International trade regulatory challenges for Brazil and some lessons from the promotion of ethanol

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Michelle Ratton Sanchez Badin* and Daniela Helena Godoy**

Abstract:
Since the 1990s, participation in international trade has been affirmed as a tool for development. Therefore, countries like Brazil have intended so far to increase their international insertion through trade. Ever since, in those twenty years since then, Brazil has experienced a sequence of moments that affirms that direction to its development: from a period of unilateral trade liberalization to a phase of integration into international blocks and negotiations, in the seek for a more structured policy by and for trade.

This article takes the Brazilian experience in its effort to promote ethanol as a renewable and competitive energy alternative in the international market. Through programs and support measures employed by the government for decades, agricultural production of sugar cane and the industrial park for its processing were developed and present high level of efficiency and productivity nowadays. In order to promote ethanol in the international trade, it takes a multi-level action from the Brazilian State to overcome the fragmentation of centers responsible for the definition of commercial policies and regulatory structure. Indeed, Brazilian government has been acting in several thematic forums, seeking specific purposes. Its traditional inherent functions have been revisited, as well as the legal and institutional framework set to have them fulfilled. Furthermore, collaboration between government and private sector has been playing a major role, once one seeks to optimize the effectiveness of defined policies and to establish a ‘learning curve’ for both sectors.

This case permits the extrapolation of its main characteristics to the Brazilian commercial policy as a whole, once, even if it is directly related to a traditional area for commercial regulation- that is agriculture-, further understanding requires complete review of that classification and of its linkages to the new commercial themes, such as energy and environment.

Key words: international trade, law and development, Brazilian foreign trade policy, ethanol promotion, renewable energy policy.
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A. Introduction: the relevance of trade for a developing country

1.1 Brazil and trade as a vector of development policy

Since the 1990s, participation in international trade has been affirmed as a tool for development. Therefore, countries have intended so far to increase their international insertion through trade\(^1\). In order to achieve that goal, States began to adopt various policies.

Domestically, it is to be noticed the stimulus to export and the softening of import rulings, as well as the remodeling and the creation of institutions capable of promoting the increase of trade flow and of coordinating the relation between national rules and international institutions.

Coordinating economic policies has also been a point of concern for some economies, such as currency devaluations in China and low interest rates in the United States (U.S.), which contribute to maintain competitive advantage over international competitors.

Internationally, a series of agreements and arrangements for trade promotion have been concluded, on a bi-, pluri- or multilateral basis, both sartorial and regional, provided with institutional structure to coordinate negotiations and means of implementation of celebrated commitments or to verify their non-compliance.

Along with other movements both in domestic and international scenario, those beliefs had a profound impact in the emergence of the concept of development for Brazil. In line with the convergence between political and economical discourse that identified trade as a tool for development, Brazil has observed the definition of a clear policy for trade liberalization in the beginning of the 90’s.

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liberalization to a phase of integration into international blocks and negotiations, in the seek for a more structured policy by and for trade.

1.2 The relevance of international regulatory structure for trade

The hegemony of the discourse of free trade and of the need for its institutionalization in national and international levels was retaken over the 1980s as part of an anti-financial crisis discourse and as a mean to protest against the growing transnationalization of productive chains and financial capitalism. Therefore, some of the policies adopted were the result of the alignment to the discourse known as the “Washington Consensus” and, in some cases, they were, more specifically, the result of conditionalities imposed by agreements with the International Monetary Fund (IMF) for financial reestablishment².

The contribution of that discourse to the debate on development would also take into consideration the success of the economic policies adopted by Southeast Asia countries³.

Data and evidence that confirmed free trade as a vector to development were in accordance with classic economical theory and its revisions, but it is also true – and that is the point for this article- that law, rules and institutions have joined the development indexes presented by economic theory⁴. Those concerns were addressed by means of studies over the relevance of competitiveness and institutions (and their regulation) to international trade⁵.

In the regulatory field, besides the strive for increased harmonization between different legal systems involved in certain commercial transactions⁶, many negotiations resulted

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³ United Nations Conference on Trade and Development. Trade Development Report. Geneva, UNCTAD, 1996. The report analyzes the policies adopted by Taiwan and Korea and their international proactive-oriented insertion in international trade as well as their industrial policies that sustained their growth based on their trade relationship (especially related to exports) with other countries.
⁴ Data on property rights, their regulation and implementation; the functioning of democratic institutions and bureaucracies, corruption, judicial independence and regulation, among others, have begun to guide the studies of international organizations in development, such as UNCTAD, the World Bank and the OECD. These studies are based on the perspective presented by Douglas North, in early 1990s in NORTH, D. Institutions, Institutional Change and Economic Performance. Cambridge: Cambridge University Press, 1990. Reviews on the conception of how such institutions should be considered for development – in order not to be reduced to the transplant process of model institutions from other countries (such as advocated by international financial organizations) but as part of a process of local experimentation – began to gain space from the late 1990s, for example by RODRIK, Dani. Where Did All the Growth Go? External Shocks, Social Conflict, and Growth Collapses, Journal of Economic Growth, v. 4, n. 4, pp. 385-412.
⁶ On that matter, it is possible to observe the development and adoption in the domestic field of a series of model-laws, international conventions, as well as setting standards for trade policy guidelines of each country. In Brazil, we have identified as part of this movement the adoption of the arbitration law in 1996 and the resumption of the debate on internalization of the New York Convention of 1958 (on international
in a relative institutionalization of international bodies aimed to administrate the relationship between the parties to those agreements.

The negotiation process of multilateral agreements and the creation of the World Trade Organization (WTO), as well as the multiplication of bilateral and regional or bi-regional agreements to expand the flow of international trade are examples of those regulatory efforts.

In terms of the synchronicity between new strategies for development and international regulatory milestones, three major characteristics of the regulation of trade after 1990 shall be stressed: (i) it did not restrain itself to the regulation and diminishment of tariffs; (ii) in addition to the regulation of areas connected stricto sensu to trade, it has also started to regulate areas that were related to trade; and (iii) it has extended its regulation to areas closely related to the public policy of States. Those features are extremely significant in what they have forged a new context of regulation to international trade, stipulating positive obligations, beyond those negative obligations so dear to international law.

Given such innovations, the debate about the limits that those new international trade agreements meant to the development of local public policies was intensified in the late 1990s, especially with regards to agreements between countries in different degrees of development. The main criticism regarding that was that the access to certain instruments for the promotion of development had been restricted, despite the fact that

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7 The WTO system, alone, keeps records of around 60 agreements and more than 2,000 rules on international trade, in addition to mechanisms for negotiation and implementation of commitments undertaken under these agreements (including its dispute settlement system). In this regard see: <http://www.wto.org/english/docs_e/legal_e/legal_e.htm>, June 2010. In 2010, from the records of the multilateral system it was accounted more than 400 preferential agreements and regional trade agreements notified to the WTO, according to. <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>, (junho 2010).

8 See OSTRY, S. What are the necessary ingredients for the world trading order? Material prepared for seminar at The Kiel Institute of World Economics, June 2002, available at: <http://www.utoronto.ca/cis/ostry/>. Access on June 2010, emphasizes "Even the term 'trading system' is an anachronism today since the WTO is less and less centred on trade rather than domestic regulation and legal systems". MARCEAU, G , TRACHTMAN, J. The technical barriers to trade agreement, the sanitary and phytosanitary measures agreement, and the General Agreement on Tariffs and Trade: a map of the World Trade Organization Law of domestic regulation of goods, in: Journal of World Trade, v. 36, n. 5, 2002, pp. 811-81, question whether the WTO should extend its area of operation beyond what they call their "core competency" in international trade and say: "Increasingly, the core of international trade is intertwined with a shadow of traditionally domestic regulatory prerogatives, such as the environment, health, labour, culture, tax, etc."

9 The expansion of areas of regulation by the WTO agreements leads to intensification of the process of "judicialization" of international trade system. Those that seek predictability to transact in the multilateral system (largely private entities) are specially benefited from this process, particularly. This process of "judicialization", according to Abbott and Snidal, ensures predictability because: (i) generally, the rules are interpreted and applied by special courts of arbitration or judicial nature; (ii) the rules become part of the law system of each State; (iii) legal commitments mobilize legal interests and the respective protection groups, and also legitimize their participation in decision-making process; (iv) increases the cost of violation of rules, both nationally and internationally; (v) the obligations themselves start to have some degree of legitimacy accepted by different groups; and (vi) a discourse defined within specific parameters is developed and applied. According to ABBOT, K. e SNIDAL, D. (2000). *Hard and soft law in international governance*, in: International Organization, v. 54, n. 3, summer, pp. 421-56.
they had been widely used by the countries that were, eventually, by then, considered to be developed\textsuperscript{10}. That debate ended up fomenting the creation of proposals for the revision of international commitments, such as the Doha Round negotiations for the revision of WTO agreements, launched in 2001, and the São Paulo Consensus within the United Nations Conference on Trade and Development (UNCTAD) in June 2004\textsuperscript{11}. Debate might be said to have been restructured since those changes took place, but it was renewed and empowered in the late 90’s and early 2000’s, once the perspective of new institutional models arose in countries which were challenged by the new trade system but creative enough to develop local policies under the new regulatory framework\textsuperscript{12}. 

