the result of the contemporary regime institutionalization process, not despite of it.

The future multilateral trade regime will have to find answers to a series of global trade challenges that are not sufficiently framed by the current rules of the game. But it contains the institutional basis for the negotiation and implementation of those rules. Regardless of the any adjustments in decision-making procedures that should be considered in the multilateral trade regime, the regime institutionalization process, both in the legal-diplomatic and in the political-negotiating dimensions, increased its roles and importance in the regulation of international trade in the last decades, redefining the incentives for trade negotiating strategies of countries, with emphasis on trade multilateralism.

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