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Centro do Comércio Global e Investimento

FUNDAÇÃO GETULIO VARGAS
EESP
Escola de Economia de São Paulo

Brazil:

exploring new paths with the EU and the US

(First Draft)

This research was sponsored by AMCHAM-BR.

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October 2014

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SUMMARY

SUMMARY AND CONCLUSIONS 5
SECTION 1 12
I. INTRODUCTION 12
II. TRADE PROFILE 16
II.1. Trade flow: aggregate factor 18
II.1.1. Commodities 18
II.1.2. Semi-Manufactured 19
II.1.3. Manufactured 21
II.2. Trade Balance 22
III. TARIFF PROFILES 27
III.1. Brazil 27
III.2. US 30
III.3. EU 34
IV. TRADE DEFENSE 37
IV.1. Antidumping 37
IV.2. Subsidies and countervailing measures 41
IV.3. Safeguards 45
V. INVESTMENTS
VI. REGULATORY BARRIERS 52
VI.1. Technical Barriers to Trade 52
VI.1.1. The CTBT 54
VI.1.2. TBT and the DSU 61
VI.1.3. Precautionary Principle 61
VI.2. Sanitary and Phytosanitary Measures 63
VI.2.1. The SPS Committee 64
VI.2.2. SPS and DSU disputes 66
VII. NEW GENERATION PREFERENTIAL TRADE AGREEMENTS AND MEGA-AGREEMENTS 69
VII.1. WTO-plus and extra rules 72
VII.2. Korea-US FTA and Korea-EU FTA 73
VII.3. EU-Canada FTA 81
VII.4. TTIP and TPP negotiations 82
ANNEX I 90
REFERENCES 92

INDEX OF TABLES

TABLE 1: BRAZIL TARIFF PROFILE (2012) (%) 27
TABLE 2: IMPORT TARIFFS BY PRODUCT GROUPS (2013) (%) 28
TABLE 3: PREFERENTIAL TARIFFS WITHIN APTR-04 30
TABLE 4: US TARIFF PROFILE (2012) (%) 31
TABLE 5: IMPORT TARIFFS BY PRODUCT GROUPS (2013) (%) 31
TABLE 6: EU TARIFF PROFILE (2012) (%) 34
TABLE 7: IMPORT TARIFFS BY PRODUCT GROUPS (2013) (%) 35
TABLE 8: ANTIDUMPING - INVESTIGATIONS INITIATED AND MEASURES APPLIED AGAINST BRAZIL, EU, AND US (1995-2013) 39
TABLE 9: ANTIDUMPING - INVESTIGATIONS INITIATED AND MEASURES APPLIED BY BRAZIL, EU, AND US (1995-2013) 39
TABLE 10: ANTIDUMPING - INVESTIGATIONS INITIATED AND MEASURES APPLIED: REPORTING MEMBER VS EXPORTING COUNTRY (1995-2013) 39
TABLE 11: ANTIDUMPING - INVESTIGATIONS INITIATED AND MEASURES APPLIED AGAINST BRAZIL, EU, AND US (1995-2013) 40
TABLE 12: ANTIDUMPING - INVESTIGATIONS INITIATED AND MEASURES APPLIED BY BRAZIL, EU, AND US (1995-2013) 40
TABLE 13: COUNTERVAILING MEASURES - INVESTIGATIONS INITIATED AND MEASURES APPLIED AGAINST BRAZIL, EU, AND US (1995-2013) 43
TABLE 14: COUNTERVAILING MEASURES - INVESTIGATIONS INITIATED AND MEASURES APPLIED BY BRAZIL, EU, AND US (1995-2013) 43
TABLE 15: COUNTERVAILING MEASURES - INVESTIGATIONS INITIATED AND MEASURES APPLIED: REPORTING MEMBER VS EXPORTING COUNTRY (1995-2013) 43
TABLE 16: SECTORAL DISTRIBUTION OF COUNTERVAILING MEASURES - INVESTIGATIONS INITIATED AND MEASURES APPLIED AGAINST BRAZIL, EU, AND US (1995-2013) 44
TABLE 17: SECTORAL DISTRIBUTION OF COUNTERVAILING MEASURES - INVESTIGATIONS INITIATED AND MEASURES APPLIED BY BRAZIL, EU, AND US (1995-2013) 44
TABLE 18: SAFEGUARD INITIATIONS AND MEASURES APPLIED BY BRAZIL, EU, AND US (1995-2013) 46
TABLE 19: SAFEGUARD INITIATIONS AND MEASURES BY SECTOR (1995-2013) 47
TABLE 20: GENERAL CONTENT OF US AND EU NEW GENERATION PTAS 70
TABLE 21: DESCRIPTION ON WTO-PLUS PROVISIONS 72
TABLE 22: DESCRIPTION ON WTO-EXTRA PROVISIONS 73

SUMMARY AND CONCLUSIONS

Present global trade transformations must be analyzed from a new paradigm. The creation of new technologies, the increased mobility of capital flows, the speed of financial transactions, the reduction of communication and transport costs, among others, directly shape the forms how global trade is operating now. A new fact is that competitiveness of various sectors of the economy is closely related to the inclusion of a country in preferential trade agreements and the integration of its production in global value chains around the World.

Trade negotiations in the multilateral level under the WTO – World Trade Organization no longer reflect the current needs of international trade, especially because the impacts of such paradigm shift on trade activities are strong and drastic, leaving no more time for the successive postponements of multilateral decisions. Since the 90´s, the great majority of countries opted to pursue an aggressive strategy of preferential trade agreements. With the successive impasses of the Doha Round in the WTO, several partners became conscious of the difficulties encountered by this Organization to adapt the old trade rules and instruments to the new reality. They decided to launch bilateral or regional preferential trade agreements to expand regulation in topics which are already covered by multilateral rules or even to regulate new trade topics.

The analysis of all the issues included in the new generation of agreements clearly shows that a new set of rules are already agreed and accepted by many trade partners, and they are defining the profile of a new structure of preferential agreements, looking for global competitiveness and given more space for consumer demands.

In order to negotiate rules for the XXI Century, the United States (US) and the European Union (EU), along with traditional preferential negotiations, decided to launch a new profile of PTAs, the mega-trade agreements, centered in the TPP (Trans-Pacific Partnership) and the TTIP (Trans-Atlantic Trade and Investment Partnership), which enclose half of World trade. More than the reduction of tariffs, these mega-agreements aim to define a new structure and modalities for all kinds of non-tariff barriers to trade, along with new rules for important trade related issues.

The recent evolution of trade regulation clearly shows a new profile of issues to be negotiated. The old framework includes negotiation through the balancing of market access by tariff and quotas concessions and services liberalization. Now this game is over. The new frameworks are the negotiation of new regulatory structures for non-tariff issues such as facilitation of customs procedures, technical regulations and standards, sanitary and phytosanitary measures, intellectual property, investment, competition, environment and climate change, labor standards, energy, e-commerce, among others.

The exam of not only this set of rules, categorized as WTO-plus and WTO-extra, since evolving from the WTO basis and exploring new issues, but also the available material about TTIP and TPP, is offering a new research area – that of a new trade regulatory framework. As old instruments of trade such as tariffs, rules of origin and trade defense are being destroyed by global value chains, new instruments of protection are being created disguised in measures to protect the consumer, the welfare of animals, the content of energy and carbon emissions, the content of sugar, salt and fat in food, bio-sustainability in plantations and forests, among others. To guarantee these new consumers demands, a new set of rules are being negotiated based on mandatory technical regulation, voluntary technical standard, and an explosion of private standards materialized through a myriad of colorful labeling schemes, stablished by non-governmental organizations. Although exploring the new demands of consumers, these standards based on precautionary or prevention principles are imposing a discriminatory set of rule upon the international trade. The EU and the US are frontrunners in this new trade framework. This is the new World of regulatory barriers that are engendering already a new World regulatory war!

Nowadays, preferential agreements are chosen as the best fora to negotiate these issues. The most relevant points to be discussed in any new preferential agreement are related to rules concerning regulatory coherence. More than tariffs, antidumping and rules of origin, the negotiation of test equivalence, agreements on mutual recognition, accepted list of certification institutes and accreditation process are much more relevant in any negotiation.

Brazil, presently, is facing a double dilemma. The first is that the country has opted to prioritize multilateral negotiations and to concentrate its preferential options in the expansion of Mercosul (Argentina, Brazil, Paraguay, Uruguay, Venezuela (in a transition phase) to integrate South America. Brazil had also some agreements with other developing countries, under its South – South strategy, but these agreements have small economic impact. The priorities of its Foreign Trade Policy were toward South America and Africa. This policy isolated Brazil from one of the most important trends of global trade, the one related to the construction of a network of preferential agreements.

The second dilemma faced by Brazil is its choice to base development on a consumer-led model, prioritizing its internal market with the expansion of credit and several programs of income distribution. This option raised a significant portion of the Brazilian population to the middle income level. Services areas boomed and industry was protected from competition through tariffs and incentives to compensate increasing costs in infrastructure, labor costs and tax burden. This policy retarded Brazil in incorporating another new trend in global trade, that of the integration of its industry and services to global value chains. The option to implement an industrial policy to support imports of intermediary goods, with technological content to added more value mainly through services, to export the final product was not considered as priority by Brazil. The consequence is that Brazil is one of the less integrated countries in the global chains network.

Given the serious impasses confronting the WTO, where even the Facilitation Agreement approved in Bali in 2013 could not be implemented, Brazil has a leading role in redirecting the WTO to explore new paths, such as plurilateral agreements and the restructuring of its decision process. It is imperative to rethink its role in rescuing the Organization from irrelevance in the multilateral system. One of the new priorities of the WTO will be the creation of a new mechanism to supervise the impacts of preferential and mega-agreements on third countries and the introduction of another mechanism to understand the impacts of global chains on the traditional trading rules and to propose the negotiation of new regulatory framework.

However, the new challenges confronting the international trading system will impact Brazil seriously: its isolation from the network of trade agreements and its non-integration in the global or regional value chains networks. These challenges are already seriously affecting Brazil competitiveness.

The year of 2015 will be a year of new options and definitions. The numbers and evidence are clear in showing that the economic model adopted by Brazil should be revisited. In terms of its External Trade Policy and its Industrial Policy, these two challenges should be reanalyzed and new solutions should be proposed.

The Report

The main objective of this Report is to exam alternatives to the present External Trade Policy adopted by Brazil. Facing the impasse of the WTO after the Bali agreement, the isolation of Brazil in the network of preferential agreements and its low integration in the global chains network, Brazil has not only the alternative to expand its trade toward South America but also to explore new pathways.

The first option is to accelerate the conclusion of the preferential agreement between Mercosul and the European Union. Started in 1995, this negotiation has lost momentum, not only because of the political will of the EU facing a deep economic crises, but also because Brazil, more interested in South America. The complex situation of Argentina offers a sensitive question to be solved, but if Brazil, Paraguay and Uruguay regain impetus to negotiate, Argentina can be accommodated through negotiated flexibilities. Venezuela is still in a transition phase to Mercosur. Against a refusal of any part, Brazil can always choose the alternative to negotiate as a single country. The necessary step will be to renegotiate the Mercosul Decision 32/00 that impedes any part to negotiate new agreements without the other parts.

The second option derives as a consequence from a highly probable agreement between the US and the EU, under the mega-agreement TTIP. With the materialization of this agreement, the challenge facing Brazil is whether it makes any sense to make an agreement with the EU and not with the US. For Brazil, in the present World scenario, there is no much trade logic in negotiating an agreement with the EU without negotiating another one with the US, since both countries will be negotiating with the TTIP framework in mind. The gains and costs to implement the rules and instruments negotiated with the EU will certainly reinforce the gains and dilute the costs of implementing the new rules and instruments negotiated with the US.

This report presents two sections:

Section I will enable a greater understanding of the complexity of the issues related to trade negotiations. The standpoint is the position where Brazil currently toward the complexities envisioned regarding the EU and the US. In its first Section, the main features of Brazil, EU and US regarding trade flows and main products are analyzed, followed by the tariff profiles, trade defense and regulatory barriers. Finally a comparison of the so-called new generation preferential trade agreements will be realized and some regulatory challenges will be explored, discussing new characteristics from the mega-agreements.

Section II will present the results of the simulation modelling, analyzing possible outcomes offered by the conclusion of trade agreements between Brazil and EU and between Brazil and the US. The impacts of TTIP on Brazil will also be analyzed.

In more details:

Chapter I gives a brief introduction of the new trends in external trade policies: the multiplication of preferential trade agreements and the integration of global or regional chains.

Chapter II shows the importance of EU and USA in the Brazilian trade agenda, examining trade flows with emphasize to the main sectors.

Chapter III sets out the tariff profiles of the countries analyzed. Except for a few sectors, applied tariffs are already low, which indicates that the greatest barriers to trade nowadays are not directly related to tariffs, but to the adoption of other non-tariff barriers.

Chapter IV deals with trade defense strategies adopted by the EU, US and Brazil. The most used mechanism is antidumping, followed by subsidies and countervailing measures, and finally safeguards.

Chapter V summarizes the picture for investments, considering flows and stocks of foreign direct investments.

Chapter VI contemplates the performance of the three countries with regard to regulatory barriers, especially technical, sanitary and phytosanitary ones. On the one hand, the US and EU have been active in deploying non-tariff measures and in raising questions against these measures in the WTO Committees on TBT and SPS. These specific trade concerns are related to measures adopted by countries, particularly with respect to foods, chemicals, and electric and electronic equipment; animal health and food safety. On the other hand, Brazil had a more discrete participation in the activities of the committees, with notifications concentrated on its major imported products, as chemicals, mechanical equipment, electrical and electronic equipment, motor vehicles and parts, and food safety.

Chapter VII explores the main issues negotiated by the new generation of preferential agreements. It shows that both the US and EU have been noticeable in defending their interests in various new topics related to international trade. By including mechanisms that advance the liberalization of topics WTO-plus and WTO-extra in preferential trade agreements with the most diverse array of partners, the US and EU strengthen their roles as rule makers for the new international trade framework.

Section II presents the simulation outcomes. This study is intended, therefore, to highlight the advantages and potential bottlenecks that Brazil may have to handle with, when negotiating with both the most relevant developed partners the EU and the US.

The results

The main results can be summarized in the following:

1 – For Brazil, comparing the alternatives of the PTAs with EU and US, the results demonstrate that the two alternatives are positive with important gains in both GDP and trade flows for all the parts. For specific agricultural and industrial sectors there are gains and losses that will call for flexibilities, adaptation and a search for more competitiveness. However, it is also true that many sectors would perceive immediate benefits arising from these agreements, and the potential to increase the long-term advantages should not be neglected.

2 – The PTA with the US is more balanced with gains in the agricultural area and gains and losses in the industrial area. The PTA with the EU is also positive, bringing a concentration of gains in the agricultural sector, impacting the exchange rate and bringing some negative effects over the Brazilian industry. These losses can be neutralized with the inclusion of flexibilities in the negotiation, such as differential tariff cuts, transition periods and adequate rules of origin.

3 – These results have important messages to the External Trade Policy of Brazil. The trade agreement with the EU, so many years on the table, should be concluded. The trade agreement with the US should be reconsidered, due to the potential positive economic effects it can bring to Brazil. In the negotiations, importance should be given not only to tariffs and quotas, but also to regulatory barriers as the ones included in TBT, SPS and private standards, with special emphasis to equivalence and mutual recognition arrangements.

4 – A closer look into the agreements reveals that the US reinforces the tendency of a standard model for PTAs, having signed these agreements with the prospect of establishing commitments and binding obligations among the parties on all issues considered "new". The PTAs negotiated by the EU usually have some flexibility regarding the level of development of its partner, even incorporating asymmetric provisions that may result in exclusions for sensitive sectors or products, preferential access to the EU market, long transition periods and financial assistance etc.

To explore these issues, the Report analyzed FTAs signed by Korea with both the US and the EU. Some interesting points are revealed by regarding the agriculture, the textile and the automotive sectors. These countries negotiated the use of safeguard measures in order to protect these sectors and negotiate a series of flexibility points.

5 – The success of both trade agreements depends heavily on the side of Brazil. Brazil has no more time to wait for internal reforms to be ready to make these agreements. It has no other choices than to face the implementation of these agreement at the same time that it accomplish some important internal tasks, involving both industry and Government: the Brazilian industry should concentrate efforts to promote its competitiveness, and the Government should implement policies to support this goal, such as the reduction of the tax burden, the reduction of energy costs, the qualification of the labor force, and a more conservative fiscal policy in order to promote a more competitive real exchange rate.

6 – In relation to the TTIP, considering only the elimination of tariff barriers, the simulation shows that the impacts to Brazil are not so expressive. However, when the elimination of non-tariff barriers between EU and US is taken into account, the negative impact to Brazil is significant, regarding sectorial GDP and trade flows. More than tariffs, the trade gains of TTIP will be obtained through negotiations of non-tariff barriers including technical barriers, sanitary and phytosanitary measures, trade facilitation, among others, which are, nowadays, the real barriers to trade.

In synthesis, the most important messages revealed by this Report can be so summarized:

Facing the new challenges of global trade of the multiplication of preferential agreements and the integration of trade in the global value chains, a new External Trade Policy should be implemented. The economic interests of Brazil cannot be restrained to South America and Africa. The negotiations with important players such as the EU and the US should receive a new attentive examination. The objective is not only to improve access in these two large markets, but also to integrate Brazil in the global chains of production and trade through imports of intermediaries with more technological content.

The gains for agriculture with each one of these two agreements can be significant. However, because they involve very sensitive areas, they can be reached by steps. This time period will be essential for the necessary reforms in the industrial sectors in search for a new level of competitiveness.

The gains through negotiation with Mercosul as a bloc are not so relevant to justify the costs of its present inertia. Mercosul should not impede the integration of Brazil in the global economy, by new trade agreements and the integration in the global chains. Brazil should support the formation of these chains in South America for the competitive sectors, but sectors with higher level of technological content should be integrated with the EU and the US.

The conclusion of TTIP by EU and US will represent a serious threat to Brazil. Not only it will be left behind in the new trends of international trade, but will lose its role as a participant in the rules making process. Even in the case of postponement for the conclusion of TTIP, private actors in the EU and the US are already negotiating among themselves to approach their positions and advance complementary decisions. What is new behind their cooperative intentions is China and its huge conquest of each other markets.

The present Report advocates that Brazil not only has to deepen its integration of Mercosul and expands its preferences toward South America, but also to give priority to the negotiation of the preferential agreement with more developed countries as the EU and the US, because they are still, the most important sources of innovations and technologies, essential factors to integrate Brazil in the global chains networks. Facing the new engagement between the EU and the US to create a Trans-Atlantic mega agreement, to rebalance the expansion of China, there is no economic and trade logic for Brazil negotiate an agreement only with the EU and not with the US.

Analyzing the present situation facing Brazil and the US one point is clear. There is a clear dissonance between the governmental relations and the social and business relations. While there is a long and evident distrust and bad understanding between the two federal governments, there is a huge and increasing interest in the US by all levels of the Brazilian society. Students, tourists, real estate business, investors and traders are traveling and investing in the US. Even sub-federal governments from the US are leading business missions to Brazil in search of new contacts and opportunities.

One concrete alternative to be analyzed is to center a new phase of economic partnership in the business areas. There is a whole positive agenda to be negotiated by business leaders to improve economic partnerships between the two countries. Among the issues to be contemplated: innovation and technical cooperation, regulatory cooperation in the area of technical, sanitary and phitosanitary measures, and private standards. These can be accomplished by mutual recognition arrangements between business sectors, equivalence assessment in standards settings, arrangements between private laboratories, among others. These barriers are becoming much more relevant than tariffs and can be negotiated by private entities.

Another concrete alternative is to engage in a planned program of integration to the European and American global value chains, importing intermediary goods to be re-exported to these markets. This option will encourage a new search for competitiveness.

Facing the new reality that is shaping international trade, the present inaction of Brazil can represent a serious risk to its own future development.

There is no time to waste. It is time to act!

SECTION 1

I. INTRODUCTION

International trade has been marked by two important and powerful trends.

The first one is the multiplication of preferential agreements in bilateral and regional level. Until now, the WTO has been notified by 585 PTAs, of which 379 are in force. Currently, there are no more countries that are not yet part of these agreements. With the successive impasses of the Doha Round of WTO negotiations, the alternative envisaged by major World economies like the US, EU, China and India is has being to seek the conclusion of PTAs with numerous partners as a way to consolidate and gain access to new markets in the areas of goods, services and investments.

The second one is the integration of production and trade in global value chains. With the progress of new technologies, countries are concentrating in importing intermediaries goods and exporting final products through the addition of value by services or components of high technological content. The era of production and trade of complete goods is being substituted by the era of integrated production and trade of intermediaries, innovation, design, logistic, marketing and distribution.

Going against these trends, Brazil and its Mercosul partners opted to continue favoring the WTO as the principal forum for trade negotiations and concentrated their efforts on completion of the Doha Round. In the case of Brazil, its foreign trade policy has been clearly marked by the support of the strategic importance of preferred alliances with developing countries (South America and Africa) at the expense of diversification and the promotion of deep integration agreements with large trading partners such as the US and the EU, sources of high technologies and innovations.

Brazil is a latecomer to the global chains strategy, figuring as one of the least integrated countries in the trend. With the exception of some sectors as aerospace and automotive, this as a regional chain, Brazil is still pursuing a path of importing to export, the core of global chains.

The present study aims to shed some light on the importance of negotiating PTAs that includes non-tariff barriers with a larger number of trading partners, mainly those countries which possesses technological potential to help Brazil to achieve a more competitive economy and integrate its economy not only to the World of preferential agreements, but also to the World of global value chains.

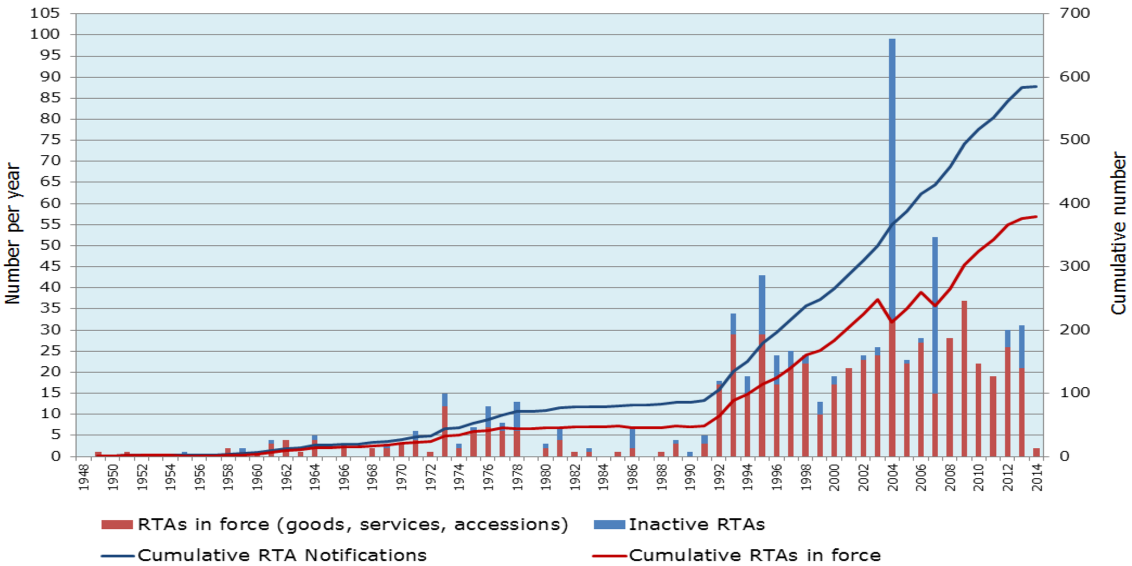
The present study advocates that Brazil not only has to deepen its integration of Mercosul and expands the preference to South America, but also to give priority to the negotiation of the preferential agreement with the EU. However, facing the facts of new engagements between the EU and the US to create a Trans-Atlantic mega agreement, to rebalance the expansion of China, there is no economic and trade logic not to enter in a new negotiation to create a preferential agreement with the US.

PTA Proliferation

International trade is under a significant and complex change process. It represents a great challenge to Brazil. The low speed of trade rules negotiation dead-lock in multilateral negotiations under the WTO has lead major players in international trade, notably the US and the EU to focus on the negotiation of preferential trade agreements where they could advance trade rules, lower trade barriers and promote integration with their partners, signalizing the rules they want for the present century.

As the WTO graphic shows, there has been a huge increase in the number of preferential trade agreements in the past years, pointing to the importance that these agreements have acquired in the regulation of international trade flows.

Figure 1 – Preferential Trade Agreements notifications (1948-2014)



Source: WTO Secretariat.

The first generation of PTAs had as objective the reduction or the elimination of tariffs in goods between its partners. The following generation of PTAs has promoted, besides tariff reductions, the negotiation of rules on subjects not fully dealt by the multilateral system, establishing a relevant framework of trade regulation on the regional level, that affected not only the partners of the respective PTA, but also influenced multilateral negotiations. The current generation of PTAs keeps the trends of the previous agreements, but in a deeper process. These deep-integration PTAs promote a greater coordination and harmonization between trade partners, facilitating the establishment of production chains on the regional level, contributing to establish the regulatory framework the major phenomenon of trade in recent times: the expansion of trade through regional and global value chains.

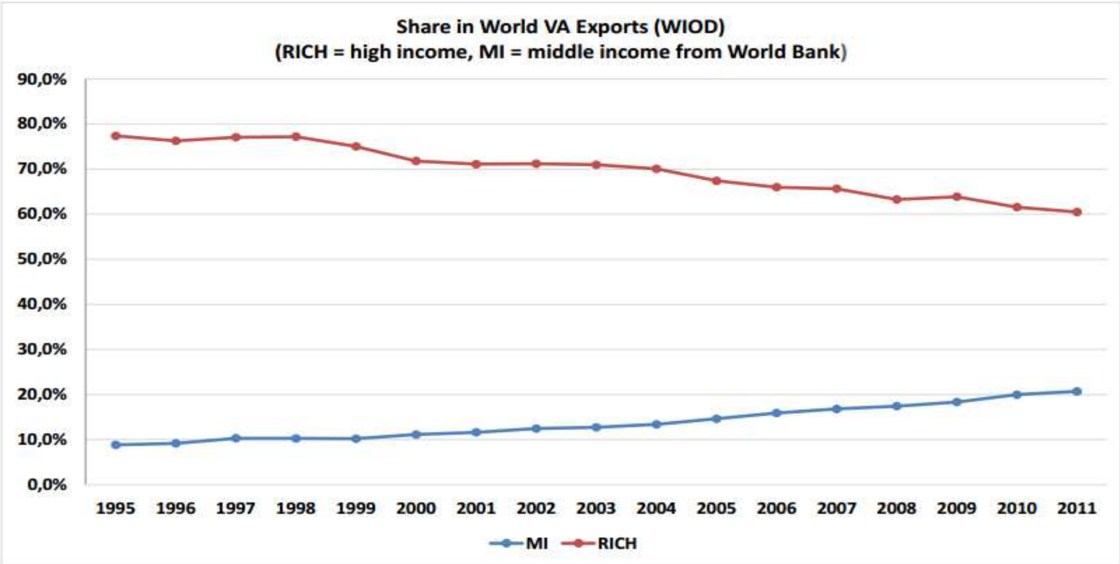
In the new generation preferential agreements, tariffs are not the main target. They have become genuine hubs for the regulation to support global trade, in pursuit of an increasingly deep integration. Their proliferation has resulted in the creation of differentiated regulatory regimes that despite reproducing basic rules of the WTO (trade defense, technical barriers, sanitary and phytosanitary measures (termed "WTO in"), contain others that make stricter provisions relating to intellectual property and give a more liberalizing bias to negotiations on trade in services (WTO plus). These PTAs also deal with areas not covered by the WTO, such as rules of promotion and protection of foreign investment, competition (antitrust and cartels), regulatory coherence, environment, climate change, e-commerce and labor standards (WTO extra).