Thinking about international trade, therefore, in the beginning of this century, means not only to dimension policies, or the competitiveness of price and quality of products, but it is especially to consider the regulatory frameworks and the connection of institutional alternatives in national and international levels.

The proliferation of institutional and regulatory alternatives brings about to a greater degree of fragmentation of the international trade system.

As a result, the conception of trade strategies demands, nowadays, to take into account factors such as the multiplicity of forums in which policies for a given sector are defined or that influence the degree of openness of a certain market.

Similarly, the regulation in domestic context, whether it is meant to promote exports of the producer country or to restrict imports in the countries of destination of those goods or services, is equally important as structure for the real assessment of the access degree to markets for a certain product or service exported.

**1.3 The international regulatory context and the Brazilian experience with ethanol**

Due to that excessive fragmentation, the generic or abstract assessment of the international trade’s regulatory framework and of the challenges it represents for development would be an unproductive- or rather impossible- exercise.

Therefore, this article takes the Brazilian experience in its effort to promote ethanol\textsuperscript{13} as

\textsuperscript{10} WADE, R. H. What strategies are viable for developing countries today? The World Trade Organization and the shrinking of ‘development space’. in: Review of International Political Economy, 10:4, nov. 2003, argumenta “The net result is that the ‘development space’ for diversification and upgrading policies in developing countries is being shrunk behind the rhetorical commitment to universal liberalization and privatization. The rules being written into multilateral and bilateral agreements actively prevent developing countries from pursuing the kinds of industrial and technology policies adopted by the newly developed countries of East Asia, and by the older developed countries when they were developing (...). See also CHANG, H. J. Globalization, economic development and the role of the state. London: Zed Books, 2003. Globalization, economic development and the role of the state. London: Zed Books; RODRIK, D. Industrial policy for the twenty-first century, in One Economics many Recipes. Princeton University Press: 2007.


\textsuperscript{13} It was adopted in this paper the use of alcohol and ethanol as synonymous expressions to describe ethanol in its role as a fuel. As will be discussed below, the customs classification of ethanol is not homogeneous, making it difficult to distinguish fuel ethanol from alcohol used, for example, to make beverages.
a renewable and competitive energy alternative in the international market as an example.
Ethanol has been pointed as one of the most promising export products for Brazil\textsuperscript{14}. Such trend is primarily driven by new policies to stimulate biofuels, those policies being adopted in more than 100 countries\textsuperscript{15}. The search for alternative sources of energy has been an important stimulus for the growth of this market. Insofar as the issue of climate change occupies prominent space in the political agenda of countries, they have begun to seek more diligently the development and use of sustainable energy sources in order to reduce emissions of greenhouse gases\textsuperscript{16}. Due to those environmentally concerned stimulus, national policies that determine the increase of renewable fuels participation in the energy matrix have favored the growth in ethanol consumption in several countries\textsuperscript{17}.

Brazil holds significant comparative advantages to compete in the international market of renewable energy, having ethanol as its flagship. Through programs and support measures employed by the government for decades, agricultural production of sugar cane and the industrial park for its processing were developed and present high level of efficiency and productivity\textsuperscript{18} nowadays. Brazilian ethanol production costs are highly competitive when compared to those of ethanol produced in other countries\textsuperscript{19}.

In order to promote ethanol in the international trade, it takes a multi-level action from the Brazilian State to overcome the fragmentation of centers responsible for the definition of commercial policies and regulatory structure. Indeed, Brazilian


\textsuperscript{15} The number of countries adopting some sort of policy to encourage the use of renewable energy was small in the 1980s and 1990s. Since then, the number started growing and most rapidly between 2005 and 2010, when it jumped from 55 to over 100. Renewables Global Status. (2010). Available at: <http://www.ren21.net/globalstatusreport/REN21_GSR_2010_full.pdf>. Access on Aug 22, 2010.

\textsuperscript{16} Overall, the incentive to use biofuels is implemented through the increase in production and mandates of compulsory blending of biofuels within fossil fuels. Currently, about 17 countries and 36 states or provinces have introduced legislation for mandatory blending. The determination often requires a mixture of 10% ethanol to gasoline. United Nations Environment Programme (UNEP). Towards sustainable production and use of resources: assessing biofuels, 2009.

\textsuperscript{17} A World Bank's study highlights some of the motivations for the growing stimulus to use biofuels as an alternative to fossil fuels: "Increasing consensus about the end of cheap oil, the risks to supply due to political instability in major oil-producing regions, and the consequences of carbon emissions from fossil fuels have caused a spurt in the search for alternative sources of oil. (...)There are several reasons for the excitement surrounding biofuels: biofuels are replenishable (...); biofuels can reduce carbon emissions (...); biofuels can increase farm income (...); biofuels can improve energy security (...); biofuels can create new jobs (...)." World Bank. Policy Research Working Paper 4341: review of environmental, economic and policy aspects of biofuels, Sept. 2007.


\textsuperscript{19} For example, in the United States of America (USA), currently the world’s largest producer, the cost of ethanol production is 50% higher than in Brazil. See: MOREIRA, José R. e GOLDEMBERG, José. The alcohol program. In: Energy Policy 27 (1999) 229-245. On production costs compared to major producing countries, see: SOUZA, Raquel Rodrigues de. Panorama Oportunidades e Desafios para o Mercado Mundial de Álcool Automotivo. Master’s degree dissertation submitted to the Federal University of Rio de Janeiro, 2006, p. 47.
government has been acting in several thematic forums, seeking specific purposes. Its traditional inherent functions have been revisited, as well as the legal and institutional framework set to have them fulfilled.

Furthermore, collaboration between government and private sector has been playing a major role, once one seeks to optimize the effectiveness of defined policies and to establish a ‘learning curve’ for both sectors.

This case permits the extrapolation of its main characteristics to the Brazilian commercial policy as a whole, once, even if it is directly related to a traditional area for commercial regulation- that is agriculture-, further understanding requires complete review of that classification and of its linkages to the new commercial themes, such as energy and environment. In addition, its growing relevance to Brazilian politics and economy and the leadership of the country in the field turn that experience into a key for Brazil to foresee its potentials and the challenges in short and medium terms to advance its export capability.

In the following three sections of this article, we will adopt two approaches: the first is a mapping of the current most advanced international trade regulation and its reflexes in the Brazilian system, and the second is a case study in order to present specific tools of a pro-active policy in the trade area in Brazil.

Thus, firstly, we briefly describe the relationship between trade and development in Brazil, especially regarding its economic relevance and institutional alternatives in policies of import substitution and export promotion. In this section, we also seek to identify the legal peculiarities of international conventions and their effects on the Brazilian legal system and institutional framework. In the last section, we are going to focus on the case of the promotion of ethanol and its outspreads, in order to present the regulatory milestones that are relevant to the definition of development strategies for such a priority sector for Brazil.

B. Remnants from changes in development strategy and international trade

The trajectory described in Section 1.2 above has been the context and the driving of the Brazilian options in its international trade policy. It is interesting to note that the national policy for the production of ethanol had an essentially national aspect, that is, turned to the domestic market at the time of its creation; however, the development of the sector was only possible within a regulatory framework of trade similar to the one that preceded the neoliberal model adopted after the 1990s, and, nowadays, it establishes a constant dialogue to that to define its part in the international market.

In 1990, Brazil began its process of trade reopening, under president Collor government, after more than half a century of market protection. It is important to provide historical background that clarifies the beginning of this process, so that one might trace back its origins some of the current bottlenecks to the implementation of new development strategies- such as providing the country with an export-oriented

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20 Since the beginning of the twentieth century, especially from the 1930s and post-World War II, Brazil has adopted a policy of protectionism in international trade, with some variations according to the development of productive and financial international capitalism. In this regard, see ABREU, M. P. (org) (1990). A ordem do progresso: cem anos de política econômica republicana 1889-1989. Rio de Janeiro, Campus.
profile- and identify whether the ethanol sector fits that structure. Analysis is going to be carried out in two ways: that of the reviewed elements of the national legislation that aim to implement certain politics and that of the international agreements to which Brazil has committed itself.