Brazil and the Global Value Chains

Global value chains can be defined as the full set of activities required to produce and deliver the product to the final consumer. The qualification of this process as a value chain stems from the fact that production take place in stages that aggregate value added. At each stage of production, each firm acquires its inputs and employs factors of production (capital, land and labor). The remuneration of these factors will compose the value added. This process is repeated at the next stage in such a way that the value previously added is transformed into cost to the next producer. The set of steps may be performed within a firm or between firms. If the set of linked firms are located in more than one country, then we will have a value chain that is global.

The recent interest in the economics literature by this new production paradigm has occurred for two main reasons: i) because trade flows arising from the outsourcing of production stages are intensifying; and ii) because such flows are occurring between poor and rich countries. In this context, there is an indication that this new relationship has been beneficial to developing countries, as there is an increase in the World income and exports share earned by emerging economies in recent decades.

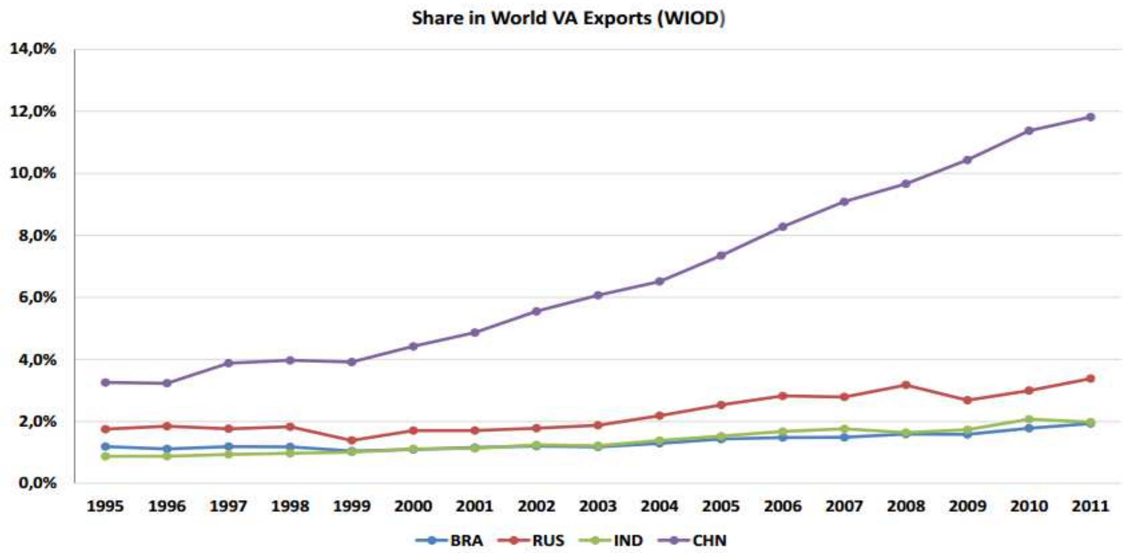
Figure 2 – Share in World Value Added



Source: WIOD

This result suggests that the fragmentation of trade has been beneficial to developing countries. If the case of the BRIC, and if we consider Brazil, it is evident that Brazil presents the worst result in this group.

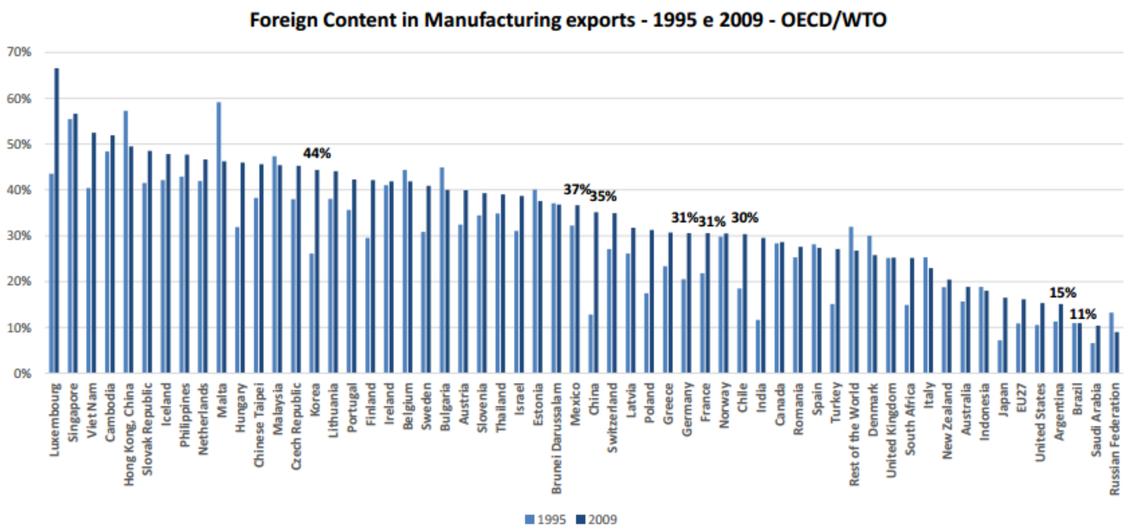
Figure 3 – Share in World Value Added Exports



Source: WIOD

Observing these numbers, one conclusion is that Brazil is not following the direction of a greater fragmentation of production in the last decades. In accordance with this path, Brazil is the one showing the weakest backward linkages in a sample of countries studied by OECD, suggesting its low levels of connection to international supply chains.

Figure 4 – Foreign Content in Manufacturing Exports



Source: OECD/WTO

In summary, the global trade has underpinned a growing fragmentation of productive activity. However, Brazil does not seem to be inserted in this movement. This should be a great concern for the country since, nowadays, goods are bundles of many nations inputs and competitiveness is no longer derived only within the domestic border.

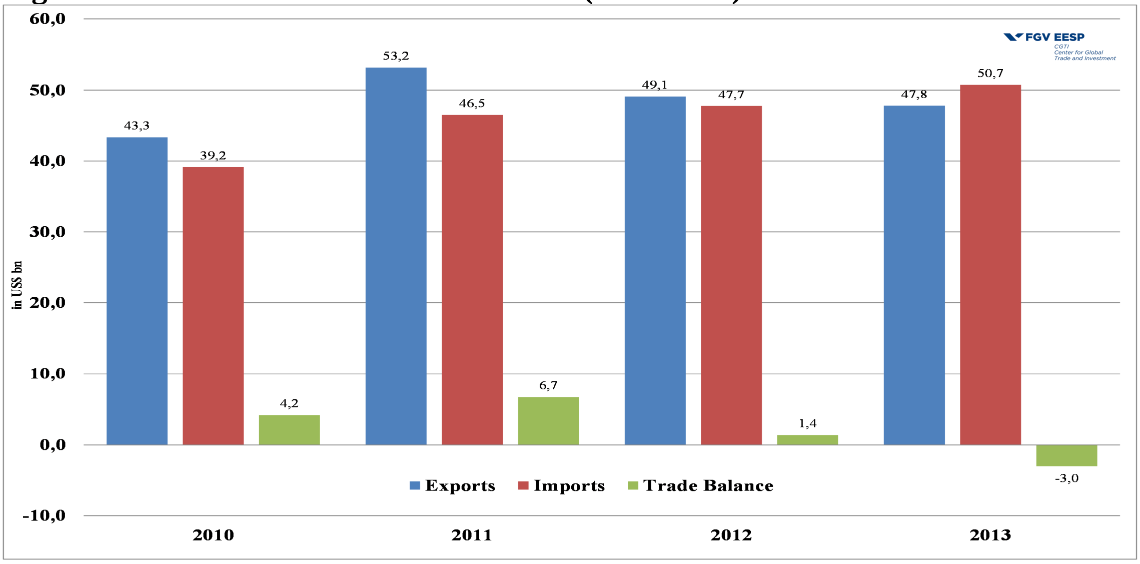
In this sense, Brazil is losing a great development opportunity as can be seen comparing Brazil with the Asian and East-European countries.

II. TRADE PROFILE

The first step is to analyze the current trade scenario involving Brazil and its major partners. In this regard, the US and the EU are two of the top five trade partners of Brazil[1].

In the past four years, the EU remained as a larger market for Brazil than the US. Graphic 1 below shows that our exports to the EU in 2010 were US$ 43.3 bn and US$ 47.8 bn in 2013. However, the rise of imports from US$ 39.2 bn in 2010 to US$ 50.7 bn in 2013 has reversed the trade balance in favor of Europeans. In 2010, Brazil had a positive trade balance of US$ 4.2 bn and, in 2014, a deficit of US$ 3.0 bn with the EU.

Figure 5 – Trade Flow: Brazil and the EU (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

For the US, the situation is also of deficits. From 2010 to 2014, Brazilian exports grew US$ 5.4 bn. However, Brazilian imports, which had already surpassed exports, rose from US$ 27.0 bn in 2010 to US$ 36.0 bn in 2014. The result is a trade balance deficit of US$ 11.4 bn in 2014. See Graphic 2 below:

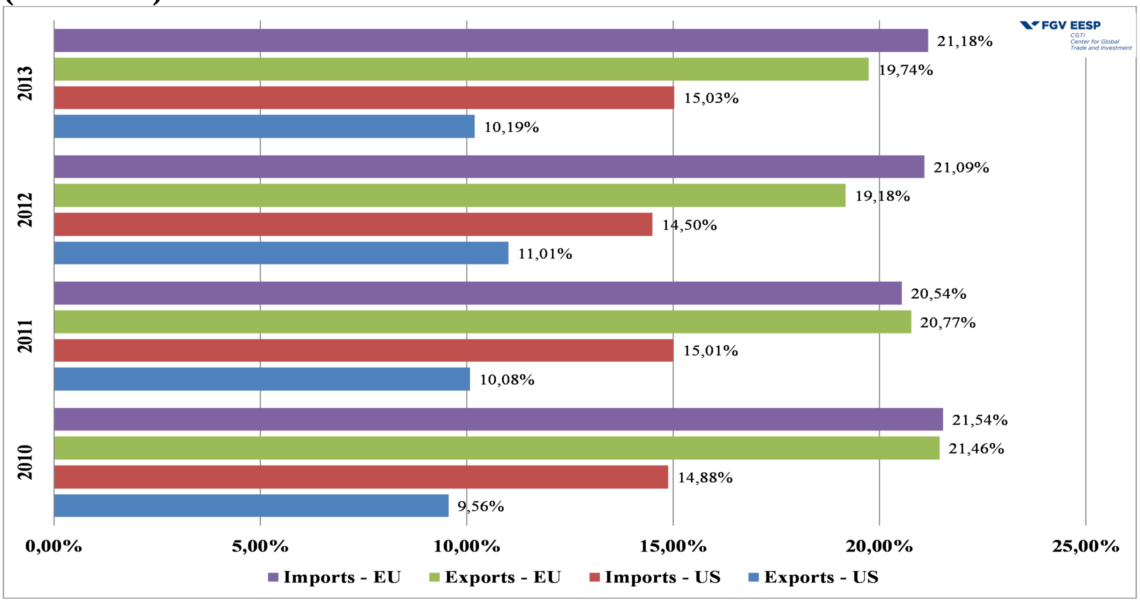
[1] Other examples are Argentina and China.

Figure 6 – Trade Flow: Brazil and the US (2010-2013)

Source: MDIC/SECEX. Elaborated by CGTI.

In spite of this, the US and the EU participation in Brazilian exports and imports are extremely relevant. For exports, in the last four years, the position of the US came from 9.56% to 10.19% while the EU reduced its participation from 21.46% to 19.74%. For imports, the pressure has been higher. The US are responsible for 15.03% of all Brazilian imports in 2013 while the EU has broadened the gap between exports and imports participation (Graphic 3).

Figure 7 – Participation of the US and the EU in Brazilian exports and imports (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

In general terms, these numbers are of concern for Brazil. The next subsections will show how these deficits in the trade balance is construed and what Brazilian exports and imports profiles are by aggregate factors (commodities, semi-manufactured, and manufactured). It will be possible to identify strong points for the trade policy of Brazil and some aspects to be considered.

II.1. Trade flow: aggregate factor

The analysis of general trade flows between Brazil and the US or the EU is only part of the big picture. To provide a more accurate characterization of the trade relationship between these actors it is necessary to examine exports and imports by aggregate factor.

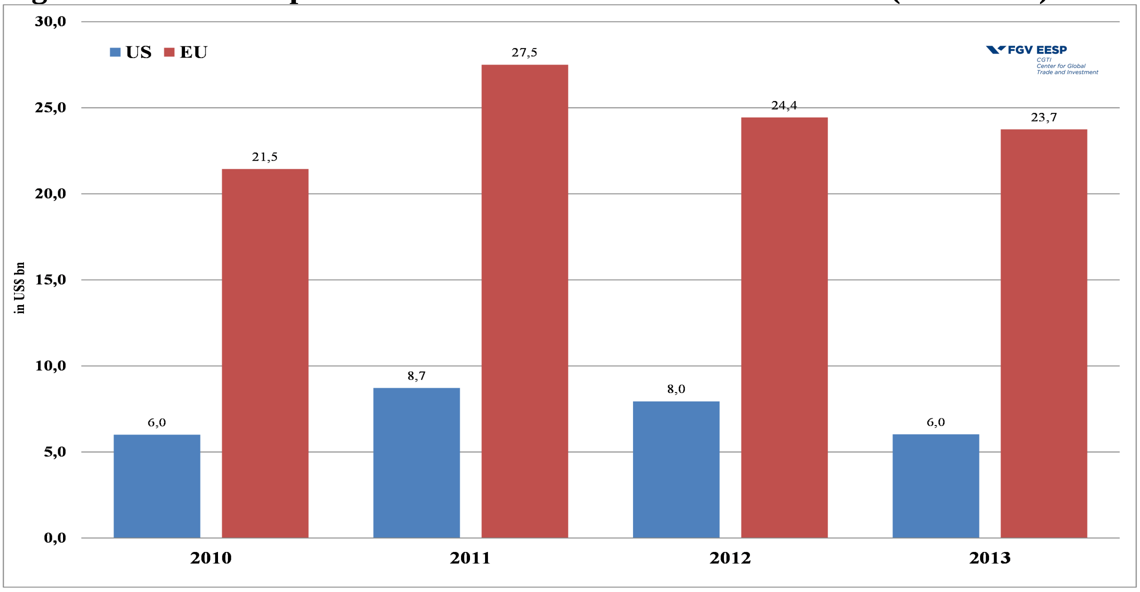
Brazil Ministry of Development, Industries and Foreign Trade (MDIC) established four categories, which are explored here: commodities (primary products such as coffee in grain, soybeans in grain, meat *in natura*, etc); semi-manufactured (products that are not in their final form of use to the consumer or even as an intermediary product –, i.e. they demand another transformation process such as raw sugar; crude soybean oil; cellulose, etc.); manufactured (products in their final form of use such as refined sugar; refined soybean oil; paper, etc.).

Main products exported and imported from the US and the EU can be found in Annex I at the end of this paper. The results are presented in the next subsections.

II.1.1. Commodities

Brazil is one of the largest economies in the World and well-known for its agriculture and exports of commodities. Recently, commodities prices in international markets have decreased. This movement might be one of the causes for the reduction of exports to the EU and the US.

Figure 8 – Brazil: Exports of Commodities to the US and the EU (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

Exports to the EU in 2013 were almost four times more than to the US. Brazil exported US$ 23.7 bn in commodities to the EU and only US$ 6.0 bn to the US.

Another conclusion can be drawn from Graphic 4: since 2011 commodities exports in value have decreased to both markets analyzed returning to the level of 2010. From 2011 to 2013 the decrease was about US$ 3.8 bn and of US$ 2.7 bn for the EU and the US, respectively.

A more modest amount of commodities exports reflects directly in Brazil trade balance performance with these two trade partners (see subsection II.2 below).

Figure 9 – Brazil: Imports of Commodities from the US and the EU (2010-2013)

Source: MDIC/SECEX. Elaborated by CGTI.

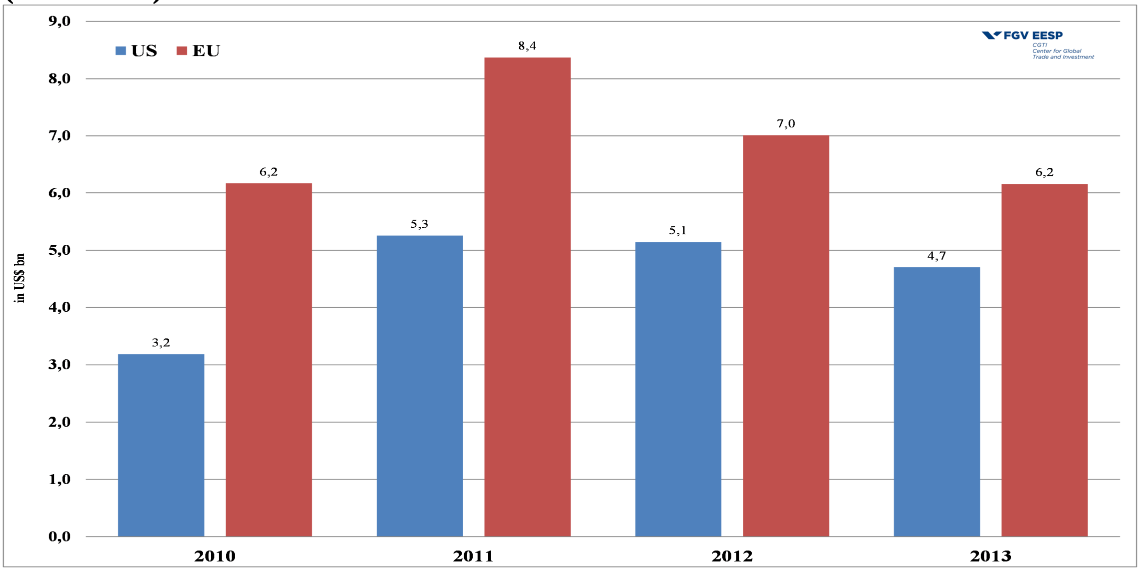
For imports, there is little or none variation from the EU. It remains as US$ 0.7 bn since 2010. However, imports from the US have increased since 2010 from US$ 1.8 bn to US$ 2.4 bn but it is still less than 2011, in which commodities imports raised up to US$ 2.9 bn (Graphic 5).

II.1.2. Semi-Manufactured

Exports to the EU in 2013 were of US$ 6.2 bn which is more than the US$ 4.7 exported to the US. However, since 2011, semi-manufactured exports have lessened. For the US, from US$ 5.3 bn to US$ 4.7 bn. For the EU, from US$ 8.4 bn to US$ 6.2 bn.

One preliminary conclusion is that semi-manufactured products to the US have increased US$ 1.5 bn when compared to levels of 2010. In the case of the EU, there have been no increase and exports of 2013 are at the same level of 2010.

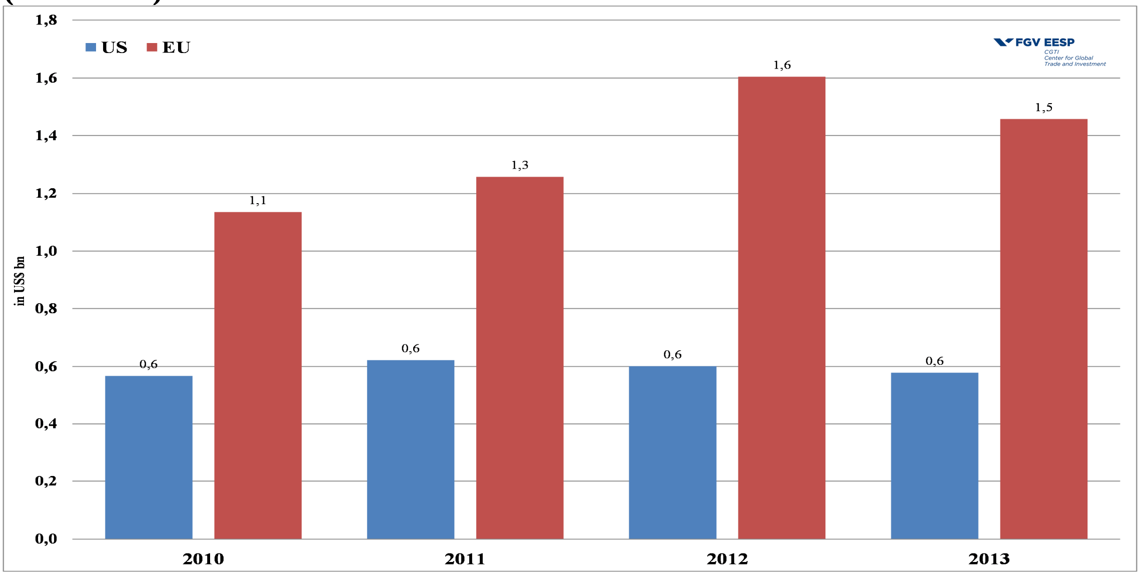
Figure 10 – Brazil: Exports of Semi-Manufactured Goods to US and EU (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

Imports are relatively lower when compared to exports of semi-manufactured goods as Graphic 7 shows:

Figure 11 – Brazil: Imports of Semi-Manufactured Goods from the US and the EU (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

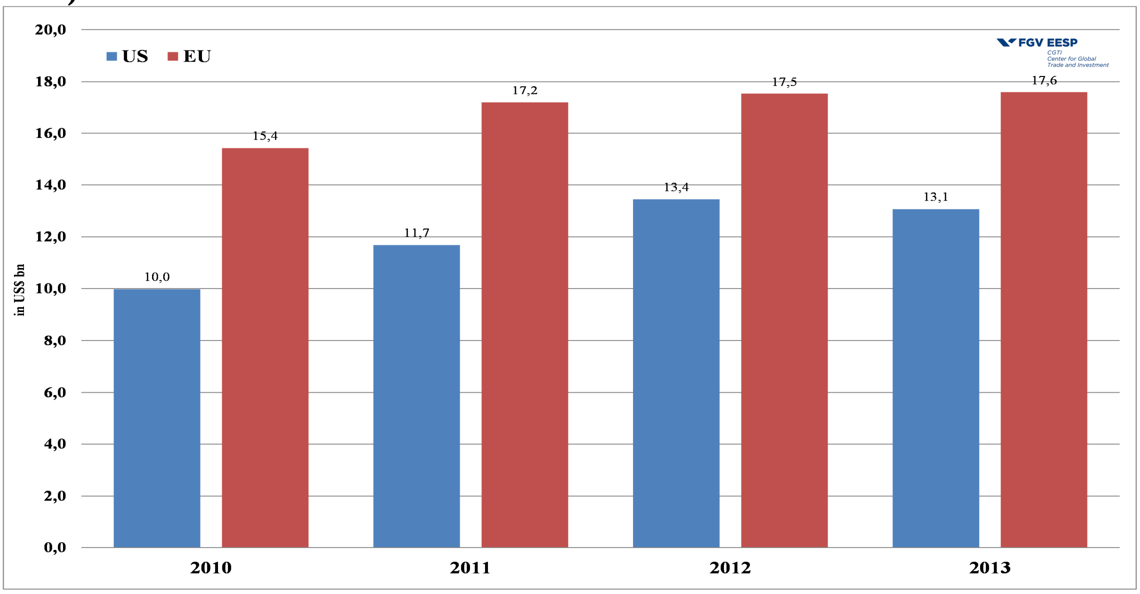
The same way as it is for commodities imports from the EU, imports of semi-manufactured goods from the US are the same since 2010, around US$ 0.6 bn. Imports from the EU in this same productive factor is three times bigger as of US$ 1.5 bn.

In the semi-manufactured goods, Brazil has an expressive positive trade balance of US$ 4.7 bn with the EU and of US$ 4.1 bn with the US.

II.1.3. Manufactured

In the manufactured sector, exports have increased since 2010. For the US, it increased from US$ 10.0 bn in 2010 to US$ 13.1 bn in 2013. For the EU, it increased from US$ 15.4 bn in 2010 to US$ 17.6 bn in 2013 (see Graphic 8).

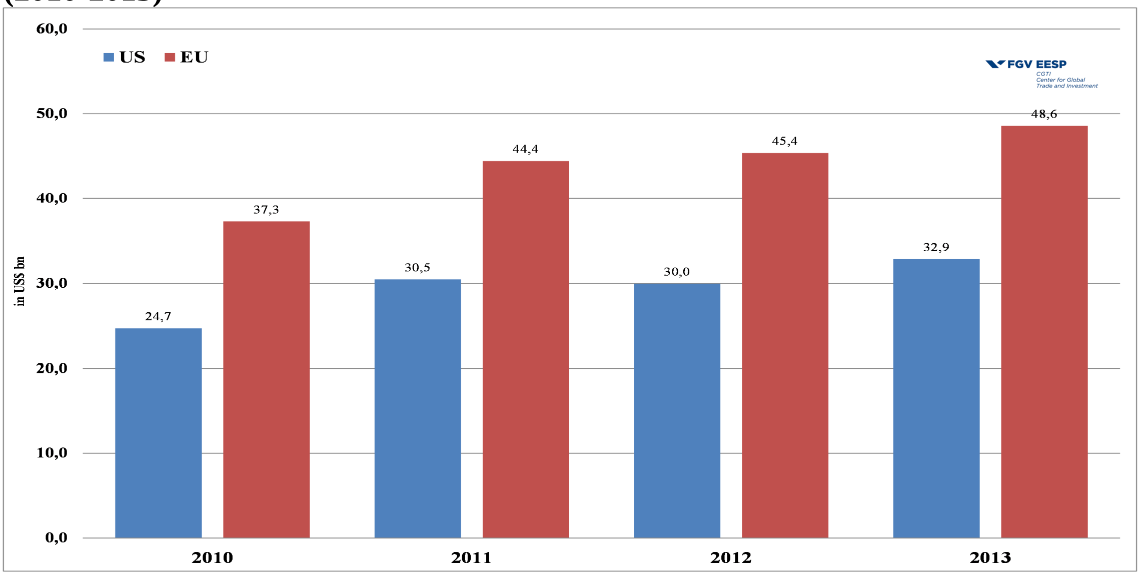
Figure 12 – Brazil: Exports of Manufactured Goods to the US and the EU (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

In spite of this, imports of manufactured goods are much higher and they are responsible for the great deficits Brazil has experienced in the last four years with the US and the EU combined.

Figure 13 – Brazil: Imports of Manufactured Goods from the US and the EU (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

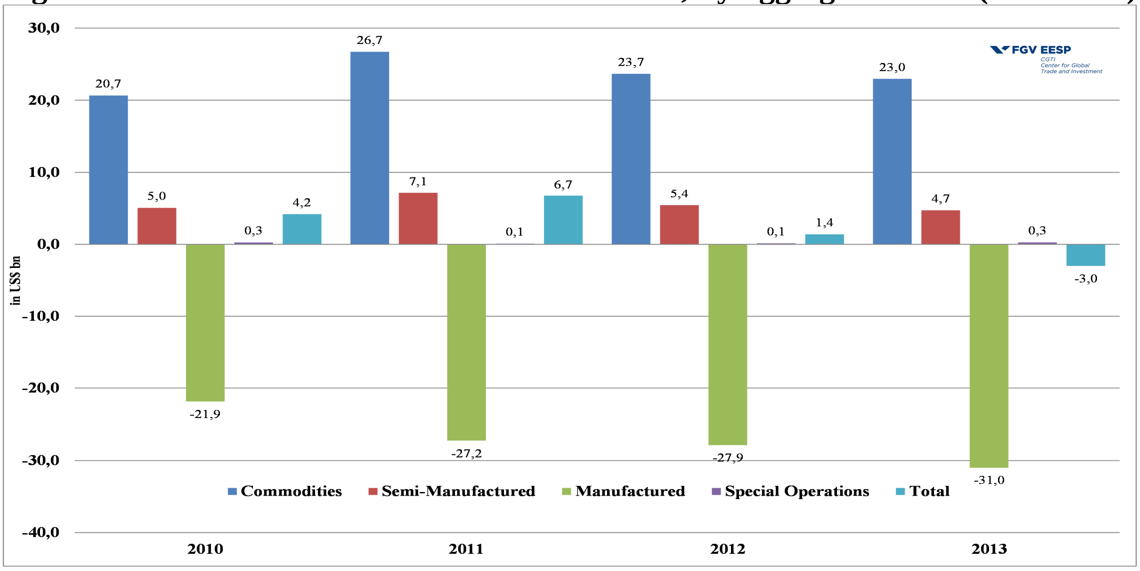
For the US, while exports have decreased in the manufactured goods sector in comparison between years 2010 and 2014, imports have a persistent rise. In 2010, Brazil imported from the US US$ 24.7 bn in manufactured products. In 2013, it has risen to US$ 32.9 bn, or 33.2% in four years.