2.1 Trade policy re-definition and the peculiarities of ethanol

According to Maria da Conceição Tavares, the policy of import substitution, which was institutionalized in Brazil in the 1960’s and 1970’s, attempted to repeat the industrialization process of developed countries in a faster pace. As a development strategy, it resorted to instruments of foreign trade in order to prevent the entry of foreign products and to encourage the development of national production and market. Among the tools used for that matter are import licenses, quotas, tariffs and foreign exchange auctions. During this period, the major international trade commitments undertaken by Brazil were the General Agreement on Tariffs and Trade (GATT) and the preferential agreements signed with Latin American countries within the Area of Latin American Integration Association (ALADI, acronym in Portuguese). These agreements dealt only with specific tariff concessions, without effective mechanisms for supervising its implementation, and therefore they exerted very marginal influence on Brazilian trade policy, leaving much room for the country to abuse its regulatory independence in setting intervention instruments for the economy.

The trade policy of import replacement had significant impacts on the Brazilian economy and its international insertion. In foreign trade, the country has expanded its production base, so that the largest share in exports was transferred from commodities to manufactured goods (see chart below). That was the result of the extension of production complex, combined with a policy of export promotion that favored higher added value products. Today, as we can see in the chart below, the country has a diversified export portfolio, which impacts the legal field either in its international integration (including the strategy adopted in negotiation forums and the types of agreements undertaken) and for the domestic regulation on imports and exports.

**Brazilian exports by aggregate factor - 1964 to 2009**
*(participation on the total)*

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23 Under GATT’s multilateral regime, which over the years has begun to regulate the procedures and instruments of state intervention in trade policy, Brazil’s participation was marginal, although it had been a founder member and followed the successive rounds of negotiations. Brazil has focused on negotiations of different conditions for developing countries. And, over the years, the country has been favored by the expansion of an structure of à la carte negotiation, allowing Brazil not to be bound to the main commitments regarding the regulatory policy (e.g., the Subsidies Code of 1979). In this regard, see LIMA, J. A. G., O Brasil e o Comércio Exterior, in AMARAL JR., A. (org), A OMC e o comércio internacional. São Paulo: Aduaneiras, 2002; BAUMANN, Renato, CANUTO, O., GONÇALVES, R., Economia internacional: teoria e experiência brasileira, Rio de Janeiro: Elsevier, 2004, pp. 176 on.
24 BAUMANN, R., CANUTO, O., GONÇALVES, R., op. cit. describe the policy of export promotion as a compensatory policy to import replacement: “the defense argument for granting so many incentives was the need to neutralize the anti-export bias of trade policy”, p. 164.
The results of the strong control of the State over economy and trade also have important implications for the sugar-ethanol industry. In fact, the current state of development and organization of the sugarcane industry in Brazil cannot be dissociated from the history of public policies for the sector, which coincide largely with the phase of imports substitution. In the 1930s, government intervention in the structure of the sugarcane industry became a hallmark, which would last for the next six decades.

Especially in the early programs, the use of alcohol remained linked to sugar production, which is one of the major export products in Brazil since colonial times. In 1933, the Sugar and Alcohol Institute was created (IAA, acronym in Portuguese), an organ that possessed the authority to control virtually the whole industry structure, from cycle of production to marketing. Among its tasks, there was pricing and quotas definition, as well as control of exports and imports. Still, by the mid-1970s, the share of sugarcane production dedicated to ethanol was negligible.

The oil crisis that followed, coupled with the falling price of sugar in the international market, provided momentum for the establishment of the National Alcohol Program (Proálcool, acronym in Portuguese). Administered by the Ministry of Industry and Commerce, through the Brazilian Executive Commission of Alcohol (Cenal, acronym in Portuguese), the program was a package of measures aimed at reducing dependence on oil through increased production of biofuels and industrial capacity of transformation. The main incentives used during Proálcool can be classified into the following categories: economic policies (fixed prices, subsidies and transfers), mandatory mandate of mixing, equalization of costs, tax exemptions, guarantee of

payments and of sales to producers, funding for agriculture production, industry, logistics and creation of vehicles running on alcohol\textsuperscript{27}.

In its first phase, efforts focused on increasing the number of distilleries attached to sugar mills already operating in the country. The results of the increase in production were impressive. Between 1975 and 1979, annual production jumped from 5.5 million liters to 25 million liters. The majority – 20 million gallons – consisted of anhydrous ethanol used in blending with gasoline. In its second phase, the program increased the incentive to the creation and the use of cars that ran exclusively on alcohol (hydrated), which started to be manufactured in 1980. Between 1979 and 1986, the share of alcohol in the vehicle fleet increased from 0.5% to 66%. In the same period, consumption of ethanol fuel had jumped from 1% to 55%. This stage represented the heyday of Proálcool, with the creation of a significant domestic market for the consumption of ethanol and the confirmation of the feasibility of its continuous production\textsuperscript{28}.

It is observed that, until the conclusion of the Uruguay Round (1994), Brazil was not committed to limits on its subsidies policy in any international forum. It just occurred when the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture, both signed under the WTO, were put into effect. Only under that specific scenario it was possible to combine the policy of subsidies, either under the context of policies of import substitution and compensatory promotion of exports, and under the specific program of ethanol production.

Two main criticisms should be scored, both being considered as negative externalities to the strategy of import substitution and localized promotion of exports. The first would be that it induced dependence of the private sector on the public sector, especially for funding. As a result of the dynamics of this policy, a culture of dependency on the state as promoter of private sector interests, both nationally and internationally, was constituted\textsuperscript{29}. Also, in the public sector itself, the bureaucratic apparatus of the state and the organizational culture developed around it aimed to close the economy and protect domestic industry from the activities of international trade. Those features that defined the relationship between public and private sectors in Brazil relationship in the years of import substitution became critical obstacles when Brazil was to open its market.

The 1980s financial crisis, however, seriously affected the ability of articulation of economic policies by the Brazilian state. Brazilian balance of payments was destabilized.

\textsuperscript{27} PUERTO RICO, MERCEDES, and SAUER (2010), op. cit., p. 7. Moreira and Goldemberg highlight the role of Petrobras on the guarantee of buying production and maintaining prices at levels attractive to consumers, since ethanol was offered by a value about 40% lower than petrol. MOREIRA e GOLDEMBERG, The alcohol program. In: Energy Policy 27 (1999) pp. 229-245, p. 232.

\textsuperscript{28} According to Carvalho and Carrijo, alcohol production reached a peak in 1985-86, reaching 11.8 billion liters a year. During this period, Proálcool relied mainly on research and technological development, involving the chemical, agricultural, automotive and heavy machinery industries. CARVALHO, Simone Pereira de and CARRIJO, Ed Licys de Oliveira. A produção de álcool: do PROÁLCOOL ao contexto atual. Paper presented at the XLV Congress of the Brazilian Society of Economics, Administration and Rural Sociology, July 2007, p. 3.

\textsuperscript{29} One concern of the government at this time was to provoke reflection, together with the private sector, about the implications of foreign trade policies. This concern resulted in the creation of FUNCEX in 1976. Originated from public-private partnership, the institution has the participation of a number of government agencies, enterprises and business associations. The main work of FUNCEX has been the preparation of studies and the promotion of the debate on foreign trade and export. In this regard, see <http://www.funcex.com.br> (September 2010).
because Brazilian debt was greatly compounded by external debts, especially those related to loans given by international financial organizations. Once the country was not able to pay its commitments, it became difficult to maintain the expensive imports substitution policy and the related policy of exports promotion. Brazilian State was, then, forced to review its protectionist behavior towards international and to leave room for claims for a de-regulated model of trade, like that proposed by the Washington Consensus. As a result, Brazil re-negotiated its debt, especially those agreements with the International Monetary Fund (IMF), which stipulated a review of the government’s subsidies policies.

The changes in these two decades, 1970s and 1980s, have significantly impacted Brazilian diplomacy. They brought the distinction between a certain high international politics, focused on strategic policy and issues associated with safety and preservation of the state, and a certain so-called low international politics, restricted to issues of cooperation and trade, to its end. This last category had been challenging Brazilian international insertion since 1980s and became, therefore, a priority topic in the national agenda.

In the mid-1980s, specifically in relation to the sugar-ethanol sector, a crisis in the supplying of ethanol caused serious shock to the program and to its reliability. Production was diverted from ethanol because sugar prices had become higher, which implied the need of importing ethanol and the lack of fuel at gas stations. As a result, consumer confidence diminished and the sale of vehicles running on ethanol was dramatically impacted. That happened among other casualties in the larger context that led to the exhaustion of the import substitution model in Brazil and to the loss of interest in maintaining Proálcool as a priority policy of the state. Indeed, in the early 1990s, the government stopped providing support mechanisms for the sugarcane industry.

The proposal for free trade, sophisticated by institutional and regulatory framework in the international context, advocated, then, a single model of development – known as “one size fits all” –, based on the belief that a regulatory apparatus that ensured security and predictability for market players would be sufficient to enable economic growth and consequent development of the countries (in addition to the possibility of having those problems related to balance of payments solved). From the 1990s, under Collor’s

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30 As an example, MOREIRA, S. and SANTOS, A. F. Políticas Públicas de Exportação: o caso do PROEX. Brasília, IPEA, Text for discussion n. 836, 2001. “This policy [of import substitution and compensation in export promotion] has begun to deteriorate from 1983 due to several factors, mainly: i) pressure from some trading partners of Brazil and from GATT (General Agreement on Tariff and Trade) which affected the tax incentives; ii) international recession, with strong protectionism by the industrialized countries; and iii) the international financial crisis has worsened, preventing the continuation of the credit lines from the Brazilian government to exports.” (p. 7)

31 See FARIA, J. E. A diplomacia para resultados vista 25 anos depois, Política Externa, v. 18, n. 4, mar/abr/mai 2010. According to data presented by the author, “the foreign debt, which had changed from US$ 5.2 billion in 1970 to US$ 100 billion in 1984 – the largest in the world. (…). In the following year (in 1982), the sum of the oil bill with the one of the external debt service reached US$ 20.9 billion, surpassing the total exports, which stood at US$ 20.1 billion.” (p. 7)

32 Idem, p. 3-4.

government, Brazil responded positively to that by defining new strategies for the implementation of such a more liberal development policy.\(^{34}\)

Compared to other developing countries, however, Baumann, Canuto and Gonçalves argue that Brazil has managed to maintain a cautious position regarding its reopening to international trade by admitting certain particularities.\(^{35}\) It simultaneously sustained different policies for instance, having “barriers to imports”, but “incentives to exports”\(^{36}\). According to Sucupira and Moreira, in the second half of the 1990s, the subject was addressed again, though in different grounds, when the exports-based development model of Asian countries was pointed as an example to be followed by Brazil.\(^{37}\) Brazilian development policy was then gradually evolving from a hybrid – and somewhat schizophrenic –, inherited from the imports’ substitution policy, to a new development model, which attempts to combine policies that favor exports and look for appropriate strategies for the country, as well as attempts to identify market niches in which Brazil can specialize.

2.2 The impact of 1990s mottos and the new impetus from the 2000s

Since 1990 domestic and international pressures have contributed to redefine Brazilian profile when dealing with international trade. The mottos that have based this movement – deregulation, competitiveness and international integration – had a significant impact on the regulatory and institutional framework of the State, as well as on its position towards new international commitments.

The phasing out of Proálcool throughout the 1990s, which included the liberalization of production and marketing in 1988, the termination of production quotas in 1991, and price liberalization of anhydrous ethanol and hydrated alcohol in 1999 are all examples of that new position. Subsidies and guarantees of purchases were also abolished. The new dynamics of withdrawing government’s main instruments of control and incentives caused serious problems the sector – which was also going under an unfavorable external environment due to oversupply and resulting in low prices in the international market – so that the industry was forced to be restructured. Mechanisms of market logics were introduced into the production process in order to reduce costs and make it


\(^{35}\) The transition from a straight policy of import substitution to a policy with a bias of export promotion was gradual due to a number of particular characteristics of the Brazilian economy, according to BAumann, R., CANuto, O., GONÇALVES, R. Op. cit., p. 158.


\(^{37}\) Sucupira, R. e Moreira, M.. Exports and Trade Finance: Brazil’s recent experience, chap. 6, in HufBAuer, G. e RodrigueZ, R., The Ex-Im Bank in the 21st century: a new approach?, Peterson Institute, 2001, pp. 81-96, p. 95: “The East Asian experience conveys two important lessons for developing countries: Exports matter because they promote macroeconomic stability and boost productivity; and governmental-led trade finance matters because of imperfections in the capital market. Despite an impressive export performance in the 1960s and 1970s, and notwithstanding the government’s early efforts to promote trade finance, Brazil only took full advantage of the Asian lessons in the 1990s, after the Brazilian economy was opened up.” See also in this regard UNCTAD, op. cit., with the examples of Taiwan and Korea and its trade policies focused on exports.
The role of trade policy had therefore been definitely changed in the early 1990s. Foreign trade had shifted from an instrument of industrial promotion to a tool for the adjustment of the balance of payments. Domestically, this new perspective resulted in the dismantlement not only of policies but also of institutions responsible for the coordination of foreign trade – announcing the growing need for reinvention.

Traditionally, the power to negotiate, regulate and manage issues of trade policy had been shared between the Ministry of Finance, the current Ministry of Development, Industry and Trade (MDIC, acronym in Portuguese) and the Ministry of Foreign Affairs (MRE, acronym in Portuguese). In the Ministry of Finance, the roles of the Federal Revenue and of the National Treasury must be highlighted when it comes to defining customs policy and some lines of financing, respectively. The creation of the current MDIC is the main example of the new Brazilian conception of foreign trade. In 1990, the State Ministry of Industry Development and Trade was extinguished, and had its powers dispersed; in 1992, the Ministry of Industry, Trade and Tourism was created.

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38 The mills whose existence was inevitably linked to state support and which could not adapt to this new environment did not survive the crisis. Between 1987 and 1997, more than 130 alcohol producers went bankrupted or were bought. Together with the country's economic crisis, there was a crisis in the industry. As VIAN and BELIK: “In the long period from 1990, with the extinction of the IAA and the first measures to liberalize prices in the sector, to the changes in the rules for the distribution of alcohol and oil products in 2001, the sugarcane industry experienced the accommodation of different strategies offered by mills in São Paulo. A new structure with technical and more realistic organizational aspects and in tune with the perspective of competition has emerged from this period. As if the state fiscal crisis and the exhaustion of the intervention model based on the old IAA were not enough, the sector had to cope with periods of oversupply and the lowest international prices of sugar in the last three decades”. VIAN, Carlos E. F. e BELIK, Walter. Os desafios para a reestruturação do complexo agroindustrial canavieiro do Centro-Sul. In: ECONOMIA, Niterói, v. 4, n. 1, p. 153-194, jan/jun. 2003, p. 163. In this regard, ARAÚJO highlights the government's official position: “The explanation of the Department of Sugar and Alcohol Department of the Ministry of Agriculture is simple and straightforward: with the de-regulation, only those who still maintained high level of competitiveness survived. The reduction occurred mainly in autonomous distilleries whose figures were reduced from 170 to 50”. ARAÚJO (2008), op. cit., p. 9.


40 According to Puerto Rico, Mercedes and Sauer: “In the same year [of the extinction of the IAA], the former CNP was extinguished and the National Department of Fuel (DNC), which became the responsible for the regulation of the sector in Brazil, was created, by Decree-Law 99180, under the Ministry of Infrastructure. Many of the functions performed by the IAA were passed on to the DNC. The pricing and control of fiscal and credit policies have been delegated to the Ministry of Economy, Finance and Planning. The supervision, coordination and standardization of sugar–alcohol activities were taken by the Secretariat of Regional Development (SDR), linked directly to the Presidency through the Department of Sugar-alcohol Issues (DAS). PUERTO RICO, MERCEDES, e SAUER (2010), op. cit., p. 7.

41 The history of the current MIDC, in its relation to foreign trade, originally had the perception to coordinate the agenda of capital-labor relations. This agenda has been restructured in the 1960s to address an understanding of the economic agenda on trade and industry, and the theme of technology was added to that list in 1980s. See in this regard History of MDIC: http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=1&menu=1662 (September 2010); on the alterations of the Ministry in the decade of 1990, see Law No. 8,028 of April 12, 1990, and Law No. 8,490 of November 19, 1992.
but it was subject to several subsequent reforms. Two relevant structures that are relevant nowadays within the MDIC were created during that period: CAMEX and SECEX. The creation of these institutions, and especially their reforms, were related not only to the redefinition of national policies, but also to the international commitments in which Brazil engaged itself over the 1990s. On its turn, MRE, which had always occupied prominent position in trade negotiations, was then confronted in its role on trade policy – whether it would resemble more like the American USTR or the European Ministries of Foreign Trade, which favored major internal restructuring of the Ministry.