For the EU, in 2010 imports were of US$ 37.3 bn and US$ 48.4 bn in 2013. This means a growth of 29.8% in four years. As a comparison, exports to the US have increased in 31.0% and to the EU in only 14.3% in the same period.

II.2. Trade Balance

In terms of trade balance, commodities have been responsible for positive results while manufactured goods have reached an important and progressive deficit.

Figure 14 – Trade Balance of Brazil with the EU, by aggregate factor (2010-2013)



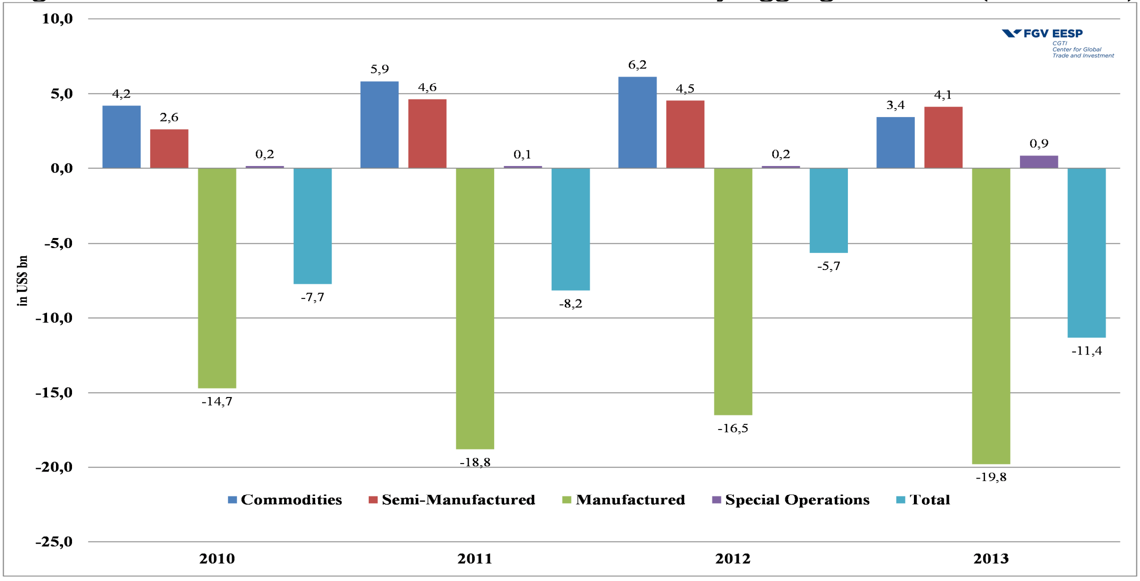
Source: MDIC/SECEX. Elaborated by CGTI.

For the EU, in 2013, for the first time in the last four years, Brazilian trade balance result was negative in US$ 3.0 bn. It was due to the increasing deficit in manufactured goods trade between Brazil and the EU. In brief, manufactured goods deficit rose from US$ 21.9 bn in 2010 to US$ 31.0 bn in 2013.

Trade in commodities and semi-manufactured were not enough to produce a positive result for Brazilian trade balance in goods. Commodities exports to the EU attained US$ 24.7 bn in 2011 but since then it has decline to US$ 23.0 bn. The same thing happened in semi-manufactured goods sector. In 2011, it had a surplus of US$ 7.1 bn while in 2013 it has decreased to US$ 4.7 bn (see Graphic 10).

Manufactured goods sector is mainly responsible for negative results Brazilian trade balance has experienced in recent years. This is something to be taken as a serious concern by Brazilian authorities.

Figure 15 – Trade Balance of Brazil with the US, by aggregate factor (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

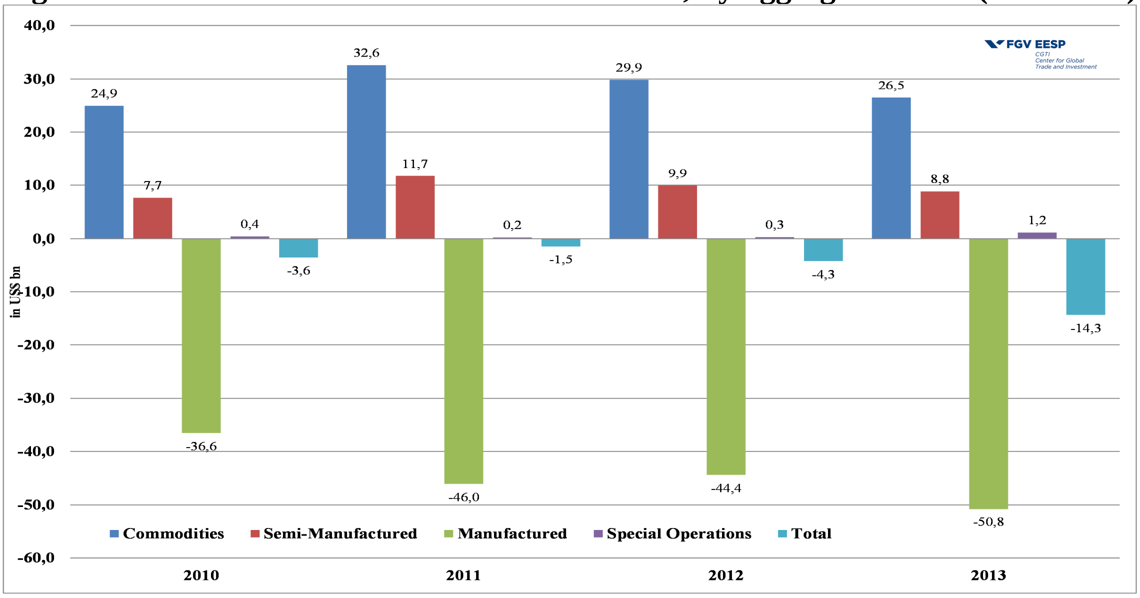
Regarding bilateral trade between Brazil and the US, numbers are even worse. For the first time, semi-manufactured goods sector had a better performance than exports of commodities. This is not due to any gain of competitiveness of Brazilian semi-manufactured goods because both sectors are decreasing.

Since 2011, surplus in the commodities sector has reduced from US$ 5.9 bn to US$ 3.4 bn, the worst performance in recent years. Semi-manufactured products have followed the same path. After an expressive rise from 2010 to 2011 when the surplus was US$ 2.0 bn higher, in 2013, it has already lost US$ 0.5 bn.

Furthermore, manufactured goods sector results with the US are extremely negative for Brazil. In the last four years Brazil has experienced successive deficits and in 2013 it was –US$ 19.8 bn.

The results are negative in all four years back. In 2012, it was of US$ 5.7 bn and in 2013 it doubled to US$ 11.4 bn. Commodities and semi-manufactured goods have experienced a substantial decrease and manufactured products enlarged the deficit experienced the year before.

Figure 16 – Trade Balance of Brazil with US+EU, by aggregate factor (2010-2013)



Source: MDIC/SECEX. Elaborated by CGTI.

Combining bilateral trade between Brazil and the US and the EU, the results are not good for Brazil. Since 2010, Brazil has experienced deficits that went from US$ 3.6 bn to US$ 14.3 bn in 2013. One of the reasons is the rising deficit in manufactured goods sector that was US$ 36.6 bn in 2010 and grew up to US$ 50.8 bn in 2013, only with the US and the EU.

Manufactured goods sector is undoubtedly the most sensitive sector for Brazil in its exchanges of goods with the US and with the EU. Even commodities bilateral trade is not doing very well compared to years before. It can be partially explained by commodities international prices which are falling.

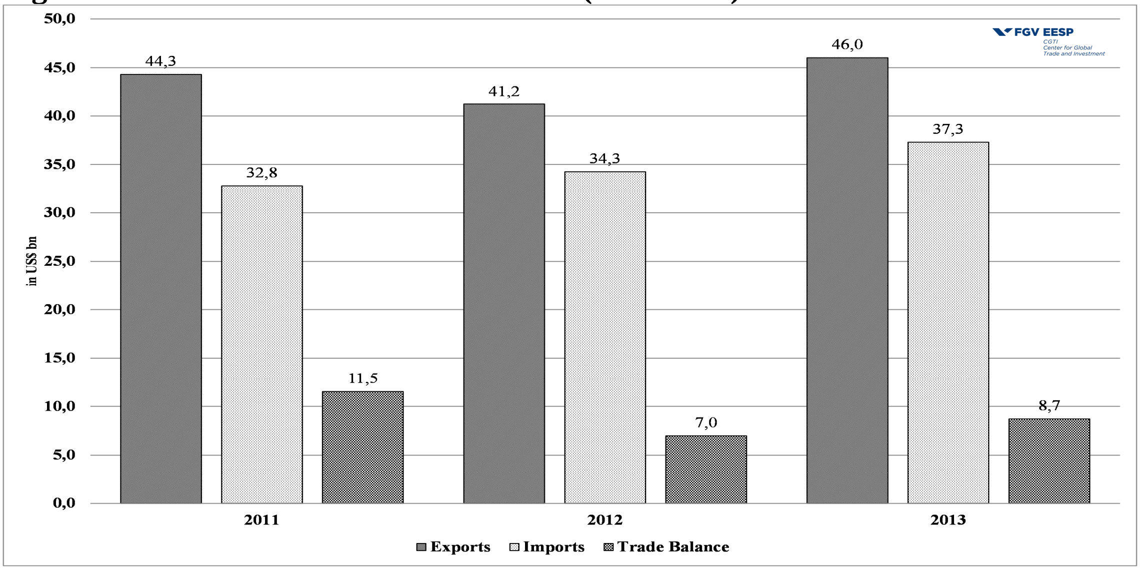
CHINA

The exam of the trade policies of Brazil toward the EU and the US cannot be completed without a quick reference to the important role played by China in its trade with Brazil.

China is one of the most important partners of Brazil with Brazil exports reaching, in 2013, US$ 46 billion and imports reaching US$ 37 billion from China. Brazil exports are concentrated in commodities, such as soya, iron and oil, while imports from China are concentrated in manufactures.

The role that China is playing toward South America, not only through trade but also through investments is already showing its interest in the region as supplier of agricultural and minerals, but also as an important market for its industrial goods.

Figure 17 - Trade Flow: Brazil and China (2011-2013)



Source: MDIC/SECEX. Elaborated by CGTI/EESP-FGV.

Brazil exports to China in 2013 can be resumed in three main products that sums 81.44% of total export: soy beans (45.77%); iron ores and concentrates (other than roasted iron pyrites, non-agglomerated) (29.06%); and petroleum oils, (6.61%). One the main priority of Brazil is to work on the diversification of its exports to China.

Brazil: Main products exported to China in 2013

HS	Description	US$ FOB	Share %
	ALL EXPORTS	35.910.991.644	100.00
12019000	Soy beans, whether or not broken, not seeds	16.437.957.011	45.77
26011100	Iron ores and concentrates, other than roasted iron pyrites, non-agglomerated	10.437.349.316	29.06
27090010	Petroleum oils and oils obtained from bituminous minerals, crude	2.373.469.646	6.61
17011400	Other cane sugar	1.080.401.461	3.01
47032900	Chemical wood pulp, sulphite, non-coniferous	933.518.704	2.60

Fonte: Secex, 2013.

As for China exports to Brazil, their list of offerings is concentrated on manufactured products. The main three products add up to only 8.58% of the total amount. China 23 main products exported to Brazil aggregates 13.59% of the total Brazilian imports from Chinese products, and are mainly focused on machinery and mechanical appliances, computer and telephones and other electrical equipment, and their parts.

Brazil: Main products imported from China in 2013

HS	Description	US$ FOB	Share %
	ALL IMPORTS	27.805.137.610	100.00
85299020	Other appliances for radio and television	1.344.553.582	4.84
85177099	Other parts for telegraphy appliances	688.307.690	2.48
84733092	Polichromatic screen monitor for portable computers	349.327.859	1.26
85171231	Telephones for cellular networks or for other weirless networks	286.730.508	1.03

The numbers are clear to demonstrate that China is not only an important market to Brazil in relation to its agricultural goods, but also China is gaining space in the markets of Brazil in relation to industrial goods, exported before from the US and the EU.

III. TARIFF PROFILES

III.1. Brazil

Import Tariffs

According to the WTO Word Tariff Profiles of 2013[2], Brazil has bound 100% of its tariff lines, and all its concessions are already implemented. Moreover, Brazil has all its tariff lines charged *ad valorem*.

Table 1: Brazil Tariff Profile (2012) (%)

	Bound	Applied
Simple Average	31,4	13,5
Maximum duty	55,0	55,0
Non-*ad valorem*	0	0
Duty-free	1,0	5,9

Source: WTO; ITC; UNCTAD. **Word Tariff Profiles**, 2013

Regarding all the 10.032 tariff lines, the average bound tariff rate is 31.4%, while its average applied tariff rate is 13.5%, representing 17.9 percentage points below the bound level. The maximum bound tariff for agricultural goods is 55%, and the maximum import tariff for non-agricultural goods is 35%.

Brazil's trade regime in agriculture, where it is highly competitive as a producer and an exporter for World markets, is more open than that of its partners. Nonetheless, the difference between the bound and applied tariffs can be used as negotiating element if protection is needed for the agricultural sector. Although the maximum bound tariff for agricultural products is the highest possible for Brazil, 55%, the average applied tariff for the same sector is 10.1%, below the average applied for all products.

When analyzing the agricultural subsectors, it is possible to understand the tariff strategy used by Brazil. Of the 10 subsectors that form the agriculture sector, half of them present average applied tariffs below the average for the sector. The cotton sector deserves consideration. Although its final bound duties are of 55%, the highest tariff for the agricultural sector, it has the lowest average applied tariff, of only 6.9%. On the other hand, the subsectors related to dairy products, beverages & tobacco, and sugars presented the highest average applied tariffs between the agricultural products, of 18.3%, 17%, and 16.5% respectively. Although higher than the rest, the average applied tariffs of these sectors do not show major deviations from the average rate applied for the agricultural sector. This indicates that Brazil do not applies tariffs with relevant peaks for agricultural products.

The Brazilian non-agricultural market is more restrictive than the agricultural one. The average applied tariff for non-agricultural products is 14.1%, but still significantly below the average bound tariff of 31.4%. The maximum bound tariff verified for all non-agricultural products is 35%, lower than the one verified for agricultural products. As regards the applied tariffs, some subsectors reach the maximum percentage allowed.

[2] WTO; ITC; UNCTAD. **Word Tariff Profiles**, 2013, p. 48.

This can be seen in the clothing sector, whose applied tariff is the same as the bound one, 35%. To a certain extent, other subsectors also count with tariff protection, as shown by the average applied tariffs of the following sectors: textile (23.3%), transport equipment (18.6%), and leather and footwear (16%).

Seven of the twelve non-agricultural subsectors present average applied tariffs below the average applied for the sector, as can be seen in Table 2 below. The petroleum sector has the lowest average applied tariff, 0.1%. This is explained by the fact that most of the HS six-digit subheadings in this sector is duty free (95.5%).

It is important to have in mind that although these subsectors' average tariffs present some difference when compared to the average bound tariffs, some tariff lines within these sectors already reached the maximum tariffs possible, as can be seen in seven of the non-agricultural subsectors (minerals & metal, textiles, clothing, leather & footwear, non-electrical machinery, transport equipment, and manufactures).

Table 1: Import tariffs by product groups (2013) (%)

Product Groups	Bound tariffs			Applied tariffs	
	Average	Max	Binding (%)	Average	Max
Agricultural Products					
Animal products	37.8	55	100	8.2	16
Dairy products	48.8	55	100	18.3	28
Fruit, vegetables, plants	34.1	55	100	10.1	55
Coffee, tea	34.1	35	100	13.3	20
Cereals & preparations	42.9	55	100	10.6	20
Oilseeds, fats & oils	34.6	35	100	7.9	30
Sugars and confectionery	34.4	35	100	16.5	20
Beverages & tobacco	37.7	55	100	17.0	27
Cotton	55.0	55	100	6.9	10
Other agricultural products	28.8	55	100	7.8	20
Non-agricultural products32					
Fish & fish products	33.6	35	100	10.3	32
Minerals & metals	32.9	35	100	10.0	35
Petroleum	35.0	35	100	0.1	6
Chemicals	21.1	35	100	8.2	28
Wood, paper, etc.	28.4	35	100	10.6	18

Textiles	34.8	35	100	23.3	35
Clothing	35.0	35	100	35.0	35
Leather, footwear, etc.	34.6	35	100	16.0	35
Non-electrical machinery	32.4	35	100	12.8	35
Electrical machinery	31.9	35	100	14.1	25
Transport equipment	33.1	35	100	18.6	35
Manufactures, n.e.s.	33.0	35	100	15.1	35

Source: WTO; ITC; UNCTAD. **Word Tariff Profiles**, 2013

Export tariffs

Brazilian Government imposes export tariffs on mainly three products: (i) cigarettes containing tobacco; (ii) wet blue leather; and (iii) arms and ammunition. The exportation of cigarettes containing tobacco is subjected to the payment of an export tariff of 150% when destined for Latin and Central America. This measure was adopted in 1998 (Decree n^{o}. 2.876/1998) with the aim of avoiding tax evasion through triangulation in neighboring countries. Regarding the exportation of skins and leather products, the imposition of an export tariff of 9% on wet blue leather has the aim of stimulate the export of products with higher added value (Camex Resolution n^{o}. 42/2006). Finally, arms and munition to Latin America are also subject to an export tariff of 150% due to security issues (Camex Resolutions n^{o}. 17/2001 and 88/2010).

Preferential tariffs

As a member of Mercosul and due to the Common Market Council Decision n^{o} 32/2000, Brazil only has bilateral preference trade agreements or preference programs towards developing or least developed countries within Mercosul and Latin American Integration Association (LAIA).

Within Mercosur, Brazil’s main vector of regional integration, the country has signed free trade agreements with Israel, Egypt, and Palestine, and preferential trade agreements with India and Southern African Customs Union (SACU).

It should be emphasized that these agreements are far from ambitious, often covering only a small number of tariff lines subject to margins of preference, as occurs in the PTA with India, and restricted to trade in goods. The PTA with Israel and Egypt predicts the liberalization of trade in services to be implemented in the future, but there is no set deadline.

Within LAIA, Brazil has signed a Regional Preferential Trade Agreement (APTR-04) and Economic Complementation Agreements (ECA) with many Latin American nations, as Chile, Bolivia, Mexico, Peru, Colombia, Ecuador, Venezuela (which recently accessed Mercosur), Cuba, Guyana and Suriname. However, these agreements, although representing relevant tariff preferences for Brazilian exports, are not innovative in the regulation on bilateral trade. There are only rules that reproduce the provisions of WTO without addressing issues and themes that challenge the current international trade.

Among them, only the agreement with Chile provides for the liberalization of the services sector, while the agreements with Bolivia, Colombia, Ecuador and Venezuela only predict the future trading of the subject. In a scenario of global value chains, which increasingly trades services instead of products, the service industry is of great importance. Lack of liberalization in this area reduces the effects that a PTA can bring to Brazil commercial insertion.

In general, Brazil agreements have rules on trade defense measures, technical barriers and sanitary and phytosanitary barriers resuming the provisions of the WTO agreements, while regulation of matters such as intellectual property, investments and so-called new issues, namely, competition, environment, social and government procurement clauses, is almost nonexistent.

The preference margins agreed by Brazil within APTR-04 are presented in the following table. All signatory countries have presented a List of Exceptions with the products that are excluded from the preferences granted.[3]

Table 2: Preferential tariffs within APTR-04

	Bolivia, Paraguay	**Ecuador**	**Colombia, Chile, Cuba, Uruguay , Venezuela**	**Peru**	**Argentina, Mexico, Brazil**
Brazil	48%	40%	28%	14%	20%

Source: MDIC.

The ECAs have the aim of enhancing ‘economic development of the Aladi members through complementarity of production systems in the region. Among the ECAs, the highest tariffs are applied to Mexico (ECA 53 and 55), Cuba (ECA 62), and Peru (ECA 59), and the lowest ones are applied to Mercosul countries (ECA 18).

III.2. US

Import Tariffs

The US Congress is responsible for the establishment of duty rates. The US has bounded 100% of its tariff lines. Most of its tariff lines are charged *ad valorem*, but 8.2% of its bound tariffs and 8.6% of its applied tariffs are subject to *non-ad valorem* duties.

Countries that are not eligible for a special duty rate under an international trade program has normal trade relations status with the U.S. and the general duty rates apply. One should also notice that 46.1% of the US total applied tariff lines are duty free for all countries, regardless of tariff preferences programs or agreements.

[3] MDIC. **ALADI**. Available at: <http://www.mdic.gov.br/sitio/interna/interna.php?area=5&menu=412>.

Table 3: US Tariff Profile (2012) (%)

	Bound	**Applied**
	3.5	3.4
Simple average		
Maximum duty	350	350
Non-*ad valorem*	8.2	8.6
Duty-free	45.7	46.1

Source: WTO; ITC; UNCTAD. **Word Tariff Profiles**, 2013

Agricultural products average bound and applied tariffs is 4.7%, 1.2 percentage points higher than the average perceived for all products. From a general point of view it may seem that the US mainly adopts low tariffs for its agricultural sector, but a careful analysis indicates there are some product groups that have applied averages three times higher than the one observed for all agriculture products. Within these product groups are tariff lines that can reach bound and applied tariff of 350% (beverages and tobacco), 164% (oilseeds, fats and oils), and 132% (fruit, vegetables, plants).

The average applied tariff for non-agricultural products is 3.2%, close to the bound average, of 3.3%.The maximum bound and applied tariff for these products, 55%, may be found at some tariff lines within the leather and footwear sector. Other sectors also present a significant deviation from the average for some tariff lines, as minerals and metals and textiles, which present maximum bound and applied tariff of 38%.

Among the agricultural product groups that have the lowest bound and applied import tariffs are other agricultural products and animal products. Among the non-agricultural products, the sectors regarding wood and paper, and fish and fish products stand out, due to the high percentage of tariff lines that has duty free treatment (91.8% and 80.5% respectively).

Table 4: Import tariffs by product groups (2013) (%)

Product Groups	**Bound tariffs**			**Applied tariffs**	
	Average	Max	Binding (%)	Average	Max
Agricultural Products					
Animal products	2.4	26	100	2.2	26
Dairy products	19.8	96	100	19.9	95
Fruit, vegetables, plants	4.7	132	100	4.7	132
Coffee, tea	3.3	42	100	3.3	42
Cereals & preparations	3.5	51	100	3.1	51
Oilseeds, fats & oils	4.2	164	100	4.8	164
Sugars and confectionery	11.2	38	100	14.4	38

Beverages & tobacco	15.0	350	100	14.0	350
Cotton	4.4	16	100	4.1	15
Other agricultural products	1.1	67	100	1.1	67
Non-agricultural products					
Fish & fish products	1.0	35	100	0.8	35
Minerals & metals	1.7	38	100	1.7	38
Petroleum	1.3	7	80.0	1.1	7
Chemicals	2.8	7	100	2.8	7
Wood, paper, etc.	0.4	14	100	0.5	16
Textiles	7.9	38	100	7.9	38
Clothing	11.4	32	100	11.6	32
Leather, footwear, etc.	4.3	55	100	3.8	55
Non-electrical machinery	1.2	10	100	1.2	10
Electrical machinery	1.7	15	100	1.7	15
Transport equipment	3.1	25	100	3.1	25
Manufactures, n.e.s.	2.1	32	100	2.4	32

Source: WTO; ITC; UNCTAD. **Word Tariff Profiles**, 2013

Export tariffs

The US Constitution prohibits the imposition of duties on goods by reason of exportation in its Article I, Section 9, Clause 5: No Tax or Duty shall be laid on Articles exported from any State.

Interpreting the Export Taxation Clause, the Court has kept clear that the clause "strictly prohibits any tax or duty, discriminatory or not, that falls on exports during the course of exportation," and that the protection extends to "services and activities closely related to the export process."[4]

Preferential tariffs

The US has free trade agreements in force with 20 countries. These are: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. The country is also in negotiations of a regional, Asia-Pacific trade agreement, known as the Trans-Pacific Partnership (TPP) Agreement, and

[4] Supreme Court of the US. **US v. International Business Machines Corp**. 1996. Available at: <http://www.law.cornell.edu/supct/html/95-591.ZO.html>

of a trade and investment agreement being negotiated with the EU, the Transatlantic Trade and Investment Partnership (TTIP).

Moreover, the US uses preference programs for reduced duty rates or duty-free treatment in order to assist other countries, normally the developing and least-developed ones, to have access to its market. According to the US International Trade Commission, most trade preference program beneficiary countries are not major U.S. trade partners. To have a better idea of what trade with these partners represents, their shipments entering the U.S. market collectively accounted for 15 percent of all U.S. imports in 2012.[5]

Among this programs are the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Initiative (CBI) Program and the Andean Trade Preference Act (ATPA) program.

The GSP is the oldest preference program in the US, providing preferential duty-free entry for up to 5,000 products when imported from one of 123 designated beneficiary countries and territories (including 44 least-developed countries). Products that are eligible for duty-free treatment under GSP include most manufactured items; chemicals, minerals and building stone; jewelry; carpets; and certain agricultural and fishery products. Among the products that are not eligible for GSP duty-free treatment are most textiles and apparel; watches; and most footwear, handbags, and luggage products.[6] In 2013, the top GSP beneficiary developing countries were India, Thailand and Brazil.[7]

The legal authorization for the GSP program expired on July 31, 2013, which means that importers that were previously eligible for duty-free treatment under GSP will be required to pay the regular trade relations duty rates. Nonetheless, the American Congress may extend the program with a retroactive clause, applying the duty-free treatment to GSP-eligible products retroactively to the expiration of the program, thereby allowing importers to seek refunds of duties paid.

The AGOA was established in 2000 with the aim of encouraging increased trade and investment between the US and sub-Saharan Africa, among other things. U.S. goods imports under AGOA accounted for about 70% of all imports from the AGOA countries during 2008-2013.[8] Energy-related products, especially crude oil, accounted for more than 90% of the US imports from these countries during 2001-2013. Besides that, transportation equipment, refined petroleum products, and apparel were the US main import products in 2013.[9]

The CBI Program was launched in 1983 and intended to facilitate the economic development and export diversification of 17 beneficiary countries in the Caribbean.

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[5] USITC. **U.S. import shifts under trade preference programs**. Available at: < http://www.usitc.gov/research_and_analysis/tradeshifts/2012/usimport.htm >.

[6] USTR. **Generalized System of Preferences**. Available at: < http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp >.

[7] USTR. **GSP by the Numbers**. March 5, 2014. Available at: < http://www.ustr.gov/sites/default/files/GSP-by-the-numbers-030514-final.pdf >.

[8] USITC. **AGOA**: Trade and Investments Performance Overview. April 2014, p.19. Available at: <http://www.usitc.gov/publications/332/pub4461.pdf>.

[9] USITC. **AGOA**: Trade and Investments Performance Overview. April 2014, p.20. Available at: <http://www.usitc.gov/publications/332/pub4461.pdf>.

The tropical fruit sector was the leading category for agricultural products imported by the US from CBI beneficiary countries. Energy related products, and chemicals and related products also are major export sectors to the US within the CBI.[10]

The ATPA dates from 1991 as an attempt to help Bolivia, Colombia, Ecuador and Peru in their fight against drug production and trafficking by expanding their economic alternatives. Energy-related products corresponded to more than 90% of the US imports within ATPA in 2012, flowed by agricultural products. Since the end of 2012, Ecuador is the sole remaining eligible beneficiary country to this program.[11]

III.3. EU

Import Tariffs

The EU binds 100% of its tariff lines in the WTO and all its concessions are implemented. Most of its tariff lines are charged *ad valorem*, still 4.8% of its bound tariffs and 5.0% of its applied tariffs are subject to *non-ad valorem* duties.

Countries that are not qualified for a special duty rate have normal trade relations status with the EU and the general duty rates apply. It should be noted that 26.9% of the EU total applied tariff lines are duty free for all countries, regardless of tariff preferences programs or agreements.

Table 5: EU Tariff Profile (2012) (%)

	Bound	Applied
Simple Average	5.2	5.5
Maximum duty	605	605
Non-*ad valorem*	4.8	5.0
Duty-free	28.9	26.9

The European average bound tariff for all imported products is 5.2%, and the average applied one is 5.5%, covering a universe of 10.453 MFN applied tariff lines.

For agricultural products, the average bound tariff is 13.7%, and the average applied one is 13.2%. The sector also concentrates the greater part of the non-ad valorem duties, approximately 32%. In 50% of the product groups the average applied tariffs are higher than the one observed for all agricultural products, as can be seen in the following sectors: dairy products (52.9%); sugars and confectionery (32.1%); animal products (20.4%); beverages and tobacco (19.9%); and cereals and preparations (17.1%).

It is also the agriculture sector that has the most significant tariff peaks. Six of its product sectors present tariff lines which have tariffs higher than 100%, and in the subsector related to dairy products it may take up to 605%.

The non-agricultural sector has lower tariffs than the agricultural one. The average bound tariff is 3.9%, and the average applied one is 4.2%. The maximum MFN applied

[10] USITC. **U.S. import shifts under trade preference programs**. Available at: < http://www.usitc.gov/research_and_analysis/tradeshifts/2012/usimport.htm >.

[11] USITC. **U.S. import shifts under trade preference programs**. Available at: < http://www.usitc.gov/research_and_analysis/tradeshifts/2012/usimport.htm >.

duties are considerably lower than the ones perceived when analyzing the agricultural sector.

Table 6: Import tariffs by product groups (2013) (%)

Product Groups	**Bound tariffs**			**Applied tariffs**	
	Average	Max	Binding (%)	Average	Max
Agricultural Products					
Animal products	23.4	134	100	20.4	134
Dairy products	54.7	605	100	52.9	605
Fruit, vegetables, plants	10.2	156	100	10.7	156
Coffee, tea	6.2	21	100	6.2	21
Cereals & preparations	22.2	61	100	17.1	61
Oilseeds, fats & oils	5.6	87	100	5.6	87
Sugars and confectionery	31.0	133	100	32.1	133
Beverages & tobacco	21.3	165	100	19.9	161
Cotton	0.0	0	100	0.0	0
Other agricultural products	4.1	103	100	4.3	103
Non-agricultural products					
Fish & fish products	10.9	26	100	11.8	26
Minerals & metals	2.0	12	100	2.0	12
Petroleum	2.0	5	100	2.8	5
Chemicals	4.6	17	100	4.6	17
Wood, paper, etc.	0.9	10	100	1.0	12
Textiles	6.5	12	100	6.6	12
Clothing	11.5	12	100	11.5	12
Leather, footwear, etc.	4.2	17	100	4.2	17
Non-electrical machinery	1.7	10	100	1.9	10
Electrical machinery	2.4	14	100	2.8	14
Transport equipment	4.1	22	100	4.3	22
Manufactures, n.e.s.	2.5	14	100	2.7	14

Export tariffs

The EU does not apply export taxes to its products. On the contrary, as an economy highly dependent on imported raw material supplies, the EU is therefore trying to discipline developing country use of export taxes and restrictions at the World Trade Organization (WTO) and in its FTAs.

Preferential tariffs

Currently the EU has the greatest number of FTAs in force. EU PTAs are usually open with respect to industrial goods and defensive on agricultural goods. Moreover, the EU provides enhanced market access for a large number of developing countries unilaterally, mostly within the framework of its Generalized System of Preferences (GSP).

The European GSP currently running has a three-tier structure: (i) a standard scheme, open to the broadest group of developing countries; (ii) a 'GSP+', which provides lower tariffs to 'vulnerable' countries that implement 27 specific labour and human rights agreements; and (iii) 'Everything But Arms' (EBA), a mechanism available to LDCs only, which gives duty and quota-free access for almost all goods exported to the EU (except for armaments).[12]

The exam of the tariff profiles of the EU and US can demonstrate that applied tariffs presented by these two partners are already low, except for some agricultural goods protected by quotas. The tariff profile of Brazil is high in terms of its bound tariff but relatively low for its ap**p**lied ones. Except for some sensitive products, the reduction of tariffs can be accommodated in an extended period in a preferential negotiation.

[12] TOWNSEND, Ian. **EU trade preferences for developing countries**: the GSP & 'Everything But Arms. SN/EP/3369, December 2008.

IV. TRADE DEFENSE

The use of trade defense instruments is based on rules set out by the World Trade Organisation (WTO).

IV.1. Antidumping

Antidumping measures are often used against a situation of international price discrimination, where the price of a product when sold in the importing country is lower than the normal value found in the market of the exporting country for the like product.

According to the Antidumping Agreement of the WTO, the practice of dumping is condemned whenever cause or threaten to cause injury to a domestic industry, or materially retards the establishment of a domestic industry. Besides the existence of dumping and injury, it is also required the demonstration of a causal relationship between the dumped imports and the injury to the domestic industry.

In a few words, the first step to be taken in an investigation that aims the application of antidumping measures is the determination of the so-called normal value of the product for the subsequent determination of the dumping margin. The dumping margin is calculated from the difference between the normal value of the product and the export price for the like product. Then it must be determined the material injury, the threat of material injury, or material retardation of the establishment of a domestic industry and it must be established the causal link between dumped imports and material injury.

Brazil

From 1995 to 2013, 123 investigations have been initiated against Brazil, which resulted in 86 antidumping measures applied. The EU and the US are among the countries that initiated investigations and applied measures. The US initiated 45 and applied 18; the EU initiated 5 and applied 3 measures. The sectors most affected were base metals and articles (38 investigations initiated and 38 measures applied); machinery and electrical equipment (21 investigations initiated and 12 measures applied); and resins, plastic and rubber (12 investigations initiated and 10 measures applied).

In the same period, Brazil initiated 334 investigations and applied 165 measures. Amid the initiated investigations, 10 were against the US and 4 against the EU; 9 measures were applied against the US and 5 against the EU. The sectors most impacted were base metals and articles (75 investigations initiated and 43 measures applied); resins, plastic and rubber (98 investigations initiated and 28 measures applied); and chemicals (62 investigations initiated and 28 measures applied).

US

Between 1995 and 2013, 255 investigations have been initiated against the US, which lead to the implementation of 150 antidumping measures. Brazil is among the countries that initiated investigations and applied measures against the US. Brazil has initiated 10 and applied 9 measures. The following sectors are among the most affected ones: chemicals (109 investigations initiated and 62 measures applied); resins, plastic and rubber (52 investigations initiated and 29 measures applied); and base metals and articles (17 investigations initiated and 13 measures applied).

In the same period, the US initiated 508 investigations and applied 319 measures. Amid the initiated investigations, 41 were against Brazil and 15 against the EU; 18 measures were applied against Brazil and 8 against the EU. The sectors most impacted were base metals and articles (277 investigations initiated and 165 measures applied); chemicals (69 investigations initiated and 44 measures applied); and machinery and electrical equipment (32 investigations initiated and 19 measures applied).

EU

In the analyzed period, 100 investigations have been initiated against the EU, which lead to the implementation of 68 antidumping measures. Brazil and the US are among the countries that initiated investigations and applied measures against the EU: they have initiated 4 and 15 investigations respectively, and applied 5 and 8 measures each. The following sectors are among the most affected ones: chemicals (55 investigations initiated and 38 measures applied); resins, plastic and rubber (18 investigations initiated and 14 measures applied); and base metals and articles (10 investigations initiated and 7 measures applied).

During this time, the EU initiated 454 investigations and applied 297 measures. Amid the initiated investigations, 5 were against Brazil, and 3 were effectively applied. The sectors most impacted were base metals and articles (160 investigations initiated and 111 measures applied); chemicals (85 investigations initiated and 61 measures applied); and machinery and electrical equipment (58 investigations initiated and 32 measures applied).

Table 7: Antidumping - Investigations initiated and measures applied against Brazil, EU, and US (1995-2013)

	1995		1996		1997		1998		1999		2000		2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		2011		2012		20013		**Total**	
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	**I**	**M**
Brazil	8	9	10	10	5	7	6	6	13	5	9	8	13	2	3	6	3	4	10	3	4	5	7	5	2	2	3	2	12	3	3	4	3	2	3	0	6	3	**123**	**86**
US	12	8	21	4	15	9	16	12	14	8	13	13	15	4	11	10	21	6	14	10	12	13	11	9	7	4	8	7	14	5	19	7	10	7	9	9	13	5	**255**	**150**
EU	0	0	1	0	2	1	4	1	7	4	9	4	9	8	10	6	10	7	3	6	5	3	3	3	2	1	4	3	6	1	9	4	3	4	5	8	8	4	**100**	**68**

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 8: Antidumping - Investigations initiated and measures applied by Brazil, EU, and US (1995-2013)

	1995		1996		1997		1998		1999		2000		2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		2011		2012		20013		**Total**	
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	**I**	**M**
Brazil	5	3	18	6	11	2	18	14	16	5	11	9	17	13	8	5	4	2	8	5	6	3	12	0	13	9	24	11	9	16	37	5	16	13	47	14	54	30	**334**	**165**
US	14	33	22	12	15	20	36	12	47	24	47	31	77	33	35	27	37	12	26	14	12	18	8	5	28	5	16	23	20	15	3	17	15	4	11	7	39	7	**508**	**319**
EU	33	15	25	23	41	23	22	28	65	18	32	41	28	13	20	25	7	2	30	10	24	20	35	12	9	12	19	15	15	9	15	5	17	11	13	3	4	12	**454**	**297**

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 9: Antidumping - Investigations initiated and Measures applied: Reporting Member vs Exporting Country (1995-2013)

	Brazil		EU		US	
	I	M	I	M	I	M
Brazil	-	-	4	5	10	9
EU	5	3	-	-	0	0
US	41	18	15	8	-	-

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 10: Antidumping - Investigations initiated / measures applied against Brazil, EU, and US (1995-2013)

	Brazil		EU		US	
Sector	**I**	**M**	**I**	**M**	**I**	**M**
Live animals and products	5	2	1	1	9	6
Vegetable products	0	0	2	1	6	3
Animal and vegetable fats, oils and waxes	3	0	0	0	2	1
Prepared foodstuff; beverages, spirits, vinegar; tobacco	2	1	1	0	5	3
Mineral products	2	2	1	1	6	5
Products of the chemical and allied industries	10	8	55	38	109	62
Resins, plastics and articles; rubber and articles	12	10	18	14	52	29
Hides, skins and articles; saddlery and travel goods	0	0	0	0	0	0
Wood, cork and articles; basketware	6	1	0	0	5	3
Paper, paperboard and articles	9	5	7	3	17	8
Textiles and articles	8	4	2	1	5	4
Footwear, headgear; feathers, artif. flowers, fans	0	0	0	0	0	0
Articles of stone, plaster; ceramic prod.; glass	4	2	0	0	4	2
Pearls, precious stones and metals; coin	0	0	0	0	0	0
Base metals and articles	38	38	10	7	17	13
Machinery and electrical equipment	21	12	1	0	10	8
Vehicles, aircraft and vessels	1	0	0	0	2	2
Instruments, clocks, recorders and reproducers	2	1	2	2	3	0
Miscellaneous manufactured articles	0	0	0	0	3	1

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 11: Antidumping - Investigations initiated and measures applied by Brazil, EU, and US (1995-2013)

	Brazil		EU		US	
Sector	I	M	I	M	I	M
Live animals and products	5	4	7	4	15	11
Vegetable products	1	2	2	2	13	10
Animal and vegetable fats, oils and waxes	0	0	0	0	0	0
Prepared foodstuff; beverages, spirits, vinegar; tobacco	1	1	2	1	8	8
Mineral products	7	5	6	6	8	4
Products of the chemical and allied industries	62	28	85	61	69	44
Resins, plastics and articles; rubber and articles	98	28	35	19	39	23
Hides, skins and articles; saddlery and travel goods	0	0	4	2	0	0
Wood, cork and articles; basketware	1	0	9	9	3	3
Paper, paperboard and articles	13	12	1	1	15	10
Textiles and articles	24	20	43	23	14	12
Footwear, headgear; feathers, artif. flowers, fans	1	1	9	7	0	0
Articles of stone, plaster; ceramic prod.; glass	20	6	11	6	5	4
Pearls, precious stones and metals; coin	0	0	0	0	0	0
Base metals and articles	75	43	160	111	277	165
Machinery and electrical equipment	8	8	58	32	32	19
Vehicles, aircraft and vessels	0	0	9	8	6	2
Instruments, clocks, recorders and reproducers	4	2	1	2	0	0
Miscellaneous manufactured articles	14	5	12	3	4	4

Source: WTO
Obs: I = Investigations initiated; M = measures applied

IV.2. Subsidies and countervailing measures

According to the WTO Agreement on Subsidies and Countervailing Measures (SCM), the definition of the term “subsidy” comprises three main elements that must be satisfied in order for a subsidy to exist: (i) a financial contribution, (ii) by a government or any public body within the territory of a Member, (iii) which confers a benefit. In order for a financial contribution to be a subsidy, it must be made by or at the direction of a government or any public body within the territory of a Member. These two categories of subsidies are prohibited because they are designed to directly affect trade and thus are most likely to have adverse effects on the interests of other Members.

The agreement also defines two categories of subsidies: prohibited and actionable. There are two types of prohibited subsidies: the first type consists of subsidies related to the export performance; the second comprises the so-called local content subsidies, giving preference to the use of domestic goods over imported ones. Because they directly affect trade and thus are most likely to have adverse effects on the interests of other Members, the use of these two categories of subsidies are prohibited among the members of the WTO.

Actionable subsidies are not prohibited, and most of the existing subsidies fall in this category. In order to challenge a given subsidy, the complaining country has to show that the subsidy has an adverse effect on its interests, otherwise the subsidy is permitted. The SCM lists three types of adverse effects that can be alleged by the party: (i) injury to a domestic industry caused by subsidized imports in the territory of the complaining member; (ii) serious prejudice that usually arises as a result of adverse effects in the market of the subsidizing member or in a third country market; and (iii) nullification or impairment of benefits, which arises most typically where the improved market access presumed to flow from a bound tariff reduction is undercut by subsidization.

If domestic producers suffer damages caused by imports of subsidized products, countervailing duty can be imposed. Countervailing duty can only be charged after the importing country has conducted a detailed investigation similar to that required for antidumping action.

Brazil

Countervailing duties are used less frequently than antidumping measures. From 1995 to 2013, Brazil has been submitted to seven countervailing process investigations, and 8 measures were applied. Neither the US nor the EU have initiated investigations against Brazil. Almost all the investigations initiated and all the measures applied are concentrated in the base metals and articles sector (6 initiated; 8 applied).

In its turn, Brazil has initiated nine investigations and has applied countervailing measures seven times. Three of the investigations initiated and three of the measures applied were against the US. Although the country did not initiate any investigation in the vegetable products sector, this is the one that show the greatest number of measures applied: five out of seven.

US

During the same period, 15 investigations were initiated against the US, and 7 measures were applied. The most reached sectors were mineral products (3 initiated; 2 applied), and live animals and products (2 initiated; 2 applied).

The US initiated 138 investigations and applied 79 measures. Three of the investigations initiated and 1 measure was applied against the EU. The target sectors of the greatest part of these investigations and measures were: base metals and articles (70 initiated; 45 applied); chemicals (14 initiated; 6 applied), and machinery and electrical equipment (10 initiated; 7 applied).

EU

In the analyzed period, the EU was subject to 14 investigations and to the implementation of 11 countervailing measures. The main sectors affected were prepared foodstuff; beverages, spirits, vinegar; tobacco (7 initiated; 5 applied); and animal and vegetable fats, oils and waxes (3 initiated; 3 applied).

The EU initiated 72 investigations and applied 33 measures, and none of them were against Brazil or the US. The investigations and measures were mainly distributed between the following sectors: base metals and articles (19 initiated; 10 applied); resins, plastics, rubber and articles (16 initiated; 8 applied); and textile and articles (13 initiated; 5 applied).

Table 12: Countervailing measures - Investigations initiated and measures applied against Brazil, EU, and US (1995-2013)

	1995		1996		1997		1998		1999		2000		2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		2011		2012		20013		**Total**	
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	**I**	**M**
Brazil	0	4	0	0	1	0	1	0	1	0	1	2	2	0	0	2	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**7**	**8**
US	1	0	0	0	0	0	0	0	1	0	1	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0	2	0	4	1	1	3	1	2	2	0	0	0	**15**	**7**
EU	3	1	1	2	1	0	1	2	1	0	0	1	0	0	1	0	2	1	0	1	0	1	0	0	0	0	0	0	1	0	1	1	0	1	1	0	1	0	**14**	**11**

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 13: Countervailing measures - Investigations initiated and measures applied by Brazil, EU, and US (1995-2013)

	1995		1996		1997		1998		1999		2000		2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		2011		2012		20013		**Total**	
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	**I**	**M**
Brazil	0	5	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	1	0	0	0	0	1	0	0	1	0	0	0	0	3	0	1	0	2	0	**9**	**7**
US	3	5	1	2	6	0	12	1	11	11	7	2	18	10	4	10	5	2	3	2	2	0	3	2	7	0	6	7	14	6	3	10	9	3	5	2	19	4	**138**	**79**
EU	0	0	1	0	4	1	8	2	19	3	0	10	6	0	3	2	1	3	0	2	3	1	1	0	0	0	2	0	6	1	3	3	4	2	6	0	5	3	**72**	**33**

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 14: Countervailing measures - Investigations initiated and Measures applied: Reporting Member vs Exporting Country (1995-2013)

	Brazil		**EU**		**US**	
	I	M	I	M	I	M
Brazil	-	-	0	0	4	3
EU	0	0	-	-	0	0
US	0	0	3	1	-	-

Source: WTO
Obs: I = Investigations initiated; M = measures applied

Table 15: Sectoral distribution of countervailing measures - Investigations initiated and measures applied against Brazil, EU, and US (1995-2013)

	Brazil		**EU**		**US**	
Sector	**I**	**M**	**I**	**M**	**I**	**M**
Live animals and products	0	0	1	1	2	2
Vegetable products	0	0	2	2	2	0
Animal and vegetable fats, oils and waxes	0	0	3	3	0	0
Prepared foodstuff; beverages, spirits, vinegar; tobacco	0	0	7	5	1	0
Mineral products	0	0	0	0	3	2
Products of the chemical and allied industries	0	0	1	0	3	1
Resins, plastics and articles; rubber and articles	0	0	0	0	0	0
Hides, skins and articles; saddlery and travel goods	0	0	0	0	0	0
Wood, cork and articles; basketware	0	0	0	0	0	0
Paper, paperboard and articles	0	0	0	0	0	0
Textiles and articles	0	0	0	0	2	0
Footwear, headgear; feathers, artif. flowers, fans	0	0	0	0	0	0
Articles of stone, plaster; ceramic prod.; glass	0	0	0	0	0	0
Pearls, precious stones and metals; coin	0	0	0	0	0	0
Base metals and articles	6	8	0	0	1	1
Machinery and electrical equipment	0	0	0	0	0	0
Vehicles, aircraft and vessels	1	0	0	0	1	1
Instruments, clocks, recorders and reproducers	0	0	0	0	0	0
Miscellaneous manufactured articles	0	0	0	0	0	0

Source: WTO

Obs: I = Investigations initiated; M = measures applied

Table 16: Sectoral distribution of countervailing measures - Investigations initiated and measures applied by Brazil, EU, and US (1995-2013)

	Brazil		EU		US	
Sector	I	M	I	M	I	M
Live animals and products	0	0	1	1	4	1
Vegetable products	0	5	0	0	3	1
Animal and vegetable fats, oils and waxes	0	0	0	0	0	0
Prepared foodstuff; beverages, spirits, vinegar; tobacco	0	0	0	0	10	2
Mineral products	0	0	4	1	4	4
Products of the chemical and allied industries	0	0	6	2	14	6
Resins, plastics and articles; rubber and articles	4	1	16	8	7	3
Hides, skins and articles; saddlery and travel goods	0	0	0	0	0	0
Wood, cork and articles; basketware	0	0	0	0	4	2
Paper, paperboard and articles	0	0	1	1	8	5
Textiles and articles	4	0	13	5	2	2
Footwear, headgear; feathers, artif. flowers, fans	0	0	0	0	0	0
Articles of stone, plaster; ceramic prod.; glass	0	0	4	0	1	1
Pearls, precious stones and metals; coin	0	0	0	0	0	0
Base metals and articles	1	1	19	10	70	45
Machinery and electrical equipment	0	0	7	5	10	7
Vehicles, aircraft and vessels	0	0	1	0	1	0
Instruments, clocks, recorders and reproducers	0	0	0	0	0	0
Miscellaneous manufactured articles	0	0	0	0	0	0

Source: WTO

Obs: I = Investigations initiated; M = measures applied

IV.3. Safeguards

The adoption of safeguards measures, also understood as a restriction of imports of a product temporarily, is permitted if the domestic industry of a given member is injured or threatened with injury caused by a surge in imports. Unlike the practices previously discussed (antidumping e countervailing measures), safeguard measures do not aim to respond to a condition of unfair competition; instead, they aim to the emergency protection from an import surge.

There are two kinds of import "surge" that justify the adoption of safeguard measures: (i) a real increase in imports (an absolute increase); or (ii) an increase in the imports' share of a shrinking market, even if the import quantity has not increased (relative increase). Moreover, the injury must cause or threaten to cause serious injury to the domestic industry. The Safeguard Agreement (SA) of the WTO defines the term "serious injury" as a significant overall impairment in the position of a domestic industry, while the "threat of serious injury" shall be understood to mean serious injury that is clearly imminent and based on facts.

The SA also sets out criteria for evaluating whether "serious injury" is being caused or threatened, and the factors which must be considered in determining the impact of imports on the domestic industry. When imposed, a safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

In the last eighteen years (1995-2013), Brazil has initiated safeguards investigations 4 times and applied it in 2 of them. The sectors in which the safeguards were applied were vegetable products (1) and miscellaneous manufactured articles. The US, in its turn, initiated investigations 10 times and applied them in 6 occasions on the following sectors: base metals and articles (3); vegetable products (1); live animals and products (1)/ and miscellaneous manufactured articles (1). Finally, the EU initiated 5 investigations and applied safeguards 3 times. The sectors protected by safeguards measures were live animals and products (1); base metals and articles (1); and beverages, spirits and tobacco (1).

Table 17: Safeguard initiations and measures applied by Brazil, EU, and US (1995-2013)

	1995		1996		1997		1998		1999		2000		2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		2011		2012		20013		**Total**	
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	**I**	**M**
Brazil	0	0	1	0	0	1	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	**4**	**2**
US	1	0	2	1	1	0	1	1	2	1	2	2	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**10**	**6**
EU	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	0	1	1	1	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	**5**	**3**

Source: WTO

Obs: I = initiations; M = measures applied

Table 18: Safeguard initiations and measures by sector (1995-2013)

	Brazil		EU		US	
Sector	I	M	I	M	I	M
Live animals and products	0	0	1	1	1	1
Vegetable products	1	1	1	0	3	1
Animal and vegetable fats, oils and waxes	0	0	0	0	0	0
Prepared foodstuff; beverages, spirits, vinegar; tobacco	1	0	1	1	1	0
Mineral products	0	0	0	0	0	0
Products of the chemical and allied industries	0	0	0	0	0	0
Resins, plastics and articles; rubber and articles	0	0	0	0	1	0
Hides, skins and articles; saddlery and travel goods	0	0	0	0	0	0
Wood, cork and articles; basketware	0	0	0	0	0	0
Paper, paperboard and articles	0	0	0	0	0	0
Textiles and articles	0	0	0	0	0	0
Footwear, headgear; feathers, artif. flowers, fans	0	0	0	0	0	0
Articles of stone, plaster; ceramic prod.; glass	0	0	0	0	0	0
Base metals and articles	0	0	1	1	3	3
Machinery and electrical equipment	1	0	0	0	0	0
Vehicles, aircraft and vessels	0	0	1	0	0	0
Instruments, clocks, recorders and reproducers	0	0	0	0	0	0
Miscellaneous manufactured articles	1	1	0	0	1	1

Source: WTO
Obs: I = initiations; M = measures applied

In summary, the exam of the instruments of trade defense between the three partners can demonstrate that in the present time, these instruments are not being used with the frequency they are utilized against China, pointing to the evidence that there is no abusive use of the so-called unfair trade among these partners.

V. Investment

V1. Investments

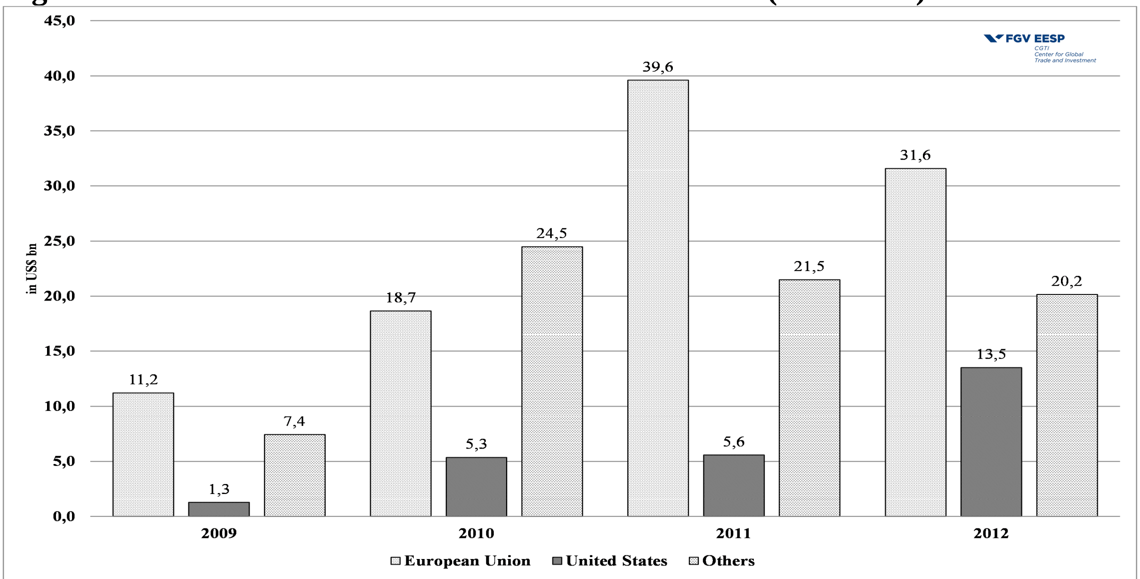
There are two main categories of Foreign Direct Investment (FDI) as defined by UNCTAD: FDI flows and FDI Stock.