From the late 1990s, the greater participation in international negotiations and the expansion of the national debate on international trade and on the impact of its regulation forced a dispersion of responsibilities in the international area among the different departments of the federal executive branch, which led to the institutionalization of interministerial groups, with emphasis on the Interministerial Group on International Trade (GICI, acronym in Portuguese), established in 1999 and coordinated by the Ministry of Foreign Affairs, and the Interministerial Group on

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42 MDIC took over the current title and competence from Provisional Measure MPV nº 1.911-8, of July 29, 1999 (later incorporated through the Law nº 10.683, of May 28, 2003).
43 CAMEX was established under the Presidency of the Republic in 1995 (Decree No. 1.386 of September 6, 1995) and was subsequently incorporated into the MDIC, with the role of coordinating inter-ministerial conduct of Brazilian trade policy. At present, CAMEX is composed of the following ministries, after reforms over the years 2000: MDIC, who presides it; Civil House; Ministry of Foreign Affairs; Ministry of Agriculture, Livestock and Supply; Ministry of Planning, Budget and Management; Ministry of Agricultural Development. The SECEX’s story dates to 1990 with the creation of the Department of Foreign Trade, in the former Ministry of Economy and Finance (MEFP). Today SECEX has five specific departments: Department of International Negotiations (Deint), Department of Planning and Development of Foreign Trade (Depla), Department of Foreign Trade Operations (Decex), Department of Trade (Decom), and the Department of Standards and Competitiveness (Denoc)(acronyms in Portuguese). See Informativo SECEX n. 18, of March 31, 2010.
44 For example, the competences of CAMEX were redefined by Decree No. 4,732 June 10, 2003, with explicit references to its activities in relation to certain agreements and international organizations in the area of trade. Also, in this sense, the indication in the Informativo SECEX about the creation of DECOM: “In 1995, in order to increase the Brazilian technical and operational performance in the government’s operation in the implementation of antidumping legislation, subsidies and compensatory measures and of safeguards, Secex the Department of Trade Protection (Decom) was created. See Informativo SECEX n. 18, March 31, 2010.
45 The understanding of the competence for trade policy formulation went through varous demands in order to be revised with the visibility at the national context of commitments internationally undertaken – particularly with regard to the relationship between international negotiations and implementation at the national level. It is clear that the difficulties of a presidential diplomacy and the advantage of the Ministry of Foreign Affairs in this structure, under the organizational and technocratic point of view as opposed to the rest of the Executive Branch, favored the competence of coordination envisaged in early 1990s for CAMEX to migrate and to take strength in some more articulated spheres of the Ministry of Foreign Affairs. This became evident with the expansion of areas coordinating issues related to trade in the Ministry of Foreign Affairs, from the new editions of its internal regulation. It also causes the pending debate on the effective role directed to CAMEX in the coordination and implementation of policies related to trade. In this regard, see BARBOSA, R. A necessária reforma do comércio exterior, O Estado de São Paulo, 9 de fevereiro de 2010.
46 In this regard, see FRANÇA, C., SANCHEZ BADIN, M. R. A inserção internacional do poder executivo federal brasileiro. In: Análises e propostas, n. 40, Friedrich Ebert Stiftung, aug. 2010. In the case of international trade, for instance, in the area of negotiations on agricultural trade, MAPA has taken important leadership especially in conjunction with the private sector and in conducting more technical topics related to the industry. In recent years, MDA also aims to follow and influence this agenda by articulating the interests related to small producers and to family farming.
Intellectual Property (GIPI, acronym in Portuguese), created in 2001 by CAMEX\textsuperscript{47}. Over the years, GIPI established itself as a center of reference in relevant discussions, bringing together the most relevant actors of the intellectual property field\textsuperscript{48}.

Among those new institutional arrangements, the Private Sector Advisory Council (CONEX, acronym in Portuguese) was created, in 2003. Composed of up to 20 representatives of the private sector (industry and agribusiness), it had the purpose of advising the Management Executive Committee, under MDIC, through the preparation of studies and proposals for the improvement of foreign trade policy. FUNCEX – that become a key player in the debate on foreign trade – kept publishing and usually has a representative at CONEX. However, except for GIPI, the work of these new groups and committees has not become reference in terms of research or the taking of positions. Neither is there sufficient debate on the formal spaces, whose functionality has been constantly criticized\textsuperscript{49}.

Reinforcing the trend in favor of strengthening international trade, international arrangements to regulate trade presented the following innovation: (i) areas not already or poorly regulated internally, such as intellectual property, antidumping and subsidies; (ii) the definition of domestic procedures to be based on the principles of due process, transparency and participation for certain administrative actions of the state – such as antidumping procedures and of definition of technical barriers\textsuperscript{50}; (iii) commitments to limit some forms of state intervention in the economy – of which Brazil had greatly profited during the policy of imports substitution; and (iv) in international level, new institutional spaces for negotiation, monitoring and questioning of practices from trading partners.

For Brazil, priorities outlined in this historical context marked its performance in international trade and operational spaces. Collor’s government, throughout the negotiations of the Uruguay Round, has eased its opposition to allow the inclusion of new topics (such as services and intellectual property) and has become a strong supporter for the institutionalization of the multilateral trade regime. Among the main reasons for this position was the fear that discussions about these new areas would

\textsuperscript{47} GIPI has an older history. Its informal works began in the 1980s, when the government felt the need to coordinate its positions to act in the negotiations on intellectual property at the Uruguay Round. Its institutionalization occurred through Decree with no number of August 21, 2001 (with subsequent modifications). Regarding GICI, see SANCHEZ, M. R. Mudanças nos paradigmas de participação direta de atores não-estatais na OMC e sua influência na formulação da política comercial pelo Estado e pela sociedade brasileiros, Revista Direito GV, n. 6, jul/dez 2007.

\textsuperscript{48} See testimony of senior officials of the Ministry of Foreign Affairs, in interviews on September 10, 2010 and on September 23-24, 2010. Names omitted, interviews on file with the authors.

\textsuperscript{49} As an example, BARBOSA, R. Comércio exterior e o futuro governo, O Estado de São Paulo, August, 24th, 2010. Barbosa, Chairman of the Board of Foreign Trade of FIESP, mentioned the example of the lack of information to the private sector about the proposed creation, in the year before, of the EximBank, seen as a major step forward the promotion of Brazilian exports. This omission reveals the need for greater coordination between government and private sector, since in the case members of CONEX did not get the information about the project's progress from MDIC (Ministry to which CONEX is subordinated).

\textsuperscript{50} This characteristic led to the revision of the rules of DECOM and also of the relevance of the work of INMETRO in the area of international trade. It is relevant to indicate here the importance of forms of mapping tariff barriers – there included those imposing trade protection measures – as well as non-tariff barriers. An important reference of this projection is in the system of information on technical requirements for exports, with information provided by the private sector and managed by INMETRO (see <http://www.inmetro.gov.br/barreirastecnicas/>, September 2010).
undermine the negotiations on market access, particularly in the agricultural and textile industries, and the projects to overcome the institutional weaknesses of GATT. Focus was so placed on the regulation of a priority sector for the country – agriculture – as well as the possibility of strengthening the multilateral locus as an effective forum for negotiations and dispute settlement. As this study will further discuss, these points became important pillars to support the promotion of ethanol, specifically in the strategies pursued in the multilateral system of trade.

Regarding legal instruments, the regulatory apparatus for international trade was incorporated to the Brazilian legal system and the corresponding domestic regulation. This produced an important hallmark for the area – the Decree No. 1,355/94 –, which incorporated the results of the Uruguay Round, and all multilateral trade agreements (WTO). Besides this normative ground base, some laws and decrees sought to regulate specific issues, as well as a wide range of determinations have been imposed by administrative acts.

Given the organic nature of multilateral agreements and their wide range, in horizontal terms (variety of covered areas) and vertical terms (depth and degree of international delegation) terms, the WTO has been considered, since its creation, as the regulatory framework for the international trade system. However, along with the conclusion of the Uruguay Round, a series of initiatives to conduct preferential trade agreements have been launched. Initially, these agreements have assumed a regional perspective – as the case of Mercosur – but soon they were broadened to include preferential agreements.

That is clear from the rush to have all those agreements signed. The following chart presents data on the notifications of agreements, from the GATT era to 2009:

After a strong association of foreign policy with the liberalization movement, during Collor’s government, foreign policy had suffered from the limitations of deconstructions in the economic area in Brazil, having as a priority the stabilization, scheduled during the Fernando Henrique Cardoso’s government. See HIRST, M., PINHEIRO, L. A política externa do Brasil em dois tempos. Revista Brasileira de Política Internacional, v. 38, n. 1, 1995, pp. 5-23 (the authors indicate three guidelines of the Brazilian foreign policy from 1989 until mid-1990: “1) update the international agenda of the country according to the new issues and new international momentum, 2) build a positive agenda with the United States, and 3) de-characterize the third-world profile of Brazil”, p. 6. BERNAL-MEZA, Raúl. A política exterior do Brasil: 1990-2002, In: Revista Brasileira de Política Internacional, v.45, n.1, 2002.