UNCTAD defines FDI Stock as *the value of the share of associate and subsidiary enterprises capital and reserves (including retained profits) attributable to the parent enterprise (this is equal to total assets minus total liabilities), plus the net indebtedness of the associate or subsidiary to the parent firm. For branches, It is the value of fixed assets and the value of current assets and investments, excluding amounts due from the parent, less liabilities to third parties*[13].

FDI flows are composed of net sales of shares and loans from associates and subsidiaries to the parent company and its share of the affiliate's reinvested earnings plus total net intra-company loans provided by the parent company.

It is possible to have reverse flows, which consists of a negative result in one of the above-mentioned components superseding the positive amounts of the others.

Figure 18 – Brazil: FDI Inflow from the US and the EU (2009-2012)

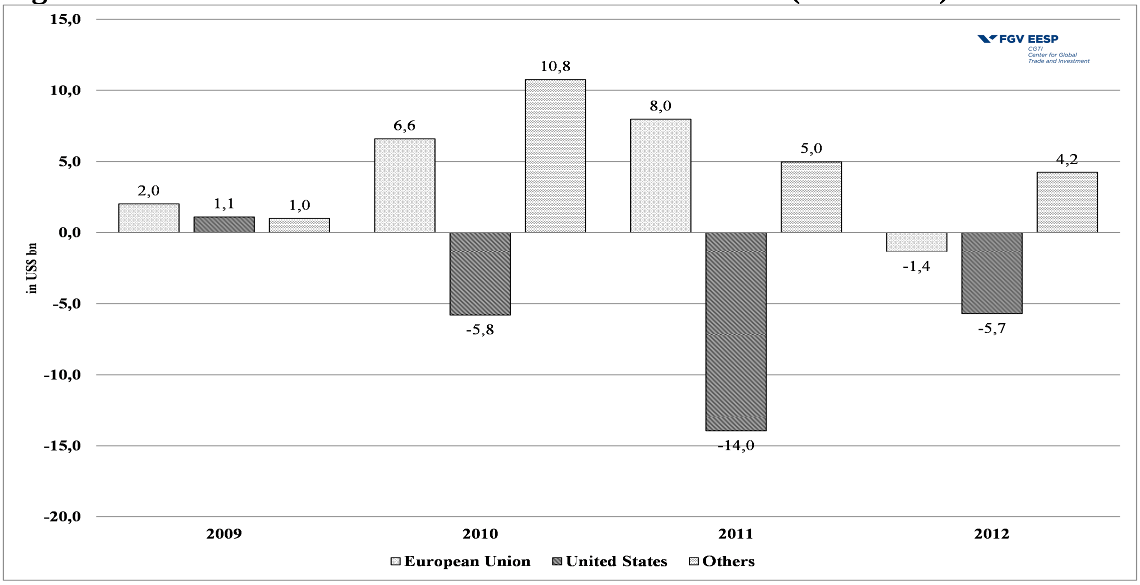


Source: UNCTAD.

Brazil FDI inflow from the US has progressively grown in the last years ranging from US$ 1.3 bn in 2009 to US$ 13.5 bn in 2012. For the EU, from 2010 to 2011 the FDI inflow doubled and reached US$ 39.6 bn. The EU and the US together represents more than 50% of Brazil FDI inflow in the last four years.

[13] *Cf.* UNCTAD. **Sources and Definitions**. Available at <http://unctad.org/en/Pages/DIAE/FDI%20Statistics/Sources-and-Definitions.aspx> (Accessed on 24 October 2014).

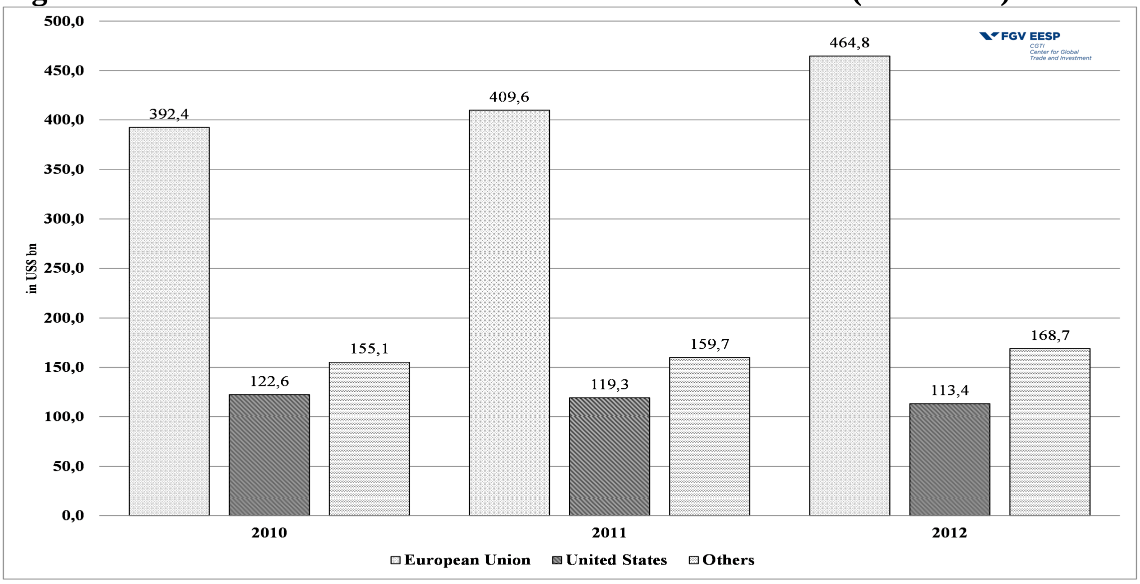
Figure 19 – Brazil: FDI Outflow from the US and the EU (2009-2012)



Source: UNCTAD.

Brazil FDI outflow to the US has progressively diminished in the last for years. For the EU, there was a rise of US$ 1.4 bn from 2010 to 2011 but it has reduced since 2012. Brazil has prioritized investments in other countries following on its foreign policy of strengthening South-South integration and cooperation.

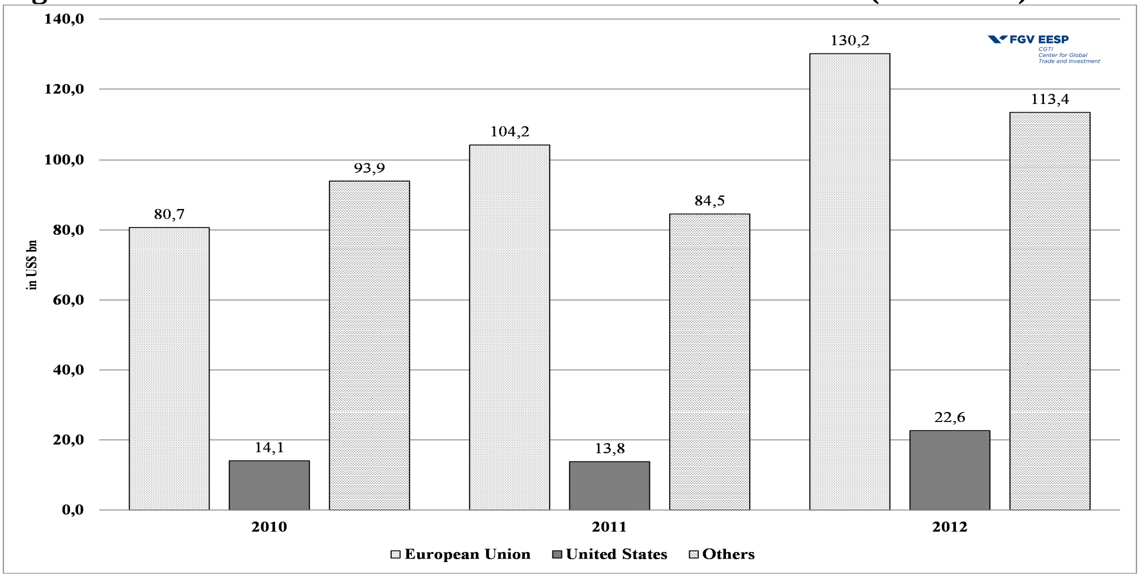
Figure 20 – Brazil: FDI Stock Inflow from the US and the EU (2009-2012)



Source: UNCTAD.

In terms of FDI stock inflow, the EU has significantly invested in Brazil when compared to other trade partners. In 2012, EU FDI stock in Brazil was of US$ 464.8 bn while the US amount was only of US$ 113.4 bn. Other countries FDI stock investments in Brazil are not much higher than the number presented individually by the US. However, the EU members are responsible for more than 50% of FDI stock inflows for Brazil.

Figure 21 - Brazil: FDI Stock Outflow from the US and the EU (2009-2012)



Source: UNCTAD.

For FDI stock outflows, the majority of Brazilian investments are focused in the EU. From 2010 to 2012, total amount of Brazil FDI stock outflow to the EU has raised almost US$ 50 bn or 61.3%. The growth rate of Brazil FDI stock outflow to the US was similar: 60.3% but with a modest amount of only US$ 22.6 bn in 2012. It is worth to highlight that Brazilian FDI stock outflows are growing towards other trade partners, following the foreign policy of strengthening South-South integration and cooperation aspects.

V2. Regulatory Aspects

Investment is a key-topic in the current international trade dynamics. The technological evolution gave international capital flows the necessary fluidity to easily transpose the states' borders. This phenomenon provoked a significant change in how countries regulate and encourage investment internally and externally as well as how they coordinate their actions.

Brazil is a good example in the international investment changing landscape. According to the World Investment Prospects Survey 2013-2015, the country is the 5th most attractive country for future foreign investment in the World.[14] As reported by the Economic Commission for Latin America and the Caribbean (ECLAC), FDI inflows in Brazil reached U$ 64,045 billions in 2013.[15] In Latin America, the country is the primary destination for FDI as well as the main source of it since World War II.[16]

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[14] UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT. World Investment Prospects Survey 2013-2015. **UNCTAD**. Available at: < http://unctad.org/en/PublicationsLibrary/webdiaeia2013d9_en.pdf>. Accessed in: 22nd set. 2014.

[15] ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN. Foreign Direct Investment in Latin America and the Caribbean 2013. **ECLAC**. Available at: < http://www.cepal.org/publicaciones/xml/8/52978/foreigndirectinvestment2013.pdf>. Accessed in: 22nd oct. 2014.

[16] AGÊNCIA BRASILEIRA DE PROMOÇÃO DE EXPORTAÇÕES E INVESTIMENTOS. Investimento Estrangeiro Direto. **ApexBrasil**. Available at: < http://www2.apexbrasil.com.br/atrair-investimentos/investimento-estrangeiro>. Accessed in: 22nd set. 2014.

In this aspect, it is important to highlight the growing importance of the country´s role not only as an investment receiver, but also as an investment promoter. In last years, the country is gaining more space as a capital exporter. As reported in the Census of Brazilian Capital Abroad presented by the Brazilian Central Bank, the total of Brazilian assets in foreign lands reached US$ 391.6 billion in 2013. This amount shows an increase of 10% compared to the year 2012. Regarding Brazilian foreign direct investment, the Census reported an increase of 10.9% in the same comparison basis, achieving the figure of US$ 295.4 billons. [17]

A sensitive issue regarding the national policy on foreign investment concerns the Investor-State Dispute Settlement Mechanism, presented in the significant number of preferential agreements. The Investor-State Clause enables the foreigner investor to choose between the domestic jurisdiction and the international arbitration to settle any controversy arising during the execution of the Investment Agreement. It is argued that this provision would be in disagreement with article 1, I (national sovereignty principle) and article 5, XXXV (right of action) of the Brazilian Federal Constitution. The theme is controversial, attracting both criticism and support from different stakeholders.

The United States has a consolidated position regarding the adoption of the Investor-State Clause. The country encourages and promotes the endorsement of this dispute resolution device in the majority of its investment agreements. On the other hand, the European Union demonstrates a more flexible attitude toward Investor-State dispute settlement.

Recently, giving the strong public interest in the issue, the European Commission decided to launch a public consultation on a possible approach that could serve as the basis for its negotiations.[18] The public hearing took place from March to July 2014 and involved the participation of approximately 150.000 persons. In the coming months, the European Commission will analyze the collected data and, as soon as the work is completed, it will disclose the outcome of the consultation.[19]

Hence, in the case of a future Brazilian negotiation on investment, the Investor-State Clause should not pose a problem to the European Union, but it may pose one for the United States.

[17] BANCO CENTRAL DO BRASIL. Censo de Capitais Brasileiros no Exterior (CBE): ano-base 2013. **BCB**. Available at: <http://www4.bcb.gov.br/rex/CBE/Port/ResultadoCBE2013p.pdf>. Accessed in: 24th set. 2014.

[18] EUROPEAN COMISSION. Preliminary Report: Online Public Consultation on Investment Protection and Investor-to-State dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement. **EC.** Available at: <http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152693.pdf>. Accessed in: 25th set. 2014.

[19] EUROPEAN COMISSION. Consultations: Online Public Consultation on Investment Protection and Investor-to-State dispute Settlement (ISDS) in the Transatlantic Trande and Investment Partnership Agreement. **EC**. Available at: <http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179>. Accessed in: 25th set. 2014.

VI. REGULATORY BARRIERS

During the GATT era, several Codes were developed and adopted. One code was dedicated to Technical Barriers to Trade, and came to be the TBT Agreements at the creation of the WTO. During the Uruguay Round, the issue of agricultural was negotiated together with a specific agreement to sanitaty and phytosanitary measures, the SPS Agreement.

VI.1. Technical Barriers to Trade

According to WTO's definition, technical barriers are those derived from the use of technical standards or regulations which are neither transparent nor grounded in internationally accepted standards, or even from the adoption of conformity assessment procedures that are either not sufficiently transparent and/or too expensive, as well as from excessively stringent inspections.

The Agreement on Technical Barriers to Trade (TBT) was adopted at the WTO with the aim of regulating the subject, assisting members in identifying the best course for implementing standards and technical regulations, and avoiding the adoption of procedures that would unnecessarily restrict international trade. TBT rules apply to both the product and its related processes and production methods (PPMs), seeking to avoid the imposition of unnecessary or discriminatory technical barriers based on the manner in which a good is produced.

TBT also applies to the imposition of labels that aim to provide consumers with information about products sold, which may influence their preferences and thus modify the conditions of competition within the market.

In general, the adoption of technical barriers related to trade and the proliferation of measures taken under the exceptional circumstances provided in the TBT and in accordance with the exceptions set out in Article XX of the GATT 94 represents a source of uncertainty for the international community. These rules may affect the trade flow of goods, primarily through measures to ensure environmental safety and to protect human health. In addition, technical requirements, whether voluntary or mandatory, can be used as a disguised means of protecting domestic markets, which proves to be an important factor for limiting the free movement of goods and services.

In order to avoid the multiplication of technical rules that rely on different scientific bases and hinder trade flows, TBT encourages the use of international standards as a basis for technical regulations and standards applied by members, as stated in the Code of Good Practice (henceforth the Code). However, if these standards do not achieve the appropriate level of protection that a WTO member determines to be necessary in order to achieve its objectives, such as protection of human health or national security, such member is allowed to establish a rule or technical regulation that goes beyond internationally established standards.

The gray area between possible harm and lack of international legislation that offers an appropriate level of protection brings forth the use of the precautionary principle. Accordingly, discussions are held on the impact that can be caused by the implementation of technical standards and regulations that exceed those set internationally, since adaptation to imposed rules can be highly costly and can influence changes in regulations for the admission in other countries as well.

The rise of TBT measures

The erosion of classic barriers to trade means that the WTO has been successful in its main goal: reducing the barriers of international trade. Now that the classical obstacles to trade are vanishing, the WTO is trying to adapt itself into a World where economies are integrating one another at full speed. According to Subramanian and Kessler's concept of hyperglobalization[20], the new economic dynamics are visible through Global Value Chains where imports of parts and spears and the export of items that absorbed those parts are a sign of a healthy economy. In this World, tariffs should be eliminated and the new tools used to protect one's own market are the so-called non-tariff barriers (NTBs). The international trade law is moving toward protecting the consumer, not the producer, and measures are evermore based on precaution. Mr. Pascal Lamy, in recent event in Brazil, said: *"We're moving from protection to precaution. This movement cannot be countered or halted"*[21].

The immediate consequences of this proliferation of TBTs by developed countries such as US and EU are that the actual tools for developing countries to work with at the WTO – the maneuver gap between bounded and consolidated tariffs – are rendered ineffective. Raising the applied tariff level of a product until it reaches de bounded tariffs will not grant developing countries' exporters all the required certifications to export their labor intensive, lower added value goods to developed countries. Nonetheless, the same specific requirements that creates demand and generates feedback from the consumers, when applied to capital intensive goods, to higher added value goods, differentiates their product from competition. Once the consumer market establishes higher grounds, it will not settle for less.

Along with the continuous tariff reductions round after round of negotiation, some authors confirm that TBTs are stepping up into the protectionism void created by the effectiveness of WTO. Bhagwati affirmed that countries obey the "Constant Protectionism Law"[22], not intending to leave its markets unprotected. Bagwell[23] points the incidence of the race-to-the-bottom effect, surely negative as it clashes with the precautionary principle, in case countries try to stimulate exports of certain national sector by cutting off TBTs costs through more lenient tariff regulations. Meaning that, instead of competitiveness, the country will be creating environment for less requirements along the value chain. Staiger noted that the country will enforce and restrict TBTs if the sector has a marginal cost relatively lower than the rest of the World to adapt to new standards, even if it has to do it indirectly, through stimuli to civil

[20] SUBRAMANIAN, Arvind; KESSLER, Martin. **The Hyperglobalization of Trade and its Future**. Peterson Institute for International Economics Working Paper No. 13-6. July 24, 2013. Available at:< http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2297994>.

[21] LAMY, P. In: International Conference on the Future of WTO with Mr. Pascal Lamy, 2014, São Paulo School of Economics at Getulio Vargas Foundation. Minutes available at http://ccgi.fgv.br/ptbr/international-conference-future-wto-multipolar-world-mr-pascal-lamy

[22] BHAGWATI, J. "More on the Equivalence of Tariffs and Quotas". In: American Economic Review, 58(1), 1968, p. 142-146.

[23] BAGWELL, K.; MAVROIDIS, P.; STAIGER, R. "It's a Question of Market Access". In: American Journal of International Law, 96(1), 2002, p. 67

society and adoption of technical standards, voluntary or not[24]. The consequence is competitive advantage on the competition into a range of already more selective consumers.

The TBTs epidemic is also confirmed by Kee. The Non-Tariff Measures (NTMs) tariffication data showed that the ad valorem tariff average of TBTs is higher on countries with higher GDP[25] per capita, shedding light on the fact that tariff measures can be replaced in equal effectiveness of protection by NTMs. He also noted that TBT and SPS measures can be used as "escape clauses", granting the members opacity and flexibility to protect their markets and increase bargain power[26]. The voluntary standards have a prestigious position in articulating opacity to policy making.

VI.1.1. The CTBT

The Committee on Technical Barriers to Trade (CTBT) functions under Article 13 of the TBT Agreement and is a valuable tool for members to discuss standards or measures taken by other members that may affect the international trade. Its structure and functioning is available at *Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995*[27].

The TBT Committee in general holds three meetings every year in which members can discuss, among other themes, aspects of the implementation of the Agreement, notifications received, and raise specific trade concerns (STC).The CTBT works in cooperation with governments and technical organisms, compiling, analyzing and overseeing technical barriers to trade. Raising a specific trade concerns (STCs) in the Committee, a member can formally question another member's measures relating to the Agreement on TBT, both in progress or already adopted. During the Committee's regular meetings or in informal discussions between members, the STCs afford members the opportunity to review trade concerns in a bilateral or multilateral setting and to seek further clarification. Through dialogue and exchange of information for STCs raised it is possible, many times, to solve the matter without resorting to the WTO dispute settlement system.[28]

Analysis of CTBT Notifications and STCs

In accordance with the raise of TBT measures, there is an unmistaken growth pattern on notifications to the Committee. Since its entry into force in January 1995 up to December 2013, 121 members submitted 1,626 new notifications (including 26 revisions) of technical regulations and conformity assessment procedures along with 467 addenda and 42 corrigenda to notifications.

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[24] STAIGER, R. W. "Non-tariff measures and the WTO". Working Paper ERSD-2012-01, Geneva, WTO, 2012, p. 6.

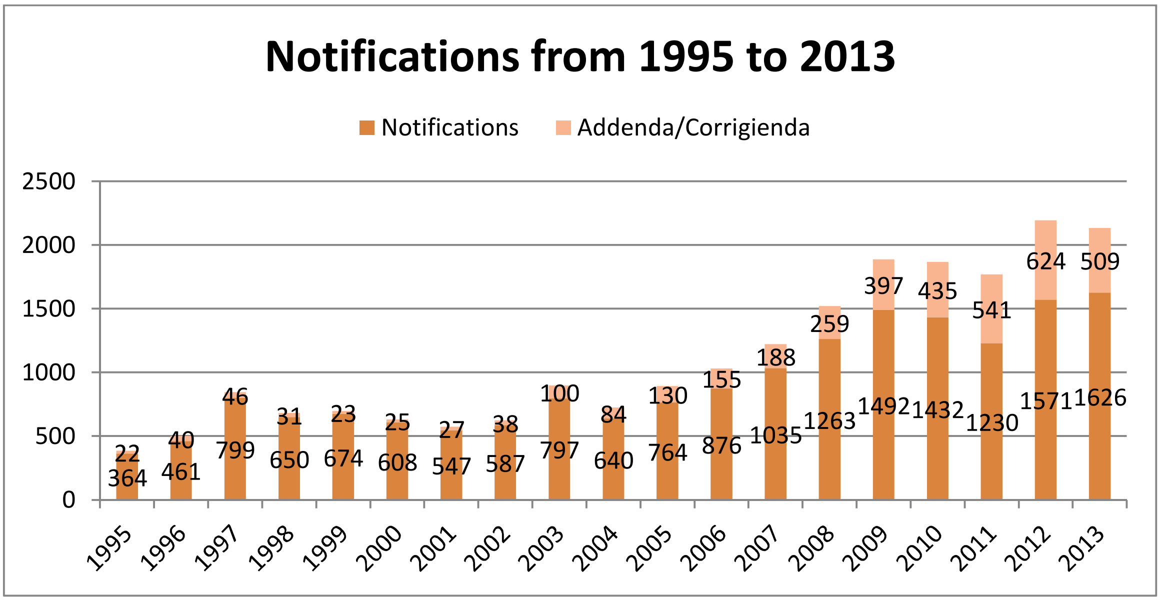
[25] KEE, H.; NICITA, A.; OLARREAGA, M. "Estimating trade restrictiveness indices". In: Economic Journal 119(534), 2009, p. 191.

[26] WTO. World Trade Report 2012, p. 72

[27] WTO. Decisions and Recommendations Adopted By the WTO Committee on Technical Barriers to Trade Since 1 January 1995, Note by the Secretariat, Revision, 9 de junho de 2011, G/TBT/1/Rev.10

[28] HORN, H.; MAVROIDIS, P.C.; WIJKSTRÖM, E.N. **In the Shadow of the DSU**: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees. IFN Working Paper No. 960, 2013, p. 24.

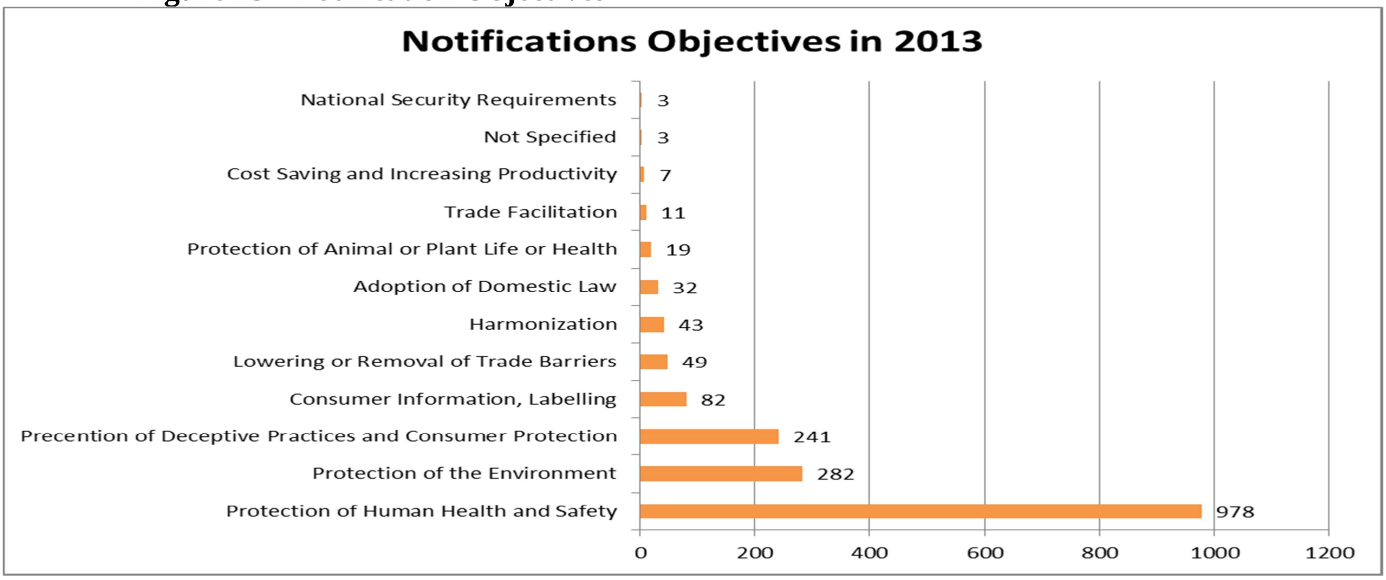
Figure 22 - Number of TBT Notifications from 1995 to 2013



Source: WTO[29]

According to the 2014 Annual Review of the CTBT, among the 1,626 notifications received in 2013, protection of human health or safety; protection of the environment; quality requirements; prevention of deceptive practices and consumer protection were the objectives most frequently mentioned.

Figure 23 - Notification Objectives

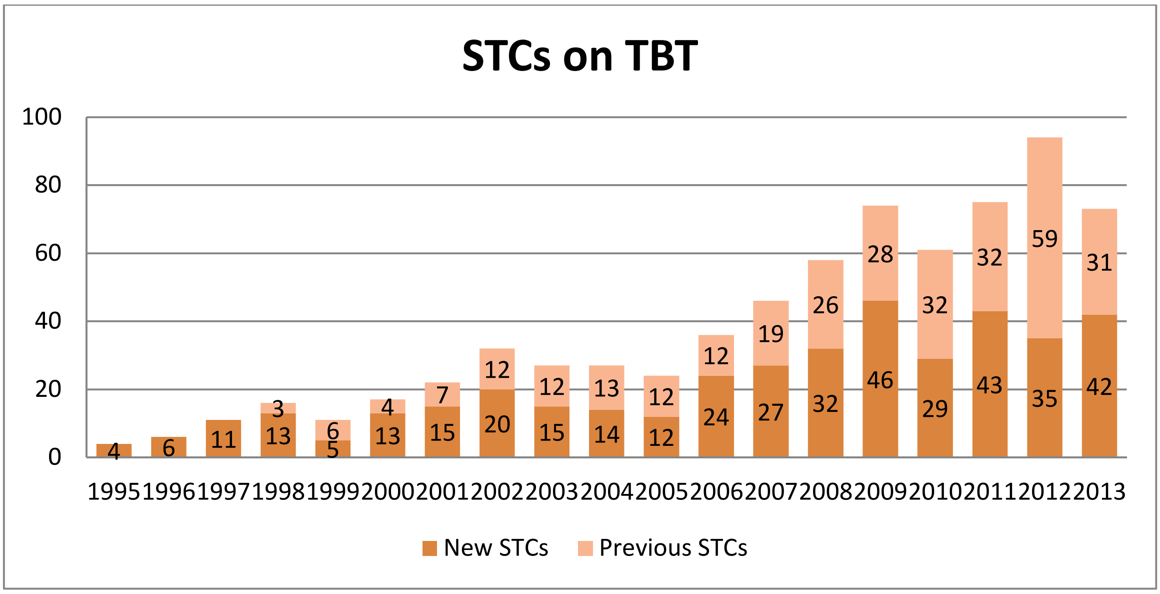


Source: WTO

The Annual Meeting also highlights that exactly the same pattern can be observed on STCs. In 2013, 42 new concerns were raised and 31 previously raised concerns were discussed.