For example, in the legal structure, the issue of subsidies: (i) regulated by Decree 1,355/1994, which incorporates the Agreement on Subsidies and Countervailing Measures, (ii) subsequently regulated by Law No. 9,019/1995 (modified by Article 53 of Provisional Measure No. 2,113/2001) that provides for the enforcement of rights under the Agreement on Subsidies and Countervailing Duties (and also under the Antidumping Agreement), (iii) the definition of administrative procedures for the application of compensation measures, by Decree 1,751/1995, (iv) and, finally, Circular SECEX No. 20/1996 that establishes the guidelines for the elaboration of petition related to the investigation of subside practice.

In contrast to 123 notifications received during the period 1948-1994, under GATT, the Committee on Regional Trade Agreements of WTO recorded 474 regional trade agreements, until July 31, 2010. See Regional Trade Agreements: facts and figures, available at <http://www.wto.org/english/tratop_e/region_e/regfac_e.htm> (September 2010).

MAVROIDIS, P. “If I don’t do it, somebody else will (or won’t)”. Journal of World Trade, n. 40, 2006, 187-214.
Apart from the debate over the clash or the mutual reinforcement between “regionalism” and multilateralism\(^\text{56}\), that trend alerts for an overlap of rules of standards and procedures among the diverse regional systems (also known as mini trade regimes) and between them and the multilateral system\(^\text{57}\). At the moment, to think about the different levels of regulation of international trade and to think about prevalent models demand an understanding of: (i) the volume of trade to be served and the flow of commerce strategies that might be in case (interested sectors, competitiveness, third competitors and their conditions of trade with that market, possibilities of triangulation of trade); (ii) rules that reinforce or that may restrict those commitments made at multilateral level; (iii) the new rules on issues still not under the multilateral regulation scheme; (iv) institutional and decision-making interfaces, i.e., how much overlap there is and whether it is possible to refer at a time to different institutions of different agreements, as well as of concomitant resort to institutions of each agreement as well as whether decisions from one or other forum can be referenced and invoked in another system\(^\text{58}\). By launching the strategy known by the jargon as “three tracks”, in 2005,

\(^{56}\) According to GATT’s perception in 1947, these movements would be complementary and manageable by the multilateral trading system. This is observed in the wording of Article XXIV.4 GATT: “The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the State Parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.”

\(^{57}\) HORN, H. e MAVROIDIS, P., SAPIR, A., “Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements”, Discussion Paper DP7317, Center for Economic Policy Research, June 2009 (available at http://www.cepr.org/pubs/new-dps/dplist.asp?dpno=7317.asp), analyzed the agreements between the EU and the U.S., seen as major leaders in the impetus for specific agreements and beyond the WTO rules. The authors have proved that EU agreements tend to move forward on issues not yet covered by the WTO (such as labor issues or social clause), although in large part these forecasts do not have binding character or mechanisms for the implementation by agreements; the agreements signed by the U.S., in turn, tend to guarantee the mechanisms for implementation and give emphasis to the devices that reinforce or are more stringent than the obligations at WTO, as the case of the TRIPs plus, which include provisions curbing the flexibilities and ensuring greater deadlines for the protection of intellectual property rights.

\(^{58}\) In this regard, in the absence of structure of a given system or even due to policy strategy, many topics end up migrating to other solution systems (in a movement also known as forum shopping). See ORTIZ, Mena L.N., *Forum-shopping in International Trade: A Tradeoff between Scope and Flexibility? Evidence from the Mexican Case* (mimeo), APSA-American Political Science Association paper, 2005. Given the
Brazil decided to restrain new commitments (“ii” and “iii”) to the forum of the WTO, while market access issues would be negotiated in coalition with Mercosur partners and other countries and, finally. In addition, topics on institutional arrangements could be freely negotiated with other partners. Combined with an unfavorable international context, the resistance to move forward on U.S. and E.U. priority issues made it possible for Brazil to conclude only four agreements by 2010, in partnership with the other parties of Mercosur. It is argued that this is also a result of the Brazilian intention to become a global trader, so that it would have had to take care of different agendas and seek market access without being bound to a single partner.

According to those same guidelines, Brazil has also focused its negotiating efforts on markets access and rulings in the Doha Round since 2001, focusing on demands for liberalization of agricultural trade, with even greater emphasis on the dispute settlement mechanism of WTO. The country becomes the fourth most active member in this system (despite occupying the position of 24th largest exporter of goods and 32th of services), in which it operates prominently, through the defense of its interests and the development of creative mechanisms to guarantee the effectiveness of the Dispute Settlement Body’s decisions.

Since the early 2000s, Brazilian diplomatic strategies on trade have also identified a “global game” beyond the WTO's multilateral forum and not related to the process of regional agreements. in line with the strategy of preferring multilateral forums, certain Brazilian demands and conflict resolutions crossed the boundaries of WTO, as in the high degree of institutionalization of the WTO’s dispute settlement system, for example, some cases have migrated to regional solution at the multilateral level - as happened to the following cases from Brazil and Argentina: WT/DS190 - Argentina - Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil, 2000; WT/DS241 - Argentina - Definitive Anti-Dumping Duties on Poultry from Brazil, 2001; WT/DS355 – Brazil - Anti-dumping Measures on Imports of Certain Resins from Argentina, 2006; other cases, after being decided at the regional level, were subjected to the WTO, as happened with the prohibition of importation of used tires by Brazil, decided within the Mercosur (Reports of the Permanent Court of Review No. 1/2007 1/2006 and 1/2005 on the dispute between Uruguay and Argentina, and Reports of Ad Hoc Arbitration Courts to examine the dispute between Uruguay and Argentina, and between Brazil and Uruguay), and later brought to the WTO system by the European Community (WT/DS332 - Brazil - Measures Affecting Imports of Retreaded Tyres).

59 They are Mercosur/ India (2009), Mercosur/ Israel (2010), Mercosur/ SACU (2009), Mercosur/Egipt (2010). The last two are not yet in force. Two other agreements were being negotiated in 2010: Mercosur/ Jordan and Mercosur/ UE. See <http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=405> (September of 2010). The Economic Complementation Agreements signed under the ALADI are not included in this list.

60 VIGEVANI, T. and OLIVEIRA, M.F., CINTRA, R. Política externa no período FHC: a busca de autonomia pela integração, Tempo social, v.15, n. 2, 2003. According to the authors, it would explain the non-institutionalist behavior of Brazil in the case of Mercosur, and at the same time, institutionalist in the multilateral agenda (WTO).

61 Regarding this strategy, see SHAFFER, G., SANCHEZ BADIN, M. R., ROSENBERG, B. The trials of winning at the WTO: what lies behind Brazil’s success. Cornell International Law Journal, v. 41, 2008, pp. 383-502. It is highlighted here the reference to institutional changes in the context of the Ministry of Foreign Affairs and of the Brazilian mission in Geneva to coordinate the works in the litigation, favoring the formation of a group of diplomats specialized in international trade.

62 A notorious example consists of a crossed retaliation by Brazil against U.S., in the case of cotton (WT/DS267 - United States of America - Subsidies on Upland Cotton) and its internal regulation process according to Law No. 12,270 of June 24, 2010 and CAMEX Resolutions No. 15 of March 05, 2010; No. 16 of March 12, 2010; and No. 43 of June 17, 2010.
case of intellectual property regulation (with the proposal for a Development Agenda at WIPO) and the resolution of the dispute with Canada on civil aircraft sector financing (at OECD). Another extension in the multilateral negotiations field is verified in the climate change debate, where the growing relevance of trade issues in its main forum—the United Nations Framework Convention on Climate Change (UNFCCC)—relates to the Brazilian strategic option to enact in both forums (WTO and UNFCCC).

C. Looking for appropriate tools for a new trade strategy: the example of ethanol

Historical digression indicates some aspects that remain as bottlenecks to the current performance of Brazil in international trade, as well as it indicates advances in the Brazilian position and in the implementation of certain strategies. Overcoming internal obstacles and reviewing structures and models conceived in the country to increase its exports capacity contribute in a decisive manner to the achievement of its greater objective, which is to integrate the country in its regulatory and institutional aspects to international trade. An incisive Brazilian (government and other interested private agents) performance in international forums and directly in touch with other governments also concurs to the achievement of that objective.

In order to understand the challenges faced by Brazil in pursuit of that objective, this paper intends to identify an example of Brazilian performance with the potential to exemplify the multiple dimensions in which those challenges are faced. Ethanol is an interesting case to illustrate such challenges due to the following reasons: (i) its competitiveness is based on models that have dramatically changed over the past two decades, (ii) the global market for ethanol, even incipient, presents great prospects for expansion, (iii) the product faces various forms of restraint or trade barriers for its major consumer markets, (iv) government has made efforts on several fronts to facilitate the opening of markets and to stimulate the expansion of the sector, (v) instruments designed to overcome barriers, domestically and internationally, including the legal and institutional restructuring and the adoption of innovative models of public and private management.

3.1 Ethanol: a new market in a new context for Brazil

From the early 2000s, some changes in the national and foreign context provided the revival of the interest in ethanol. Internationally, the major devices of this change were: (i) the continuous increase in the global demand for energy, driven mainly by economic growth in emerging economies, especially China’s, (ii) repeated increases in international oil prices, (iii) the strength acquired by environmental issues in various international forums, due to the emergence and consolidation of sustainable development as an issue.

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65 Regarding the latter, one may highlight the negotiations performed under the United Nations Framework Convention on Climate Change (UNFCCC). The alarming data and projections released by
Domestically, some factors were determinant for ethanol to regain relevance. First, Lula’s government political choice of providing ethanol with a strategic role in the Brazilian development plan. This decision was crucial for the resumption of investment and growth in the sector, which had been neglected due to low market confidence in general. As the main reasons for that strategy, government emphasizes: (i) energy security by reducing dependence on oil, (ii) the environmental issue, especially the maintenance of the Brazilian position as a global reference in clean energy matrix, (iii) employment generation, much higher than that found in the petrochemical industry. In 2008, production of sugar and ethanol moved R$ 48 billion, which represents 1% of gross domestic product. Another important internal factor for reviving the importance of ethanol as a fuel is in the introduction of flex-fuel vehicles, in 2003, with incentives for tax exemption by the government. Between 2003 and 2008, the participation of flex-fuel cars in the Brazilian fleet increased from 4% to 90%. In the same period, sales of hydrated ethanol increased five times, surpassing those of gasoline.

The sector had had to look for increased competitiveness by developing more efficient agricultural and industrial techniques once the government had withdrawn its subsidies. As a result, substantial productivity gains and cost reductions were achieved. Average production is 73 tons per hectare and reaches 110 tons per hectare in the State of São Paulo, while the production cost is about R$ 20.00 per ton. In calculating the cost per liter of ethanol produced, comparison with other producers demonstrates the Brazilian competitiveness. In Brazil, this cost is US$ 0.17; in the USA, US$ 0.32; in EU, US$ 0.56.

Another important development observed in the processing of sugar cane is in the ability of electric power cogeneration. Sugar industry is self-sufficient in energy terms, since almost all energy used in the plant is produced by burning sugarcane bagasse. And

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66 See Interview with the representative of the Civil House, on 09/15/2010.
67 Idem.
68 The flex-fuel engines are designed to allow the supply of alcohol, gasoline or any mixture of both fuels. This allowed the balance between the prices of gasoline and alcohol to be dictated by consumer choice, who started to consider the relative advantage of prices at the time of supply.
70 COELHO, S. T., GOLDEMBERG, José, LUCON, Oswaldo and GUARDABASSI, Patricia. Brazilian sugarcane ethanol: lessons learned. In: Energy for Sustainable Development , V. X, N. 2, jun. 2006. Neto points to the gap in productivity of different regions of the country. In contrast to the high levels observed in the South-Central regions, the North-East regions has not exceeded 57 tonnes per hectare, NETO, José Ferreira. Competitividade da produção de cana-de-açúcar no Brasil. Thesis presented to Universidade Federal de Viçosa, 2005, p. 5.
71 SOUZA (2006), op. cit., p. 45.
now, surpluses are generated, which are targeted to the supply of electricity in general. It is estimated that bioelectricity will account for 15% of all electricity demand in Brazil in 2010\textsuperscript{72}.

One aspect linked to the growth of ethanol production, which assumes increasing relevance from the economic point of view, is the production of agricultural and industrial inputs such as fertilizers, tractors and industrial equipment. The total economy of the agribusiness sugar-ethanol system moves US$ 80 billion annually\textsuperscript{73}.

3.2 A first step: fight the stigma of the sector

The vigorous growth of the sector has not been achieved without social and environmental burden. Since Proálcool, the expansion of sugarcane cultivation and production has drawn criticisms about the negative impacts on environment and on social actors involved\textsuperscript{74}. As noted by Schaffel and La Rovere, the legal system prevailing at the time of the program was weak, allowing the continuation of practices that provided a stigmatization of the sector. Sugar- Ethanol industry has attempted up to now to overcome that stigma\textsuperscript{75}. However, the aim for internationalization of the sector, drawn by the industry itself\textsuperscript{76}, requires surpassing this reality and the historical stigma tied to it. Among the main problems are the issue of deforestation\textsuperscript{77}, the use of burnings as the traditional method of preparation to harvest\textsuperscript{78}, allegations of child labor and poor working conditions\textsuperscript{79}, among others\textsuperscript{80}.

\begin{flushright}
74 Vian and Belik emphasize the dimension that the social and environmental aspect acquired: “It is evident that the conception and implementation of policies for the Sugar Cane Complex in Brazil cannot discard, in any way, the social and environmental aspects that are going to guide not only the market of assets, but also its restructuring. Because of the size that took the country, whether by size of land they use, or as a great part time manpower, it is clear that such restructuring is having, and will increasingly have, impact and ramifications that surpass the limits of its own configuration”. VIAN and BELIK (2003), op. cit., p. 181.
76 In this regard, see interview with UNICA’s president, Marcos Jank, soon after is appointment in 2007, A palha e o bagaço vão virar luz, Dinheiro Rural, n. 37, novembro de 2007.
77 Although the recurrent association to Amazon deforestation, the soil and natural conditions of the region are not conducive to the cultivation of sugarcane. However, the pressure of the expansion exerted on the Cerrado biome has been considered more worrisome. Abramovay highlights that the social pressure to protect Cerrado is weaker, and the monitoring systems are more precarious. ABRAMOVAY, R. Eficiência e contestação socioambiental no caminho do etanol brasileiro. In: Política Externa v. 17, n. 2, set/out/nov 2008, p. 8.
78 The gases emitted in fires cause several injuries to the environment and health of people and animals. Besides the carbon dioxide emitted by burning sugar straw, other toxic compounds that contaminate water and soil are released into the atmosphere. The smoke also causes disease in people living near the plantation. RODRIGUES, Délcio e ORTIZ, Lúcia. Em direção à sustentabilidade da produção de etanol de cana de açúcar no Brasil, Vitae Civilis, out. 2006.
79 According to Abramovay, the imposition of strenuous working hours and the informality are still found, especially in the Northeast. Most extreme cases, such as the verification of conditions analogous to slavery, although practically abolished for the most of the country, are still remembered as a mark of the exploitation of manpower in the sector. More recently, the mechanization emerged as strong trend,
 Especially with regards to preoccupation over deforestation and food security, the expansion of sugarcane plantation has raised issues about the changes in the use of land itself. Usually in reference to the Amazon region, deforestation became one of the most tied stigmas of Brazilian ethanol. The expansion of sugarcane plantation over other food plantations has been identified as a vector to such increases of food prices that it was identified as a crisis in 2008 that might be repeated in 2011. Besides being responsible for a negative image tied to Brazilian ethanol domestically and abroad, the changes in the use of the land serve ethanol buyer markets as reason for the imposition of conditionalities, as we will later refer.

The increased knowledge of socio-environmental impacts resulted in mobilization of public opinion, government and private sector, ending up in the optimization of control mechanisms and rules\textsuperscript{81}. Traditional instruments of regulation were reinforced in coexistence with new management models designed to deal with those problems. Among those instruments are: (i) the Agro-Environmental Protocol of the State of São Paulo, (ii) the National Commitment to Improve Labor Conditions on Sugarcane Plantations, (iii) the Sugarcane Agro-Ecological Zoning.

The first two instruments assume the cooperation of the private sector, and intend to drive their behavior according to increased acknowledgement of socio-environmental implications. The Agro-Environmental Protocol of the State of São Paulo rewards producers who adhere to the guidelines through the issuance of a certificate of compliance\textsuperscript{82}. The National Commitment to Improve Labor Conditions on Sugarcane Plantations has national coverage and aims to record the engagement of producers in guaranteeing good work practices\textsuperscript{83}. The rate of adherence to these commitments has been significant. In the beginning of 2010, the protocol of São Paulo already bounded especially in the Southeast, which would significantly alter the offer of jobs in the sector. ABRAMOVAY (2008), op. cit., p. 9.

\textsuperscript{80}Rodriguez and Ortiz mention among these issues the generation of inequality through the establishment of large monocultures properties; damage to indigenous groups; soil degradation; loss of biodiversity; and water contamination due to improper management of waste. RODRIGUES and ORTIZ (2006), op. cit.

\textsuperscript{81}SCHAFFEL e LA ROVERE, op. cit., p. 5.