[29] WTO. Nineteenth Annual Review of the Implementation and Operation of the TBT Agreement, Note by the Secretariat, 7 March 2014, G/TBT/34, p. 3.

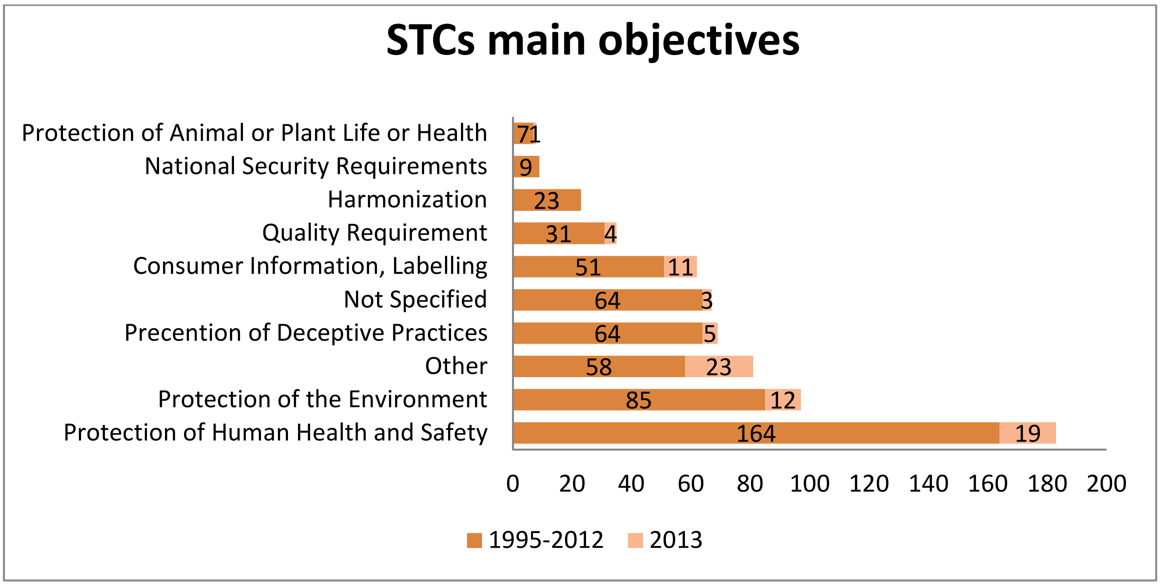
Figure 24 - Number of STCs from 1995 to 2013



Source: WTO

In spite of the total decrease, it remains clear that the number of new STCs rose, while those cases pending resolution decreased, which may indicate the parties were convinced of the legality of the measure or decided not to pursue the matter further. This might point to a rise in CTBT's efficiency to solve issues concerning measures taken by members. It is interesting to notice that the objectives also reflect those concerns on Notifications, with a curious twist: the category 'other' covers a wide range of stated objectives including trade facilitation and cost saving. STCs that do not have clear objectives have been classified as "not specified":

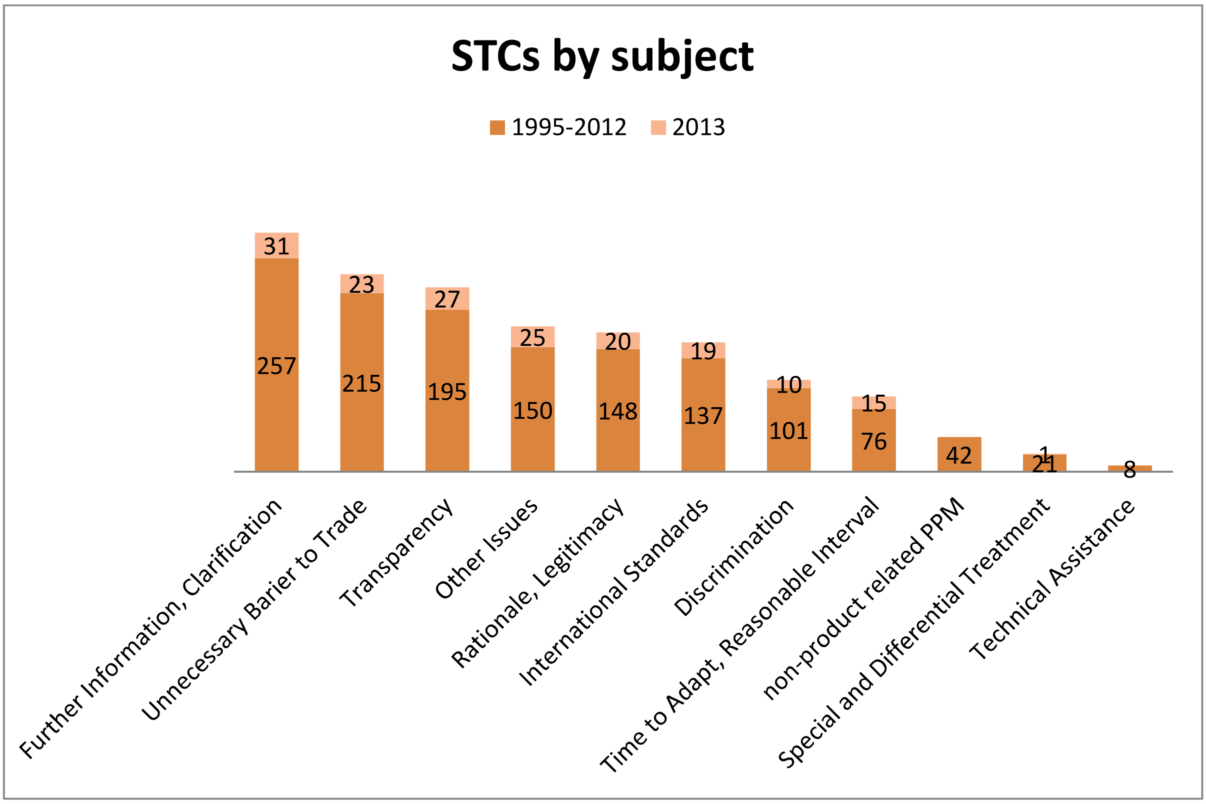
Figure 25 - STCs Objectives



Source: WTO

The most frequent concern raised was, by far, transparency-related, where members asked for more information or clarification. Avoidance of unnecessary barriers is also a concern usually invoked.

Figure 26 – STCs by subject

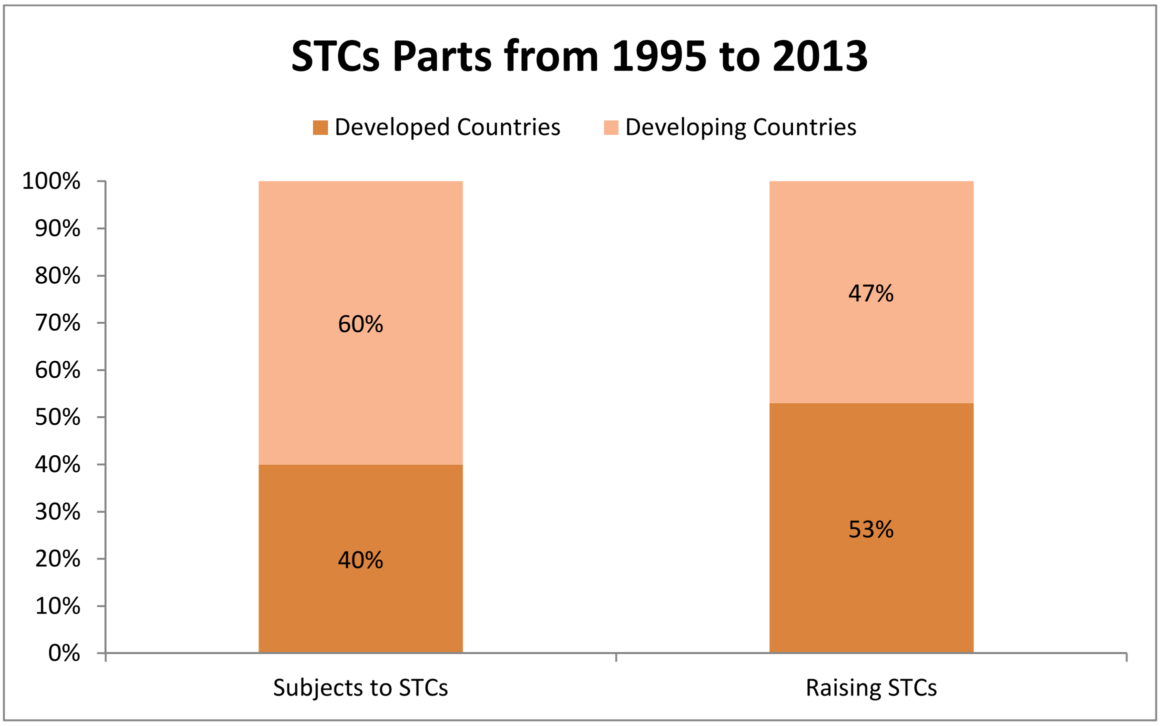


Source: WTO

The Review points of interest is that [30]: developed country raises more STCs than suffers them.

[30] Idem, p. 9

Figure 27 – STCs Parts from 1995 to 2013



Source: WTO

From all general data gathered, one can infer that there has been a steady raise in technical barriers adopted and notified by members that these measures are being discussed in the CTBT and those making more use of this mechanism are the developed countries.

According to the WTO World Trade Report 2012 on Non-Tariff Measures, the majority of non-tariff measures are destined to agriculture. The weighted average of NTMs on agriculture is of 62.5% and of 45.1% on manufactured goods. The users of such measures should also be highlighted[31].

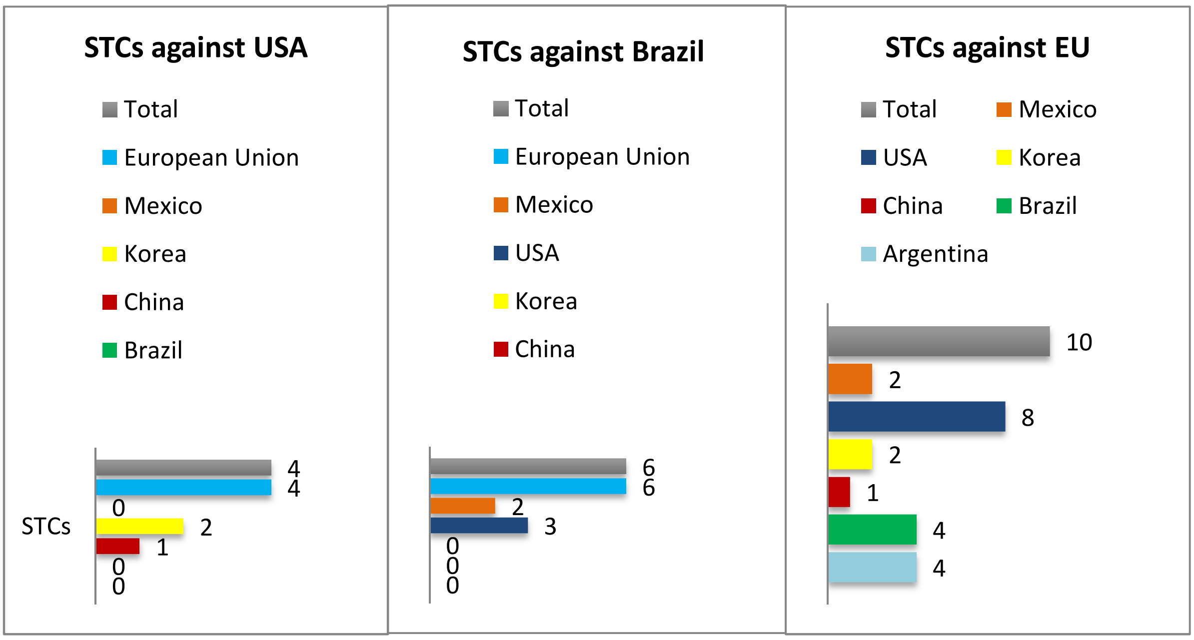
Main actors

From 1995 2013, the top 10 members whose measures have been most frequently discussed at the CTBT are the EU (89), China (45), US (44), Korea (30), India (20), Brazil (19), Indonesia (17), Mexico (12), Japan (11), and Canada (10).

From January 2010 to July 2014, observing the behavior of EU, US and Brazil in terms of STCs, the EU rose, alone or accompanied by other members, all the STCs against Brazil and the USA. Brazil, in its turn, raised 4 STCs against the EU, and not a single one against the US.

[31] Idem, p. 115-116

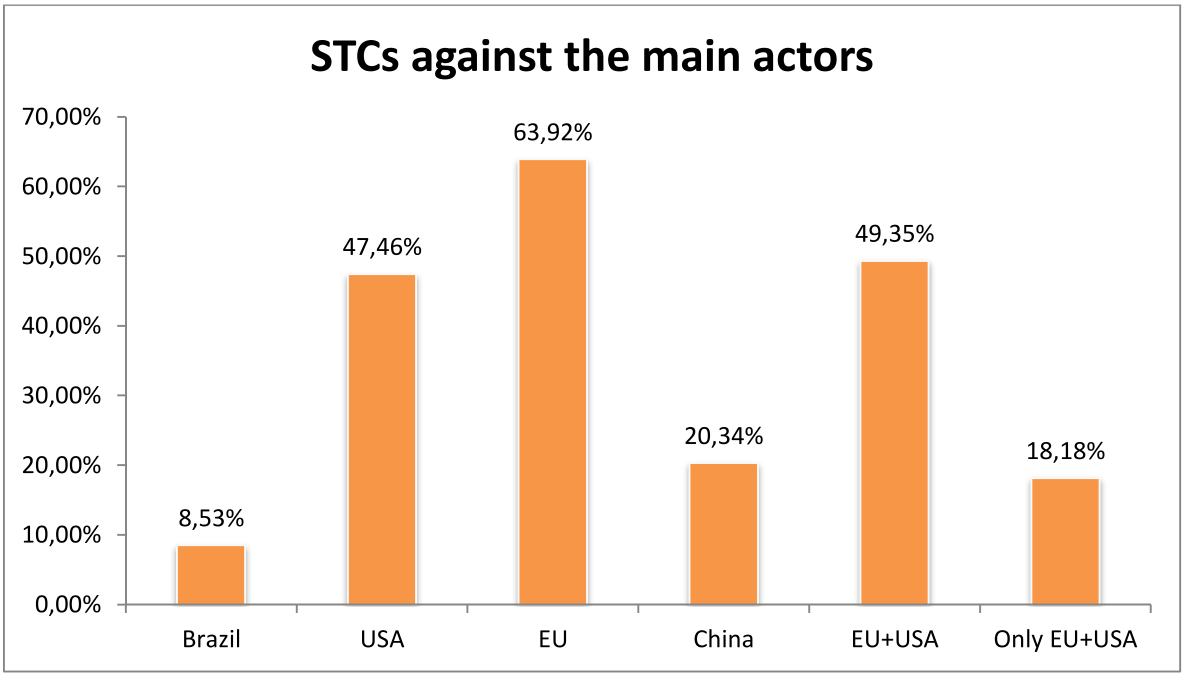
Figure 28: STCs against USA, Brazil and EU



Source: WTO

It is relevant to stress that, from January 2009 to December 2013, Brazil joined only 8,5% of STCs raised against the other 9 main actors, while the EU participated in 64%, the USA in 51,7% and China in 20,3%. On STCs against the top 10 members except EU and US, they both raised 49,3% of all STCs on the period, and were the sole concerned members on 18,2%.

Figure 29 – STCs against the main actors



Source: WTO

Main products notified by Brazil

Brazil presented 146 new notifications from January 2012 and July 2014. The main products notified by Brazil were machinery and equipment, medical and pharmaceutical material (emphasis in cosmetics) foods and beverages and chemicals.

Brazilian notifications concentrate on the top 10 imported products by Brazil, according to MDIC: chemicals (especially fuel, oils and fertilizers), mechanical equipment, electrical and electronic equipment, motor vehicles and parts, plastics and its products, pharmaceuticals, and optical and precision equipment.[32]

Main Products Notified by EU

The EU made a few improvements in its internal regulatory system. The Regulation (EC) nº 764/2008 establishes procedures relating to the application of member States' technical requirements, and enforces the legislative coherence aimed by Directive 98/34/EC, that regulates notifications, harmonization and mutual recognition among members. Between 2011 and 2013, the EU notified 154 technical regulations to the CTBT, covering household appliances, electric and electronic equipment, biocidal products, machinery, motor vehicles and parts, measuring devices, chemicals, food, cosmetics and textile products.

It is quite interesting that foods and chemicals, responsible for 17,4% total imports of EU in 2013, are also the focus of a large share of the notifications. Machinery, motor vehicles and parts, also subject to notifications, correspond to 24,1% total imports[33].

Main Products Notified by USA

The US, between 2010 and 2012, made 520 notifications to the CTBT on behalf of government agencies on the following subjects: technical standards to vehicles, cellphones and other portable devices, chemicals, drugs, gas, machinery and equipment of domestic and industrial use, which does involve the largest part of US's import share according to official government data[34]. Then, there was a period of notification hiatus due to efforts of reforming internal procedures for sub-federal notifications in order to make corrections. Specifically about foods, 29 notifications were due to the *Food Safety Modernization Act of Food and Drugs Administration*, which reforms the labeling premises[35].

Main STCs Brazil Endured

Since January 2009, out of 138 STCs raised against the 10 aforementioned members, Brazil joined as a concerned party in only 11 cases. Seven against EU, about seal products, poultry meat, Grenelle 2 Law, honey containing pollen from genetically modified maize, prevention of legal supply chains of falsified medical products for

[32] MDIC, Brazilian Trade Balance Consolidated Data 2013, p. 27

[33] Data extracted from Trade Export Helpdesk, available at http://exporthelp.europa.eu/thdapp/display.htm?page=st%2fst_Estatisticas.html&docType=main&languageId=pt

[34] In accordance to International Trade Commission for 2013, available at http://dataweb.usitc.gov/.

[35] Available at http://www.fda.gov/Food/GuidanceRegulation/FSMA/default.htm

human use, and wine and grape juice. Also, tobacco against Canada, Requirements for Information Security Products and encryption against China and, against Indonesia, one STC on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods, and other on halal food.

VI.1.2. TBT and the DSU

Forty nine cases under the WTO's Dispute Settlement Body have cited the TBT Agreement in their request for consultations.[36] The following articles are the ones in which there is most disagreement among members: Article 2 (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies), followed by Article 2.2, Article 2.1, and Article 5 (Procedures for Assessment of Conformity by Central Government Bodies).

VI.1.3. Precautionary Principle

Both USA and EU adopt forms of consumer protection. While EU uses the precautionary principle as a base for many regulations, USA has the Consumer Product Safety Commission, and an independent agency set up in 1972 under the Consumer Product Safety Act[37]. It encourages the development of effective standards, developing technical regulations where needed, and enforcing compliance with product safety laws and regulations, including the overarching requirement that no product may present an unreasonable risk of injury or death.

Although the official preference is to rely on industry's use of voluntary standards, the CPSC and other agencies with responsibility for product and service regulations may develop technical regulations when voluntary standards are not considered adequate or when compliance with voluntary standards is considered unlikely. The government agencies may also be required by law to develop or adopt technical regulations, for example, the Consumer Products Safety Improvement Act required the CPSC to develop technical regulations for toys and all-terrain vehicles. About 200 products are currently subject to technical regulations developed by the CPSC[38].

The European precautionary logic permeates its whole normative system. The application of the principle on technical requirements is based on the Regulation (EC) 764/2008. It establishes mutual recognition among member states, and it also regulates imports from outside the EU under the technical harmonization.

Under the new approach to technical harmonization launched in the mid-1980s, legislation adopted contains requirements expressed in terms of performance-based indicators or objectives. Essential requirements define the results to be attained, or the hazards to be dealt with, without specifying any particular technical solution. This approach covers a wide variety of products, including electrical and electronic products,

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[36] WTO. **Disputes by agreement**. Available at: < http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A22>.

[37] CPSC. **About CPSC.** Available at: http://www.cpsc.gov/en/About-CPSC/

[38] US Government Accountability Office. **Consumer Product Safety Commission**: A More Active Role in Voluntary Standards Development Should Be Considered, GAO-12-582, May 2012, p 4. Available at: http://gao.gov/assets/600/590990.pdf.

pressure equipment and gas appliances, toys, machinery, medical devices, radio and telecom equipment, elevators, personal protective equipment, equipment for use in explosive atmospheres, and recreational craft. Goods that are covered by new-approach technical regulations are subject to conformity assessment procedures commensurate with the level of risk associated with them. Large product sectors considered low to medium risk are subject to a supplier's declaration of conformity. For certain categories of products deemed high risk, third-party conformity assessments conducted by notified bodies are required beforehand. These high-risk goods include high risk medical devices, certain types of pressure equipment, lift, cableways, gas appliances, and most types of equipment for use in explosive atmospheres.

Voluntary standard treatment in the USA and its appropriation by the Government

The USA has few laws, regulations or guidelines on developing technical regulations and conformity assessment procedures. The National Technology Transfer and Advancement Act requires government agencies to use voluntary consensus standards developed by private-sector standards development organizations except where inconsistent with law or otherwise impractical. Also, the Circular OMB A-119 of 10 February 1998 regulates Federal participation in the development and use of voluntary consensus standards and in conformity assessment activities, and requires federal agencies to use "voluntary consensus standards" in procurement and regulatory activities, and for federal employees to participate in the standard development activities. The law defines voluntary standards, and, by opposition, private standards[39]:

> 4. a. For purposes of this policy, **"voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies, both domestic and international.** These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this Circular, "technical standards that are developed or adopted by voluntary consensus standard bodies" is an equivalent term.
> (1) **"Voluntary consensus standards bodies" are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures.** For purposes of this Circular, "voluntary, private sector, consensus standards bodies," as cited in Act, is an equivalent term. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. **A voluntary consensus standards body is defined by the following attributes:**
> **(i) Openness.**
> **(ii) Balance of interest.**
> **(iii) Due process.**
> **(vi) An appeals process.**
> **(v) Consensus,** which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.
>
> b. **Other types of standards, which are distinct from voluntary consensus standards, are the following:**

[39] http://www.whitehouse.gov/omb/circulars_a119

(1) "**Non-consensus standards," "Industry standards," "Company standards," or "de facto standards," which are developed in the private sector but not in the full consensus process.**
(2) "Government-unique standards," which are developed by the government for its own uses.
(3) Standards mandated by law, such as those contained in the US Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

This law attempts at a separation by definition of *de facto* standards from voluntary standards, and both laws aim at regulatory convergence and federal adoption of these standards, as agencies, must use voluntary consensus standards, both domestic and international, in its regulatory and procurement activities in lieu of government-unique standards, unless use of such standards would be inconsistent with applicable law or otherwise impractical. The practical meaning of this normative arrangement is that the production of adopted standards by the government is decentralized.

There are, under the American National Standards Institute (ANSI) 225 accredited private sector voluntary standards system in the US, 20 of which develop approximately 80% of the standards produced by ANSI-accredited Standard Developing Organizations[40].

VI.2. Sanitary and Phytosanitary Measures

Sanitary and phytosanitary measures are usually taken by a member in order to protect its territory against risks linked to food safety, animal health and plant protection or to prevent or limit damage from the entry, establishment and spread of pests[41]

The Sanitary and Phytosanitary Measures Agreement (SPS) was negotiated with the purpose of establishing clear rules and a level playing field so that members would be able to set sanitary and phytosanitary standards that reflect their national interest without becoming unnecessary obstacles to trade.

The SPS Agreement recognizes the right to adopt sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health as long as there are scientific principles that may well support such regulation and do not represent a unjustifiably discrimination or disguised trade restrictions regarding foreign products. Members are allowed to set higher standards based on appropriate assessment of risks if the approach is consistent, not arbitrary. As in the TBT Agreement, it is also possible to apply the precautionary principle.

Furthermore, members are encouraged to use international standards, guidelines and recommendations as a means of harmonizing their regulations, such as the FAO/WHO Codex Alimentarius Commission for food; the International Animal Health Organization for animal health; and the FAO's secretariat of the International Plant Protection Convention for plant health.

[40] WTO, USA Trade Policy Review, WT/TPR/S/275/Rev.2, paragraph 79.
[41] WTO. **Sanitary and Phytosanitary Measures**. Available at: < http://gtad.wto.org/trta_subcategory.aspx?cat=33113 >.

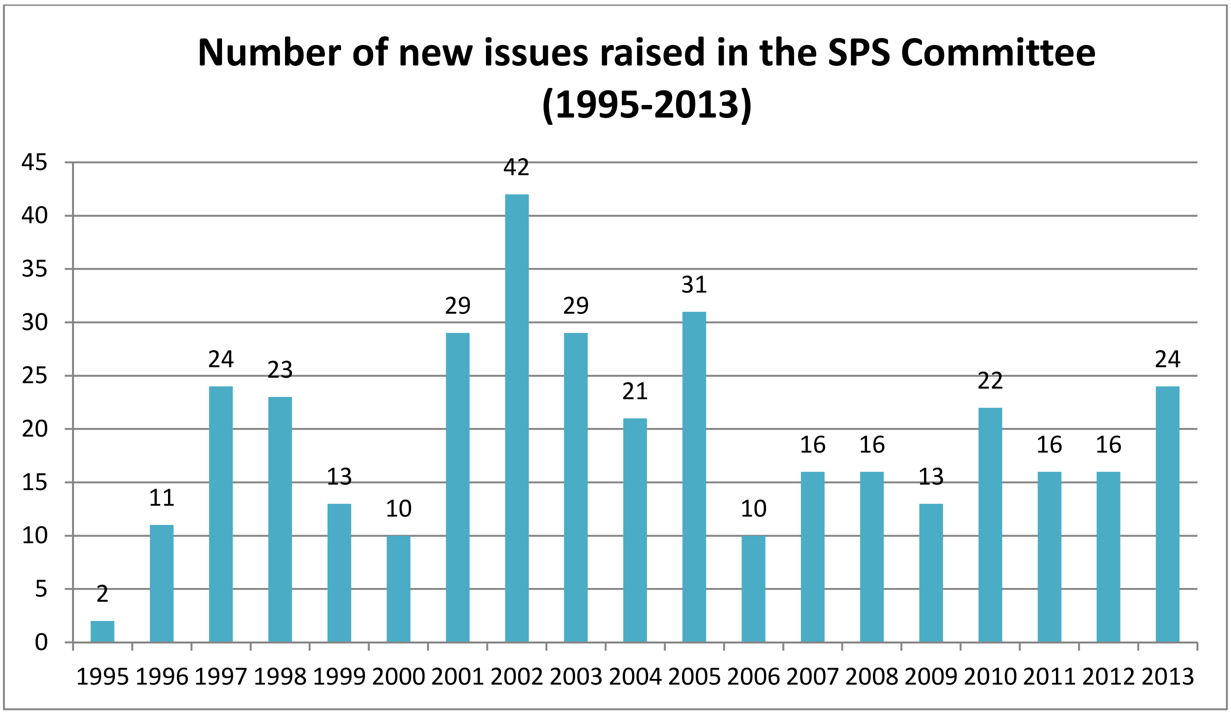
VI.2.1. The SPS Committee

The Committee on Sanitary and Phytosanitary Measures was established as a means of guaranteeing transparency and overseeing the implementation of the SPS Agreement by providing a forum for the exchange of information and consultation on aspects related to food safety and animal and plant health measures. Members shall make notifications when introducing new or changed import requirements with a suitable time so that the other countries may provide comments.

The SPS Committee in general holds three meetings every year in which members can discuss, among other themes, aspects of the implementation of the Agreement, notifications received, and raise specific trade concerns (STC). These mechanisms are useful for many countries insofar as they can lead to exchanges of information or bilateral consultations and often resolve problems without resorting to the DSB.

From 1995 to 2013, 368 STC were raised in the SPS Committee.

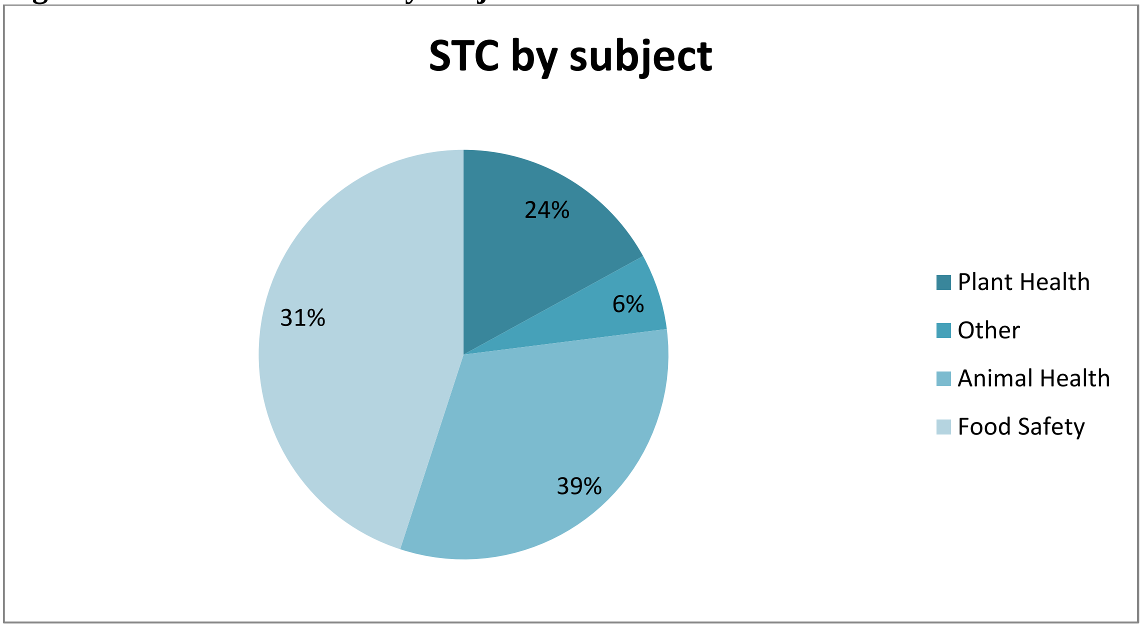
Figure 30 – Number of new issues raised 1995-2013



Source: WTO, 2014.

Animal health and zoonoses is the most questioned theme, representing 39% of all the trade concerns raised in the period above mentioned. Among the concerns raised, 33% were related to transmissible spongiform encephalopathies, while issues related to foot-and-mouth disease account for 24%, and avian influenza represent 9%.[42] Food safety, plant health and other issues count for 31%, 24%, and 6% respectively.

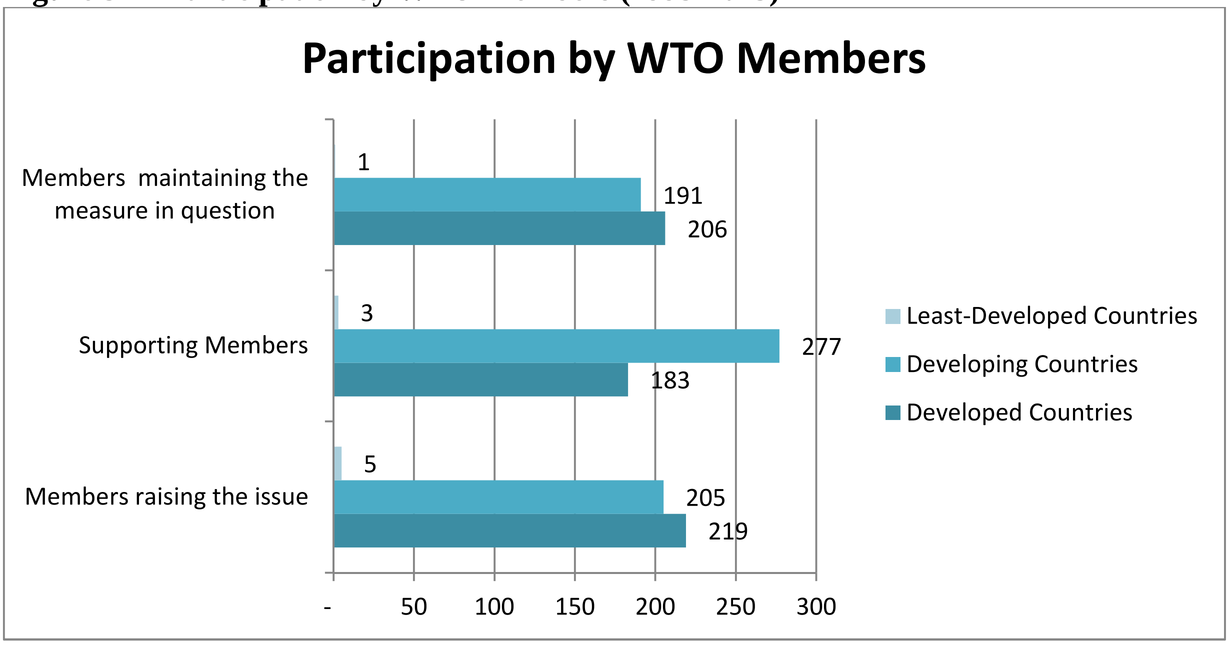
Figure 31 – Trade concerns by subject



Source: WTO, 2014

Developed countries are the main actors both raising issues and maintaining the measures questioned, while developing countries act predominantly as supporting members.

Figure 32 – Participation by WTO Members (1995-2013)



Source: WTO, 2014

In the past few years developing countries have shown greater activity regarding the proposition of new trade concerns and, especially since 2008, they even surpassed the

[42] WTO. **Specific Trade Concerns**. G/SPS/GEN/204/Rev.14, March 2014, p. 6.

performance of developed countries. In 2013, developing members raised 16 trade concerns, while developed ones raised 8 (least-developed countries did not raise any STC in the same year).[43]

Among the members that most frequently launch SPS trade concerns are US (1st), EU (2nd), and Brazil (5th). These countries also are amidst the Members that most frequently face SPS STC: EU (1st), US (4th), and Brazil (10th).[44]

The EU and the US undoubtedly are protagonists in the SPS Committee.

In 2013, the major SPS issues raised by the US were related to export: (i) certification requirements; (ii) agricultural biotechnology; (iii) Bovine Spongiform Encephalopathy (BSE) and barriers related to the export of beef and beef products; (iv) avian influenza and barriers related to the export of poultry and poultry products; and (v) maximum residue levels for pesticides and veterinary drugs.[45] The main trade concerns related to Brazilian SPS regulation regarded food safety, especially for beef and pork, and plant health (planting seeds).[46] The US also raised concerns about European regulation in all the above topics.[47]

During 2013, the EU raised concerns about import restrictions due to BSE; ban of offals; pork import restrictions; Brazilian import requirements for wine; restrictions related to avian influenza; and certification requirements for imports.[48]

Brazil, in the same year, raised issues mostly on import restrictions on beef due to BSE and on poultry meat; European restrictions on the importation of fruits and fruit juices; and Korean and Chinese application of regionalization requirements on imports.[49]

VI.2.2. SPS and DSU disputes

Specific trade concerns related to SPS do not constitute a prior mechanism to the dispute settlement system as stablished by the WTO. Nevertheless, STC frequently express divergences of views between members regarding the consistency of SPS measures adopted within the territory of a certain member. Questioning national regulations is a means of demonstrating that a given member has reasons to believe that certain obligations under the SPS Agreement are not being implemented.

There is strong evidence that the SPS Committee effectively contributes to defusing or preempting conflicts between WTO members. From all the STC previously raised within the Committee, only two led to formal proceedings under the WTO dispute settlement system.

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[43] WTO. **Specific Trade Concerns**. G/SPS/GEN/204/Rev.14, March 2014, p. 7.
[44] HORN, H.; MAVROIDIS, P.C.; WIJKSTRÖM, E.N. **In the Shadow of the DSU**: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees. IFN Working Paper No. 960, 2013, p. 9.
[45] USTR. **2014 Report on Sanitary and Phytosanitary Measures**, pp. 19-25. Available at: < http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf >.
[46] USTR. **2014 Report on Sanitary and Phytosanitary Measures**, pp. 33-34. Available at: < http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf >.
[47] USTR. **2014 Report on Sanitary and Phytosanitary Measures**, pp. 43-56. Available at: < http://www.ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled.pdf >.
[48] WTO. **Specific Trade Concerns**. G/SPS/GEN/204/Rev.14, March 2014, pp. 28-31.
[49] Ibid.

The first is about STC no. 185/2004, where both EU and US questioned India about the restrictions imposed on the importation of various agricultural products from both countries due to concerns related to avian influenza. As it was not possible to reach a consensus between the parties in the Committee, the US initiated the dispute DS430 (India – Measures Concerning the Importation of Certain Agricultural Products from the US) claiming that the measure appear to be inconsistent with several articles of the SPS Agreement (Articles 2.2, 2.3, 3.1, 5.1, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 7, and Annex B, paragraphs 2, 5 and 6) and the GATT (Articles I and XI).

The second is related to STC no. 318/2011. Argentina raised questions in the SPS Committee over certain measures imposed by the US affecting the importation of animals, meat and other animal products from its territory especially regarding the failure to recognize certain parts of Argentinian territory as free of foot-and-mouth disease. Once again, the members were not able to settle the issue and Argentina initiated the dispute DS447 (US – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina),) claiming that the measures appear to be inconsistent with several articles of the SPS Agreement (Articles 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.4, 5.6, 6.1, 6.2, 8 and Annex C.1, and Article 10.1), the GATT (Articles I:1, III:4 and XI:1), and the WTO Agreement (Article XVI:4).

A Panel was established in both cases but the final reports have not been issued yet.

Altogether, SPS Agreement is mentioned in 41 dispute cases since 1995.[50] The most mentioned article is Article 5 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection), followed by Article 2 (Basic Rights and Obligations), Article 7 (Transparency), and Article 8 (Control, Inspection and Approval Procedures).

Conclusion

It is possible to conclude that for the US, EU and Brazil, the regulatory measures notified by these members to the WTO Committees are concentrated on their main trade sectors.

Those measures, notified or not to the CTBT, are frequently raised as STCs against the member maintaining it, and the questions surrounding them are formally discussed in bilateral or group negotiations. The main objectives of STCs are to discuss and enlighten technical details, postpone the entry into force of the measure in question, and recommend members to attain to international guidelines according to the TBT and the SPS Agreements instead of using more restrictive measures such as panels in the DSB.

The increasing use of voluntary standards, both by the EU and the US, demonstrates that these partners have already a sophisticated normative system and customary use of voluntary standards. It is difficult to understand, however, why those partners are refusing to discuss the impacts of these standards in their related Committees, an action that is distorting trade and causing great concern from other partners.

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[50] WTO. **Disputes by agreement**. Available at: <http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19>.

This is an odd posture, once the data selected clearly shows that both members are actively engaging in the meetings, both as members maintaining mandated regulations, raising them to discussions, meaning that both are not only concerned with regulatory barriers to trade, but also seeking to influence the discussions and the decisions of other members.

VI. NEW GENERATION PREFERENTIAL TRADE AGREEMENTS AND MEGA-AGREEMENTS

The so-called new generation trade agreements negotiated by the US and the EU reflect their economic priorities and values, and the aim of address the 21st century trade issues. As important trade partners for Brazil, it is essential to identify trends in the new trade agreements negotiated by the US and the EU in order to examine what impacts similar agreements would affect the Brazilian trade policy and which trade instruments should be negotiated.

The US has 14 PTAs in force, while the EU has 35. These agreements have a dense regulatory framework with WTO-plus and WTO-extra rules, i.e., more ambitious regulation than the ones already included in the WTO or innovative rules not addressed by the Organization. Both North American and European PTAs have been updated and improved in order to meet the current needs of international trade.

EU PTAs normally excludes a short list of sensitive industrial goods in its schedule, representing less than one per cent of tariff lines. On the contrary, sections of the EU agricultural schedule have been excluded from reduction or liberalization, allowing for the protection of key EU agricultural products such as beef, poultry, dairy, olive oil, rice barley, wheat, rye, sugar and wine.[51]

The content of EU agreements generally takes into consideration a number of factors which reflects a relative degree of flexibility, including a policy of differentiation between agreements with developed economies, emerging market developing countries, middle-income developing countries and small states and less developed economies. According to the EU, this is relevant for all elements of PTAs but especially with regard to commitments in tariffs for agricultural goods and services, such as establishment of service providers, cross-border supply of services and government procurement, reflecting flexibility in the completion of PTAs.[52] This tendency for incorporating asymmetric provisions may result in exclusions of sensitive sectors or products, preferential access to the EU market, long transition periods, financial assistance etc. Furthermore, the EU encourages regional integration and multilateral liberalization as a means to foster complementarity between PTAs, regions and the multilateral trading system.

The US also seeks trade liberalization among countries with different levels of development. Nonetheless, regardless the level of development, US PTAs tends to be structurally standardized and the content of the provisions uniform. Also, they tend to

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[51] AHEARN, Raymond J. **Europe's Preferential Trade Agreements**: Status, Content, and Implications. Congressional Research Service. March 2011, p. 28. Available at: < http://fas.org/sgp/crs/row/R41143.pdf>.

[52] HEYDON, Kenneth; WOOLCOCK; Stephen. **Comparing international trade policies:** the EU, US, EFTA and Japanese PTA strategies. European Parliament's Committee on International Trade. February 2014. Available at: < http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/433753/EXPO-INTA_ET(2013)433753_EN.pdf >.

be symmetrical and reciprocal, being characterized by consistently comprehensive liberalization of tariff lines by both parties.[53]

The comparison of the PTAs signed by the US and the EU highlights some important characteristics of the trade policies pursued by each of them. The following table sheds light on some of the similarities and differences observed in the PTAs signed by the US and the EU.

Table 19 – General Content of US and EU new generation PTAs

	US	EU
Tariffs*	Almost complete tariff elimination in industrial goods. The agricultural sector is more sensitive and allows for exceptions.	Less than full coverage of tariffs
Services**	Negative listing; transparency rules; and prohibition of local presence requirements. There are also efforts to push for a plurilateral agreement on services in the shape of the International Agreement on Services	Positive list approach to establishment and cross border services commitments
Rules of Origin	NAFTA model, with highly specific rules.	Simplified system applied to least developed and some developing countries; Specific rules applied to developed economies. Strict rules applied to sensitive sectors.
Trade Remedies***	General provisions according to WTO rules.	General provisions according to WTO rules. Adopts the lesser duty rule for dumping.
Investment	NAFTA comprehensive investment provisions. All forms of investment are protected; set of minimum standards of treatment; provisions on expropriation and compensation, transfers, performance requirements etc.; investor-state dispute settlement.	Establishment of EU exclusive competence for Foreign Direct Investment (FDI)
Government Procurement	Extend GPA-type rules	Government Procurement Agreement (GPA) like provisions with some differentiation according to the level of development of the PTA partner on rules as well as asymmetric commitments in the schedule of entities covered.

[53] AHEARN, Raymond J. **Europe's Preferential Trade Agreements**: Status, Content, and Implications. Congressional Research Service. March 2011, p. 14. Available at: < http://fas.org/sgp/crs/row/R41143.pdf>.

Competition Policy	Provides a framework for cooperation between competition authorities from the parties	Establishes a framework for cooperation between competition authorities from the parties. EU-Korea identifies specific anti-competitive practices as being incompatible with the agreement.
Trade Facilitation	Promote cooperation to ensure compliance with the Parties' respective customs laws and regulations, including through provisions for civil penalties and criminal sanctions in the event of violation.	Framework for cooperation that seeks to ensure that the Parties comply with their respective customs laws and regulations and with relevant international agreement
Intellectual Property	Introduction of higher standards than the ones observed on TRIPS.	The EU tend to match the US PTAs commitments in terms of substantive provisions, the major difference being the recognition of developing country interests and needs on topics such as genetic resources and traditional knowledge.
TBT and SPS	General provisions according to WTO rules.	Cooperation on standards and regulatory issues, transparency; marking/labelling. Specific commitments with considerable practical relevance for sensitive sectors.
Labor and Environmental Standards	Compliance with internationally agreed norms	Standard human rights clause in all PTAs

Sources: European Policy Department. US Congress. Made by: CCGI

*Although the US liberalization policy in general covers almost 100% of tariff lines, long transition periods are available if a certain product needs for greater protection (up to 18 years). The EU policy, by contrast, has close to 100% coverage of industrial tariffs either immediately or after a short transition period (6 years average, with room for exceptions), but excludes more tariff lines in agriculture. Nevertheless, EU PTAs allows developing countries more policy space in their sensitive sectors, while US PTAs have more symmetric provisions.

**In services, the US has initiated the prohibition of local presence requirements, consistently supported greater transparency through negative listing, and gone beyond the GATS in rulemaking in sectors such as financial services and telecommunications. But there is no GATS-plus liberalization in sensitive sectors such as air transport or governmental services and there is a pronounced tendency for the US to use negative-list reservations to exclude services measures maintained at the sub-national level.

***Trade remedies provisions adopted by both the EU and the US in general incorporates the rules established in the multilateral system. However, the EU includes the lesser duty rule, the public interest criteria is applied (for the EU), and provides for a longer maximum period for bilateral safeguards when compared to the period established by the US (2 years period is the general rule established, but the EU allows for another 2 years up to a maximum of 4 years).

VII.1. WTO-plus and extra rules

As stated above, amidst the content of US and EU PTAs there are innumerous WTO-plus and WTO-extra provisions. WTO-plus provisions can be defined as provisions of PTAs that come under the current obligations and rules of the WTO, where the parties undertake commitments that build on or deepen commitments they have already made at the multilateral level. A WTO-extra provision refers to commitments in policy areas not currently covered or regulated by the WTO. [54]

The following tables describe a non-exhaustive list of WTO-plus and extra provisions that have been incorporated into US and EU PTAs.

Table 20 - Description on WTO-Plus Provisions

Provision	Content
FTA industrial goods	Tariff liberalization; elimination of non-tariff barriers
FTA agricultural goods	Tariff liberalization; elimination of non-tariff barriers
Customs Administration	Provision of information; publication on the internet of new laws and regulations; training
Export taxes	Elimination of export taxes
Sanitary and Phytosanitary (SPS) measures	Affirmation of rights and obligations under the SPS agreement; harmonization of SPS measures
Technical Barriers to Trade (TBT)	Affirmation of rights and obligations under the TBT agreement; harmonization of regulations; mutual recognition agreements
State Trading Enterprises (STE)	Establishment or maintenance of an independent competition authority; non-discrimination regarding production and marketing conditions; affirmation of Article XVII GATT provisions
Antidumping (AD)	Retention of AD rights and obligations under WTO agreement
Countervailing Duty measures (CVD)	Retention of CVD rights and obligations under the WTO agreement
State aids	Assessment of anti-competitive behavior; annual reporting on the value and distribution of state aids provided; provision of information
Public Procurement	Progressive liberalizations; national treatment and/or non-discrimination principle; publication of laws and regulations on the internet; specification of public procurement regime
Trade-related Investment Measures (TRIMs)	Provisions concerning requirements for local content and export performance on foreign direct investment
Trade in Services Agreement (GATS)	Liberalization of trade in services
Trade-related Intellectual Property Rights (TRIPs)	Harmonization of standards; enforcement; national treatment and most-favored nation treatment

Source: "Beyond the WTO? An Anatomy of EU and US preferential trade agreements," Bruegel Blueprint Series VII, 2009.

[54] HORN, Henrik; MAVROIDIS, Petros C.; SAPIR, André. **Beyond the WTO?** An Anatomy of EU and US preferential trade agreements. Bruegel Blueprint Series, Volume VII, 2009, p. 4.

Table 21 – Description on WTO-Extra Provisions

Provision	Content
Anti-corruption	Regulations affecting criminal measures relating to international trade and investment
Competition policy	Harmonization of competition laws; establishment or maintenance of an independent competition authority
Consumer protection	Harmonization of consumer protection laws; exchange of information and experts
Data protection	Exchange of information and experts; joint projects
Environmental laws	Development of environmental standards; enforcement of national environmental laws; establishment of sanctions for violation of environmental laws
Investment	Development of legal frameworks; harmonization and simplification of procedures; establishment of mechanisms for settlement of disputes
Movement of capital	Liberalization of capital movements; prohibition of new restrictions
Labor market conditions	Regulation of the national labor market; affirmation of International Labor Organization (ILO) core commitments
Intellectual property rights (IPR)	Accession to international treaties not referenced in the TRIPs Agreement
Human rights	Respect for human rights
Illicit drugs	Joint projects on reduction of supply and demand
Money laundering	Harmonization of standards; technical and administrative assistance
Social matters	Coordination of social security systems; non-discrimination regarding working conditions
Terrorism	Exchange of information and experience; joint research and studies
Visa and asylum	Exchange of information; drafting legislation; training

Source: "Beyond the WTO? An Anatomy of EU and US preferential trade agreements," Bruegel Blueprint Series VII, 2009.

The following items will more closely consider some of the PTAs that reflect the new trade policies adopted both by US and EU and the provisions that are currently being negotiated under the so-called mega-Agreements.

VII.2. Korea-US FTA and Korea-EU FTA

In order to assess the main regulatory models that have been adopted in the preferential level, the following agreements between the US and Korea (KORUS) and EU and Korea (KOREU) must be analyzed, once they are considered the most advanced models of PTAs of each of these two major international trading partners and should serve as a basis for negotiations of new agreements with the UA or the EU.

It appears that both KORUS and KOREU have a large number of rules that go beyond the WTO framework and expand the regulatory frontier of international trade. Although both FTAs share many similarities, there are various differences between these FTAs that must be highlighted.

KORUS

Among the topics regulated in KORUS, we highlight the transparency measures in the areas of technical barriers to trade, services and financial services.

Regarding regulatory barriers, the PTA allows the presence of representatives of the government partner in the development of standards, technical regulations and conformity assessment procedures. In the context of services, it is envisaged justification in writing of action taken if this is not preceded by discussions with the other party. Another question relates to the facilitation of e-commerce, with the prohibition of discrimination to digital products and the elimination of tariffs on these products.

With respect to intellectual property, the KORUS exhibits increased protection compared to the rules of TRIPS. The protection of copyright is extended to 70 years; there is an intensification of the fight against piracy; patent revocation for non-use is prohibited, among other measures. The agreement also regulates investments, including the inclusion of the investor state arbitration.

The following tables describe the major characteristics among the trade agreement analyzed regarding its provisions to preferential agreements.

Table 22 – Description on KORUS Provisions

<table>
<tr><th>Theme</th><th colspan="3">Content</th></tr>
<tr><td rowspan="11">Market access</td><td rowspan="7">Agriculture</td><td colspan="2">Tariffs will be eliminated immediately for two thirds of American farm exports. Tariffs and import quotas applied to most other agricultural goods will be eliminated in 10 years; rates applied to commodities and other products should be eliminated within 23 years from the entry into force of the agreement.
Korea has the safeguards applied to 30 agricultural products, e.g., beef, pork, sugar and alcohol.</td></tr>
<tr><td colspan="2">Beef: total reduction of tariffs by Korea in 15 years.</td></tr>
<tr><td colspan="2">Pork: tariff reduction within 10 years after the implementation of the agreement - with safeguards.</td></tr>
<tr><td colspan="2">Chicken meat: tariff reduction in 10-12 years.</td></tr>
<tr><td colspan="2">Dairy products: total reduction of tariffs on cheese, milk and butter in 15 years.</td></tr>
<tr><td colspan="2">Fruits, vegetables and nuts: significant tariff reduction (tending to zero) on most products within 10 years.</td></tr>
<tr><td colspan="2">Grains: elimination of all tariffs applied.</td></tr>
<tr><td>Motor vehicules</td><td>Total tariff reduction within 10 years.</td><td>Safeguard for the American automotive industry.</td></tr>
<tr><td>Textiles and clothing</td><td colspan="2">Immediate tariff elimination on 52% of Korean exports to the USA (in value); 21% within five years and the remaining 27% within 10 years. There is a provision of a special safeguard mechanism for the textile sector</td></tr>
<tr><td>Nontariff barriers</td><td colspan="2">Promotion of transparency, allowing nationals of the other party to participate in the development of standards, technical regulations and conformity assessment procedures.

Mutual recognition to US standards; accepts US safety regulations for imported US cars.</td></tr>
<tr><td>Sanitary and Phytosanitary Measures</td><td colspan="2">Although South Korea presents some sensibilities regarding health issues, as requirements related to the import of American beef cattle, the KORUS Agreement does not include any SPS clause with content related to specific commodities, despite American efforts towards Korean full market liberalization for SPS measurements.
The Committee on SPS measures established under the KORUS will serve as a forum to implement the terms of the WTO SPS Agreement.</td></tr>
</table>

	Rules of Origin (ROO)	Rules of origin based on different criteria: • Goods wholly obtained in one particular country; • substantial transformation (the origin of the good is determined to be the last place in which it was substantially transformed into a new and distinct article of commerce); • tariff shift; • technical test (for certain chemicals: requires that certain production or sourcing processes be performed that may - positive test - or may not - negative test - confer originating status); • local content/ regional value content test; • value added; Special ROO for textile or apparel goods: “yarn forward principle” (it is a type of tariff shift test that requires, through a tariff shift, that textile and apparel products must originate in an FTA country from the yarn stage forward; (fibers may come from anywhere) (Annex 4-A) Special ROO for automotive products: 35% of the components used for manufacturing or 55% of the components of the final product must be originated in either of the two signatory countries to benefit from tariff reduction.
	Trade Facilitation: e-commerce	Prohibition of discrimination against digital products and of imposing tariffs on these products.
	Environmental Goods	Total tariff elimination within five years[55].
Services (Partial liberalization – negative list)	Financial Services	American companies in Korea will receive the same treatment given to Korean companies.
	Audiovisual Services	Greater market access for American companies that provide audiovisual services; less restricted local content; liberalization of restrictions relating to the ownership of broadcasters and film companies by completely foreign companies.
	Entertainment	Reduction of quotas related to television programs.
Transparency	Increased transparency in TBT and financial services.	TBT: (i) allows for the presence of representatives of the government partner in the development of standards, technical regulations and conformity assessment procedures; and (ii)

[55] The definition of environmental goods used is based on the *Environmental Goods Convergence List* presented as a non-paper at WTO, covering products from HS Chapters 39, 44, 69, 70, 73, 76, 84, 85, 89, 90 and 95. It should be noted that this list does not include ethanol in the list of environmental goods.

		provides a minimum of 60 days for notification.
		Services: if there is no prior notice or opportunity for discussion of a proposed regulation, one must justify the act by written .
		Financial services: regulation authorities must decide within 120 days on the request of an investor or financial institution.
Intellectual Property	TRIPS plus provisions. Increases intellectual property protection, including for software, music, movies, videos and text.	
	Copyright: • Copyright protection was extended to 70 years after the author's death ; • Criminalizes the recording of films in movie theaters; • Intensify the fight against piracy on the Internet ; • Prevents manipulation of technical protection measures – TPM Patents: • Cancel the patente revocation for non-use; • Establishes a compensation for unreasonable delays that occur in granting the patent Trademarks: • Requires seizure, confiscation and destruction of counterfeit and pirated goods and the equipment used for its production; • Prevents violators of intellectual property rights of dispatching counterfeit goods through ports and Korean free trade zones through new customs legislation; • Protection of sound and scent aspects of a trademark; • Protection of domain names on the internet. • Protection of encrypted program-carrying satellite and cable signals	
Dispute Settlement	Designation of contact points in order to facilitate communication and bilateral cooperation among the Parties.	
Labor Clauses	Since 2007, the US has a policy aimed at implementing labor clauses in preferential agreements in which they are party[56]. This policy includes mainly the adoption of labor standards established by the ILO and coercitive rules aiming to force the application of these standards.	
Government Procurement	Reaffirms WTO GPA and expands the criteria aiming to cover more contracts. The provisions of KORUS apply to contracts with a value equal to or greater than $ 100 000, while the GPA applies to contracts equal to or greater than $ 193 000.	
Environment	Environmental clauses are subject to hard law, subject to the resolution of disputes between the parties and to trade sanctions mechanism.	
Investiments	Protection to foreign investors based on the principle of national treatment; Exceptions to the principle of national treatment must be listed in annexes to the agreement; Application of the MFN principle to foreign investors; It must be ensured for foreign investments the application of minimum standards internationally agreed, such as fair and equitable treatment;	

[56] The New Trade Policy for America. Available at:
< http://waysandmeans.house.gov/media/enewsletter/5-11-07/07%2005%2010%20new%20trade%20policy%20outline.pdf >.

	Setting limits on government expropriation of investments covered by the agreement; Free transfer of financial capital pertaining to investments of both parties covered by the agreement; Prohibition of performance requirements to investments from the other party; Establishing procedures for resolving investor-State disputes;

Source: PTAs KORUS, KOREU. Elaborated by CCGI.

KOREU

The EU PTA with Korea liberalizes almost all tariffs across the board within a transition periods of less than 7 years. But his may not be an indicator of future trends given that Korea exports few agricultural products.

In KOREU stands out Korea's commitment to recognize the standards set by the United Nations Economic Commission for Europe as equivalent to Korean standards for sanitary standards considered essential, as well as harmonization of other 29 patterns.

As regards intellectual property, strong protection is afforded to geographical indications, as well as to copyrights, extending the term of protection to 70 years after the author's death. The theme of regulatory transparency is also discussed.

The following table describes the major characteristics regarding provisions this agreement. Rights.

Table 23 – Description on KOREU Provisions

<table>
<tr><th>Theme</th><th colspan="3">Contenten</th></tr>
<tr><td rowspan="3">Market access</td><td>Manufactured and agricultural products</td><td colspan="2">Substantial elimination of tariffs progressively: prediction of 98.7% elimination of tariffs in terms of commercial value in the first five (5) years of implementation of the agreement.
Certain agricultural products and sensitive fish will have a period of greater than 7 (seven) years transition.
Only a small number of agricultural products are excluded from elimination rate, as rice.
There are also provisions related to bilateral safeguards.</td></tr>
<tr><td rowspan="2">Non-Tariff Barriers

Sector-specific annexes</td><td>Electrical and electronic equipments</td><td>Eliminates third party certification by establishing a “supplier’s declaration of conformity”;
Use of international standards</td></tr>
<tr><td>Motor vehicles and parts</td><td>Regulatory convergence approach based on the United Nations Economic Commission for Europe (UNECE) standards over a 5 year period.</td></tr>
</table>

<table>
<tr><td rowspan="5"></td><td rowspan="2"></td><td>Pharmaceutical products/ medical devices</td><td>Strong transparency rules for Korea’s regulatory system, especially regarding pricing and reimbursement rules. Enhance transparency and regulatory cooperation.</td></tr>
<tr><td>Chemicals</td><td>Ensure transparency and enhance cooperation</td></tr>
<tr><td>Rules of Origin (ROO)</td><td colspan="2">ROO based on different criteria or on a combination of these rules:
• Goods wholly obtained in one particular country;
• Sufficient transformation in a Party;
• Tariff shift;
• Technical test;
• Local content/ regional value content test;
• Value added.

The originating good should be accompanied by an origin declaration made out by: (i) an approved exporter; or (ii) any exporter for any consignment of originating products whose total value does not exceed 6000 Euros

There is also different types of rules regarding specific products, including more strict rules in sensitive sectors:
• Machines: for most products, non-EU parts /materials should not represent more than 45% of ex-works price of the machine;
• Cars: moderate increase of levels of permissible foreign content from 40% to 45%;
• Articles in base metal: for most products, the base metal itself could be imported, as long as non-EU inputs don’t represent more than 50% of the ex-works price of the final product;
• Clothing: for most products, a double transformation should take place in the EU or in Korea.</td></tr>
<tr><td>Textiles and clothing</td><td colspan="2">Immediate elimination of 92% of tariffs; the remaining tariffs will be eliminated within 5 years.</td></tr>
<tr><td>Antidumping</td><td colspan="2">Lesser duty obligation in the application of anti-dumping measures.</td></tr>
<tr><td rowspan="3">Services (positive list)</td><td>Telecommunication</td><td colspan="2">Satellite broadcasters can operate directly cross-border into Korea, without the obligation to establish a relationship with a Korean operator;
Allows 100 percent indirect ownership;</td></tr>
<tr><td>Environmental</td><td colspan="2">Among the liberalized environmental services are: (i) Waste Water Services; (ii) Solid/hazardous waste management, excluding cross-border transport of hazardous waste; (iii) Protection of ambient air and climate; (iv) Remediation and clean-up of soil and waters; (v) Noise and vibration abatement; (vi) Protection of biodiversity and landscape; e (vii) Other environmental and ancillary services.</td></tr>
<tr><td>Express delivery</td><td colspan="2">EU providers of international express delivery services would have access to the Korean market.</td></tr>
</table>

	Shipping	Full market access and the right of establishment in South Korea for EU shipping firms; non-discriminatory treatment in the use of port services and infrastructure.
	Financial	Full market access for EU financial firms.
	Legal	EU lawyers would be allowed to use their home titles. European law firms will be allowed to open offices in South Korea to advise foreign investors or Korean clients on non-Korean law. Law firms will also be able to form partnerships with Korean firms and recruit Korean lawyers to provide multijurisdictional services
SPS	The Agreement contains commitments relating to transparency, consultation and working together toward a common understanding of international standards. Korea agrees to recognize the standards set by United Nations Economic Commission for Europe (UNECE) as equivalent to Korean standards for sanitary standards considered essential. Korea also pledged to harmonize regulations concerning the other 29 patterns according to UNECE within a period of five years. For other standards not subject to harmonization, Korea undertook not to apply them so that you can limit access to markets. Finally, the Agreement provides that any new standards on SPS measures adopted by Korea should be based on European standards.	
Competition	Ban and sanction of anti-competitive practices such as cartels, abuse of companies with dominant market position and anti-competitive mergers (hard law).	
	The parties agree to remove distortions of competition caused by subsidies to the extent that affect international trade.	
Government Procurement	It is possible to expand procurement opportunities to public works concessions and "Built-Operate-Transfer" (BOT) contracts not yet covered by the Government Procurement Agreement (GPA) commitments.	
Intellectual Property	Higher level of protection for EU geographical indications such as: Champagne, Prosciutto di Parma, Feta cheese, Rioja, Tokaji wine or Scotch whisky; In case of conflict between the registration of a trademark and the registration of an existing geographical indication, the latter shall prevail.	
	Copyright: adequate remuneration for European holders of related music and other artwork rights, copyright protection for 70 years after the author's death etc.	
	Provisions regarding the protection of designs, including unregistered ones.	
Transparency of the regulatory environment	The Agreement ensures horizontal commitments to transparency of regulations affecting matters subject to the agreement.	
Sustainable Development	• Social Clauses: ratify and implement the updated ILO conventions; • Environmental Standards: implement the provisions of all multilateral agreements on the environment in which they participate. • Total tariff reduction for environmental products within three years from the date of entry into force of the Agreement; • Open access to markets for environmental services.	
Investments	No provisions.	

Source: PTAs KORUS, KOREU. Elaborated by CCGI.

Both US and EU agreements with Korea deal with the so-called Singapore issues and more: government procurement, competition, investment, trade facilitation, and labor and environmental standards. In government procurement, both agreements go beyond the agreed in the multilateral level. On environmental issues, the KORUS enforce clauses of hard law, while KOREU uses sustainability standards and liberalization of green goods.

In general, the two deals bring an extensive regulatory framework that goes beyond the provisions of the WTO and imposes new rules for bilateral trade. Measures relating to harmonization of standards, transparency and liberalization in services facilitating trade between the Parties by promoting greater integration between the economies of the agreements

VII.3. EU-Canada FTA

The consolidated text of the Canada-EU Comprehensive Economic and Trade Agreement (CETA) is worth noting.

The current version of CETA's consolidated text[57] follows the new framework set by KOREU, covering topics already agreed at the multilateral level and including new topics, as electronic commerce, sustainable development, labour, environment, regulatory cooperation, mutual recognition of professional qualifications etc.

The agreement establishes full tariff elimination on all non-agricultural goods on the date of its entry into force. Regarding industrial goods, 99 per cent will be duty free immediately (100 per cent after seven years), including forestry, chemical and plastic products that will be duty free on Day 1. About 95.5 per cent of fish and seafood products will be duty free immediately (100 per cent after seven years). On the subject of agricultural products, 94 per cent of agricultural tariffs will be eliminated, with tariffs immediately eliminated from items including maple syrup, fresh and frozen fruits, cherries, fresh apples and cat and dog food. Canadian producers will be able to sell a significant higher amount of beef and pork, and there will also be duty free - quota free access to the EU dairy market.[58]

In general, the rules of origin applied to the agreement follow the wholly obtained and sufficient production methods. There are some exceptions regarding products with a higher proportion of imported inputs, which are listed in an annex designed to product-specific rules of origin, such as automobiles, textiles and apparel, processed foods, among others.

The automobiles sector presents some sensibilities that are addressed throughout the agreement. The main rule of origin have a 50% limit on non-originating materials, decreasing to 45% after seven years, presenting a cumulation provision in the case of an EU-US FTA. Canada also agrees to incorporate several United Nations Economic Commission for Europe (UNECE) standards within its regulatory regime in order to meet European technical standards for motor vehicles.

The chapter designed to address regulatory cooperation stands out for creating, for the first time, a formal mechanism aiming to facilitate joint initiatives between Canadian

[57] EUROPEAN COMMISSION **Note for the attention of the Trade Policy Committee**: CETA Consolidated text. Brussels, 5 August 2014.

[58] **Technical Summary of Final Negotiated Outcomes**: Canada-EU Comprehensive Economic and Trade Agreement. Available at: < http://www.actionplan.gc.ca/sites/default/files/pdfs/ceta-technicalsummary.pdf>.

and EU regulatory authorities. In the field of non-tariff barriers, there are procedures through which technical regulations from both parties may be requested to be considered as equivalent. In the same way, a protocol will provide for the acceptance by Canada and the EU of conformity assessment test results and product certification by recognized bodies in the other party.

The investment chapter contains provisions on expropriation (direct and indirect) and provides for a detailed investor-state dispute settlement mechanism. CETA's services chapter guarantees great market access, labour mobility (including mutual recognition of professional qualifications) and commitments regarding temporary entry.

Some provisions related to intellectual property, as copyright provisions, trademark and industrial design, only enforces compliance with international conventions on the topic and do not expand the terms of protection already provided. On the contrary, geographical indications have detailed provisions, following the European policy agenda already established in other agreements.

VII.4. TTIP and TPP negotiations

Within the proliferation of APCs, two initiatives stand out among the agreements under negotiation: the Trans-Pacific Partnership – TPP, and the Transatlantic Trade and Investment Partnership - TTIP. The TPP is an initiative launched by the US to ensure access to markets in the Pacific region and to contain China's influence in the region. Currently negotiating are Australia, Brunei, Canada, Chile, Singapore, USA, Japan, Malaysia, Mexico, New Zealand, Peru and Vietnam agreement. Negotiations of TTIP, on the other hand, seek an agreement in the Atlantic region, between the U.S. and the EU, aiming to lay the basis of trade rules for the current century.

Called mega-deals, because they cover a substantial part of international trade, they aim to promote a substantial reduction of tariffs and non-tariff barriers, in addition to establishing the regulatory framework for the new themes of contemporary trade as investment, competition, environment and climate, private standards and, especially, regulatory coherence, perhaps the most important point of the whole initiative.

E-commerce, digital media trade, regulatory coherence, state enterprises, small and medium enterprises, global value chains, among others, are brand new themes that should be addressed by those agreements.[59].

TPP

Since the launch of TPP negotiations, twenty formal rounds of negotiations were held until August 2014. Once negotiations have a high number of participants with different levels of economic development and diverse interests, reaching a consensus is no easy task.

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[59] FERGUSSON, I.; COOPER, W.; JURENAS, R.; WILLIAMS, B., **The Trans-Pacific Partnership Negotiations and Issues for Congress**. Congressional Research Service Report for Congress, june 2013, p. 47-48 e AKHTAR, S. JONES, V., **Proposed Transatlantic Trade and Investment Partnership (TTIP):** In Brief. Congressional Research Service, July 2013

According to what has been published until now, TPP seeks to address issues that promote comprehensive market access, the development of production and supply chains among TPP members, and regulatory coherence through the elimination of tariff, quotas and non-tariff barriers and the regulation of telecommunications, e-commerce, textiles, services (including financial services), customs, rules of origin, government procurement, environment, trade capacity building, investments, competition, intellectual property, labour standards, and state-owned enterprises.

One of the group's major concerns is the negotiations for the achievement of regulatory coherence among the parties. This aspect will surely benefit its parts but, at the same time, will create an uncertain scenario for all other trade partners, because, due to their size, they will establish a new system of rules, probably in conflict with WTO because it will discriminate parts-in from parts-out of the PTA.

The Intellectual Property Rights and the Environmental chapters of the TPP that have been leaked to the public reveal the path taken, the stage of the negotiations as well as some points of disagreement between the parties.

Some of the provisions relating to the enforcement of patents and copyrights provide intellectual property restraints beyond those set in the KORUS agreement. As an example, terms of protection for copyright and related rights on the basis of the life of a natural person shall be not less than the life of the author and 70 years after the author's death (although Mexico proposes 100 years). When considered on a basis other than the life of a natural person, the US proposes 95 years; Mexico proposes 75 years; and Australia, Peru, Singapore and Chile propose 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram. Failing such authorized publication within 25 years (according to the US) or 50 years (according to Australia, Peru, Singapore and Chile) from the creation of the work, performance, or phonogram, the protection should be extended not less than 120 years (according to the US) or 70 years (according to Australia, Peru, Singapore and Chile) from the end of the calendar year of the creation of the work, performance, or phonogram.

The environmental chapter mostly reflects the way the US addresses environmental issues and climate change challenges in its PTAs. A key element of this chapter is the commitment by the parties to adopt and implement laws and regulations to fulfil their obligations under Multilateral Environmental Agreements (MEAs) already in force. The chapter also contains provisions on environmental goods and services and encourages the adoption of voluntary mechanisms to enhance environmental performance. Furthermore, provides a detailed dispute resolution mechanism regarding environmental issues.

Regarding investments, there is much controversy surrounding the issue of investor-State dispute settlement (ISDS) system.[60] On the one hand, the US shows no flexibility on the topic, since this clause already exists in other PTAs in which they are part and it is unlikely they are going to deviate from the main points in its previous PTAs. On the other hand, the other parties tend not to agree with this clause as it could mean great juridical instability within its territories, since it is natural that investors will choose to

[60] **TPP State of Play after Salt Lake City**. 19-24 November 2013 Round of Negotiations. Available at: < https://wikileaks.org/IMG/pdf/tpp-salt-lake-extracts-.pdf>.

take up cases in the international tribunal where their chances of success and the payout are higher than in local courts.

The deal does not have a deadline to be closed, and it is of great importance to continue to observe its developments in order to identify sensitive issues that may arise during negotiations of a possible preferential trade agreement between Brazil and US.

TTIP

The conclusion of an agreement of major proportions such as TTIP may cause a significant transformation not only for the parties involved in the negotiations, but for all partners that have trade relations with these countries. This is because the TTIP aims to be a new generation trade agreement, one that moves away from the traditional mutual elimination of tariffs in order to address regulatory barriers that are not fully encompassed at the multilateral level.

Both parties deem regulatory diversion may affect trade by creating unnecessary barriers, unnecessary expenses and unnecessary duplication of rules.[61] The search for regulatory compatibility among US and EU aims to bring down additional costs, while achieving the levels of health, safety, consumer, labour, and environmental protection that each side believes appropriate. It is worth noting that this regulatory convergence may comprise the entire range of new themes based on principles of equivalence and mutual recognition, but third countries not involved in the negotiations, as Brazil, may find themselves excluded from the rule making and forced to prove compliance.

Discussions over the content of TTIP provisions are still recent and the details have not yet been published. Nonetheless, according to the European Commission paper on the State of Play of TTIP negotiations[62], it is possible to infer that regulatory coherence is a major topic, as well as technical barriers regarding some specific sectors as textiles, chemicals, pharmaceuticals, cosmetics, medical devices, motor vehicles, information and communication technologies, engineering, and pesticides.

There are two issues that are sensitive to many possible partners of the EU and the US. They are the propositions on intellectual property rights and the provision investments.

To exam the alternatives already available, the following tables describe the major characteristics among the trade agreements analyzed in the present paper regarding provisions on Intellectual Property Rights and Investment.

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[61] EUROPEAN COMMISSION. **Transatlantic Trade and Investment Partnership**: The Regulatory Part. Available at: < http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151605.pdf>.
[62] EUROPEAN COMMISSION. **State of Play of TTIP negotiations ahead of the 6th round of the negotiations**. 11 July 2014.

Table 24 – Major characteristics of the Agreements regarding provisions on Intellectual Property Rights

	WTO	KORUS	KOREU	TTIP[63]	TPP[64]
Copyright and Related Rights	General work: no less than **50 years** from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making. Performers and producers of phonograms: shall last at least until the end of a period of **50 years** computed from the end of the calendar year in which the fixation was made or the performance took place Broadcasting: at least **20 years** from the end of the calendar year in which the broadcast took place	Terms of protection: (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and **70 years** after the author's death; and (b) on a basis other than the life of a natural person, the term shall be: (i) not less than **70 years** from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or (ii) failing such authorized publication within **25 years** from the creation of the work, performance, or phonogram, not less than **70 years** from the end of the calendar year of the creation of the work, performance, or phonogram.	Terms of protection: shall be not less than the life of the author and **70 years** after the author's death Broadcasting: no less than **50 years** after the first transmission of a broadcast	**Intellectual Property Rights/Geographical Indications** As regards IPR, the two sides are currently engaged in discussions aiming to define the architecture of the chapter and identify potential topics to be addressed. The EU has provided an indication of the issues it prioritizes. On GIs, discussions were held on both the EU and US objectives	Terms of protection: (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and **70 years** after the author's death (Mexico proposes **100 years**); (b) on a basis other than the life of a natural person, the term shall be: (i) not less than: US proposes **95 years** AU/PE/SG/CL propose: **70 years** MX proposes: **75 years** from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or (ii) failing such authorized publication within US proposes: **25 years** SG/PE/AU/CL propose: **50 years** from the creation of the work, performance, or phonogram, not less than US proposes: **120 years** AU/PE/SG/CL **70 years** from the end of the calendar year of the creation of the work, performance, or phonogram.
Trademarks	Term of protection: no less than **7 years;** the registration of a trademark shall be renewable indefinitely.	Term of protection: no less than **10 years** Includes detailed provisions for the creation of an efficient and	There is no extension from the TRIPs 7 years Includes provisions for the creation of an efficient and		Term of protection: no less than **10 years**

[63] According to the paper published by the European Commission on the State of Play of TTIP negotiations ahead of the 6th round of negotiations. July 2014.
[64] According to the negotiating positions on Intellectual Property released by Wikileaks in November 2013.

		transparent trademark registration process, comprising electronic applications, refusals of protection to be written and reasoned, and the opportunity for interested parties to contest decisions. Trademark protection is also used to cover Geographic Indications	transparent trademark registration process, comprising electronic applications, refusals of protection to be written and reasoned, and the opportunity for interested parties to contest decisions		
Geographical Indication	Special provision for wines and spirits		Requirement of 'reciprocal' or 'mutual' protection for GIs Specific geographical indications for wines, aromatized wines and spirits		Provisions to recognize and protect Geographical Indications A list of GI may be included.
Domain names on the Internet	–	Appropriate procedure for the settlement of disputes in order to address the problem of trademark cyber-piracy			Appropriate procedure for the settlement of disputes in order to address the problem of trademark cyber-piracy
Industrial Designs	Protection for at least **10 years**		Protection for at least **15 years**		Provision on the protection to industrial design
Patents	Term of protection: 20 years from the filing date Article 27(2) Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law Article 27(3): Members may also	Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes are not excluded from patenteability. Article 6(a) compensation for unreasonable delays that occur in granting the patent (more than 4 years in registration). Special measures related to certain regulated products (Article 18.9): pharmaceuticals and agricultural chemical products: period of	The Parties shall extend patent life for up to 5 years, on application, to compensate for protection lost during approval procedures, such as for new pharmaceutical products. Provision for data exclusivity: at least **5 years** for pharmaceuticals and at least **10 years** for new plants. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health		US: General Provisions relating to Pharmaceutical Products and Agricultural Chemical Products The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health

	exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement. Compulsory licensing of pharmaceuticals: Compulsory licensing is when a government allows someone else to produce the patented product or process without the consent of the patent owner. It is one of the flexibilities on patent protection included in the WTO's agreement on intellectual property. What has changed is a provision that used to say that compulsory licences must be granted mainly to supply the domestic market (paragraph (f) of Article 31). The 2001 Doha Ministerial Conference decided that this should be changed so that countries unable to manufacture the	protection of **5 years** for undisclosed data concerning pharmaceutical products and **10 years** for agricultural chemicals. Prohibits the registration of any pharmaceutical product that uses clinical data from a protected supplier for **3 years**, or **5 years** for other data, and **10 years** for new agricultural chemicals. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health	

	pharmaceuticals could obtain cheaper copies elsewhere if necessary. OBS: both the EU and the US announced that they will not use the compulsory licence mechanism to import.				
Genetic and Traditional Knowledge and Folklore	–	–	The Parties shall provide for the protection of plant varieties. Also, they shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.		Provisions on Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources
Layout-Designs of Integrated Circuits	Term of protection: no less than **10 years** counted from the date of filing an application for registration or from the first commercial exploitation wherever in the World it occurs.		–		
Protection of Undisclosed Information			–		Provisions related to the protection of undisclosed data
Protection of Encrypted program-carrying satellite and cable signals		Each Party shall make it a criminal offense: (a) to manufacture, assemble, modify, import, export, sell, lease, or	–		

	otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite or cable signal without the authorization of the lawful distributor of such signal; and (b) willfully to receive and make use of, or further distribute, a program-carrying signal that originated as an encrypted satellite or cable signal knowing that it has been decoded without the authorization of the lawful distributor of the signal, or if the signal has been decoded with the authorization of the lawful distributor of the signal, willfully to further distribute the signal for purposes of commercial advantage knowing that the signal originated as an encrypted program-carrying signal and that such further distribution is without the authorization of the lawful signal distributor.	
Control of Anti-Competitive Practices in Contractual Licences		

Table 25 – Major characteristics of the Agreements regarding provisions on Investments

	WTO	KORUS	KOREU	TTIP[65]	TPP
Investment and Related Rights	There is no specific multilateral investment agreement under the WTO Framework. The only relevant issue treated in the TRIMS is the prohibition of certain investment measures that may have trade-restrictive and distorting effects on trade in goods; and GATS includes investment in the definition of mode 3 of service supply.	Protection to foreign investors based on the principle of national treatment; Exceptions to the principle of national treatment must be listed in annexes to the agreement; Application of the MFN principle to foreign investors; It must be ensured for foreign investments the application of minimum standards internationally agreed, such as fair and equitable treatment; Setting limits on government expropriation of investments covered by the agreement; Free transfer of financial capital pertaining to investments of both parties covered by the agreement; Prohibition of performance requirements to investments from the other party; Establishing procedures for resolving investor-State disputes.	There is no investment provisions in the KOREU.	Guarantees of protection against expropriation; Free transfer of funds; Fair and equitable treatment; Level of playing field for investing companies; Investment protection; Investor-state dispute settlement; Safeguards and right to regulate.	Investment protection, ensuring non-discrimination; A minimum standard of treatment; Rules on expropriation; Prohibitions on specified trade distortive performance requirements; Investor-state dispute settlement subject to safeguards to protect rights of countries to regulate in public interest.

Conclusion

The EU and the US follow two different models for their preferential agreements. The EU is more flexible in terms of the tariff reduction program, positive list for the liberalization of services and intellectual property rights. However, there is a mounting pressure from consumers to negotiate precautionary principles for TBT and SPS, private stands, climate change and to enforce labor standards.

The US follows a more rigid model based on NAFTA with less flexibility for tariff reductions, negative list for services, extended rights for intellectual property and new rules for climate change, labor and investments, including the clause on investor-state dispute mechanism.

[65] According to the paper published by the World Economic Forum on Mega-regional Trade Agreements: game-changers or costly distractions for the World Trading System? July 2014.

It will depend on Brazil and the ability of its diplomacy to achieve a successful agreement balancing gains and costs for the country.

ANNEX I

Brazil – Main products exported and imported to and from the EU and the US

Brazil: Main products Exported to the EU (Jan-Aug 2014)

NCM	Description	Part.	Var.
12019000	Soya beans, whether or not broken; other.	9.83%	25.33%
23040090	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil.	9.56%	0.54%
09011110	Coffee, not roasted, not decaffeinated (grain)	6.83%	21.09%
26011100	Iron ores and concentrates, other than roasted iron pyrites, non-agglomerated.	6.76%	-32.81%
47032900	Chemical wood pulp, soda or sulphate, other than dissolving grade; semi-bleached or bleached; non-coniferous.	4.87%	1.68%

Brazil: Main products Imported from the EU (Jan-Aug 2014)

NCM	Description	Part.	Var.
27101259	Light oils and preparations; gasoline (except for aviation)	3.23%	49.96%
87032310	Motor cars and other motor vehicles principally designed for the transport of persons; cylinder capacity 1500<CM3<=3000; six passengers.	2.44%	1.47%
27111100	Liquefied Natural Gas	1.44%	29.74%
38089299	Fungicides; other.	1.35%	35.36%
87082999	Parts and accessories of the motor vehicles of headings 87.01 to 87.05; other.	1.15%	-16.13%

Brazil: Main products Exported to the US (Jan-Aug 2014)

NCM	Description	Part.	Var.
27090010	Crude petroleum oils and oils.	12.79%	1.89%
72071200	Semi-finished products of iron or non-alloy steel; less than 0.25% of carbon; other, of rectangular (other than square) cross-section.	5.10%	15.31%
84119100	Turbo-jets and turbo propellers; parts.	4.86%	173.53%
09011110	Coffee, not roasted, not decaffeinated (grain)	4.43%	30.75%
47032900	Chemical wood pulp, soda or sulphate, other than dissolving grade; semi-bleached or bleached; non-coniferous.	3.56%	0.07%

Brazil: Main products Imported from the US (Jan-Aug 2014)

NCM	Description	Part.	Var.
27101921	"Gasoleo" (Diesel)	8.77%	25.25%
84119100	Turbo-jets and turbo propellers; parts.	4.11%	36.63%
27111290	Liquefied propane; other.	3.55%	74.17%
10019900	Durum wheat; other.	2.63%	28.09%
27011200	Coal, whether or not pulverized, but not agglomerated; bituminous coal.	2.22%	-22.32%

Source: MDIC/SECEX. Elaborated by CGTI.

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