\textsuperscript{82}The Environmental Protocol of the State of São Paulo is a compromise negotiated and signed between the state government, UNICA and the Organization of Sugar Cane Planters of South-Central region of Brazil. The requirements include: (i) the anticipation of the deadlines for the elimination of the burning of the straw in seven years (until 2014), (ii) the protection of forest remnants of springs and riparian forests, (iii) the erosion control and best practices of land use, (iv) a proper management of pesticides, (v) the reduction of water consumption in the industrial stage, and (vi) the reduction of atmospheric emissions. See Secretaria de Meio Ambiente do Estado de São Paulo. Protocolo Agroambiental. Available at: <http://www.ambiente.sp.gov.br/etanolverde/#!>. Access on Aug 15, 2010. Law No. 11,241 /2002 of the State of São Paulo established the gradual reduction of the flaring employed to facilitate manual cutting of cane sugar, with total elimination of the practice estimated to 2021.

\textsuperscript{83}The terms of engagement determine the adoption of best practices in the management of manpower, which include, among others, direct hiring of workers, the provision of transport by the employer, transparency in the verification of production by the worker, forehand information of the price paid to employees, and the guarantee of health conditions, such as taking regular breaks in the journey.
more than 90% of plants in the state\textsuperscript{84}; as for the commitment, in 2009 75% of plants operating in Brazil had joined\textsuperscript{85}.

The Sugarcane Agro-Ecological Zoning, on its turn, consists of a more comprehensive legislation that intends to guide the expansion of sugarcane production in Brazil. Based on the study of the Brazilian Agricultural Research Corporation (Embrapa), it was performed a mapping of regions with favorable conditions to expansion of cultivation, taking into account the vulnerability of the land, climate risk, the potential for sustainable agricultural production and the environmental legislation in force\textsuperscript{86}. Production in those areas outside the stipulated demarcation is going to be prohibited\textsuperscript{87}. According to a representative of the sector, though still pending in Congress, regulation is already in effect in practice, since the release of credit for production has been linked to compliance with the stipulated areas\textsuperscript{88}.

Those are some of the measures that not only meet domestic demands, but also intend to condition the private sector to correct bad practices as ways to gain competitiveness. The adoption of those standards strengthens the competitive advantage of the product, especially when considering that ethanol can be directly associated with the concept of sustainability. Through the use of fair practices of production, acceptance in the international market tends to be higher and the creation of technical barriers through environmental and social criteria tends to be avoided.

3.3 The creation and the expansion of markets

3.3.1 Ethanol markets main limits

One of the peculiarities of ethanol lies on the fact that the product faces virtually all forms of trade limitation and restriction. Firstly, due to the fact that there is no continuous and permanent purchase and sale of the product, it is hard to precise the existence of an international market for ethanol. Therefore, when traded, it is difficult to classify the product according to the harmonized system for tariffs adopted by the international trading system; and then severe tariff burdens apply, protecting the national competitor product in these markets, as well as ethanol remains subject to non-tariff barriers (especially on aspects related to environment). In order to enable the international expansion of ethanol, Brazil looks for means of articulation in the


\textsuperscript{86} As a result, we excluded the regions of the Amazon, Pantanal and Upper Paraguay River Basin, while areas with the possibility of mechanization and degraded were released. Ministério da Agricultura, Pecuária e Abastecimento. Zoneamento Agroecológico da Cana-de-Açúcar. Available at: <http://www.cnps.embrapa.br/zoneamento_cana_de_acucar/ZonCana.pdf>. Acesso em: 16 ago 2010.

\textsuperscript{87} The areas authorized correspond to 7.5% of the Brazilian territory. Currently, sugar cane occupies 0.9% of the territory, which demonstrates the great potential of expansion. UNICA. Brazilian sugarcane ethanol: the big picture. Presentation prepared for the International Conference on Biofuels, May 27, 2010.

\textsuperscript{88} Interview with the representative of UNICA, held on September 10, 2010.
domestic environment and to overcome the barriers at the international level, considering its productive capacity in the industry, technological innovation and the strategies associated with this form of renewable energy.

International ethanol market is not large, as the share of world production internationally traded is small. That is due to the lack of surplus production in most countries, where the focus remains on the domestic market. Brazil is a rare example of a country that manages to set aside part of its production for export\(^90\). Given this reality, the country currently dominates the offer side, being responsible for 48% in global exports of ethanol\(^90\). The major Brazilian exports expansions occurred in 2003 and 2008, both driven by the increase of the American demand\(^91\).

Sales to the United States (directly or via the Caribbean countries) and to the European Union together are responsible for 80% of total national exports\(^92\). The perspectives of market expansion are, however, optimistic. It is projected an increase of 260% in global consumption by 2020\(^93\). Besides the two largest markets, other 24 countries and 41 states or provinces have enacted legislation requiring mandatory blending\(^94\).

Since ethanol has not been consolidated as an international commodity, it does not fit a standardized customs nomenclature. This harms not only data collection about the market, but seriously affects the transparency on the quotation of prices in world market\(^95\). The frequent use of a common classification for natured ethanol and

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\(^{89}\) SOUZA (2006), op. cit., p. 45.

\(^{90}\) HIRA (2010), op. cit., p. 3.

\(^{91}\) In 2004, exports jumped from 757 million liters to 2,408 million liters, driving U.S. regulations that banned the use of methyl tert-butyl ether (MTBE) as an additive to gasoline. The addition of the compound was replaced by a mixture of ethanol, mainly imported from Brazil. In 2008, the reason for the jump was a new crop failure in the U.S. UNICA. Nota explicativa sobre exportação. (14/01/2010). Available at: <http://www.unica.com.br/download.asp?mmdCode=0C5AD3CF-E596-44AF-A6C9-0CF222F56A60>. Access on Aug 20, 2010.


\(^{93}\) Idem. See also: Renewables Global Status (2010), op. cit., p. 24-25.

\(^{94}\) Among these are Indian and Chinese provinces, in addition to 14 other developing countries. See Renewables Global Status (2010), op. cit.

\(^{95}\) An example of the variation in foreign sales is seen in the phase which goes from mid-1980s to the following decade. In 1984, Brazil exported over 850 million liters. At the turn of the decade, exports fell
denatured ethanol (HS 2207) complicates the tracking that would allow distinction between exports of ethanol meant for chemical or fuel use and exports of ethanol meant for the manufacture of alcoholic beverages. Hence one of the major Brazilian pleas now is for the recognition of the product as fuel in international market.

On top of those limitations imposed by the structure of international market itself, the two main consumer markets of Brazilian ethanol – the U.S. and EU – impose heavy tariff barriers as a means of protecting their domestic industries. The U.S., in addition to the ad valorem rate of 2.5% over imports of “alcohol”, applies a specific rate of US$ 0.14 per gallon. The EU imposes tariffs of US$ 0.24 per gallon for ethyl “alcohol”. Besides tariff protection, domestic production receives strong government subsidies in the two markets.

Another limit to the expansion of Brazilian ethanol exports has been the increasing imposition of criteria related to its production process, meaning real non-tariff barriers to imports. This constraint refers to a broader context of resistance and criticism to biofuels. Schaffel and La Rovere emphasize that the initial enthusiasm about renewable fuels was soon followed by several doubts related to sustainability. In contrast to the motivations in the domestic sphere, international market demands have focused on three basic claims: (i) that biofuels contribute to deforestation of tropical forests, (ii) that the competition between food and agro-energy culture would result in competition for raw materials and consequent increase in food prices, (iii) that the objectives related to reducing GHGs emissions would be suppressed due to emissions from the manufacturing process of biofuels and their consumption. This framework explains why the renewable energy policies of the U.S. and EU, which determine an increase in the participation of biofuels in the energy matrix have limitations related to these concerns, particularly the reduction of GHG emissions.

In the U.S., the Renewable Fuel Standard - RFS1 and its reissue (RFS2) set targets for increasing the use of biofuels, but they also establish conditions for that increase. Part of the goals should be achieved through the use of the so-called “advanced biofuels,” which reach a minimum volume of emission reduction over its life cycle. In the EU, the second most important market to Brazil, the Renewable Energy Directive decided that biofuels must meet two criteria relevant to importers: (i) to reduce emissions in the life cycle in at least 35% in comparison to fossil fuels, (ii) they should not be produced

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96 HIRA (2010), op. cit., p. 3.
98 It is estimated that in the United States ethanol producers receive direct subsidies of about US$ 0.51 per gallon. See MASIERO, Gilmar e LOPES, Heloísa. Etanol e biodiesel como recursos energéticos alternativos: perspectivas da América Latina e da Ásia. In: Revista Brasileirâ de Política Internacional, 51 (2), 2008, p. 60-79.
99 SCHAFFEL and LA ROVERE, op. cit., p.4.
100 The RSF1 established that the consumption of biofuels from 4 billion gallons in 2006 should increase progressively to reach 7.5 billion gallons in 2012. In 2007, the RFS1 was reissued, introducing a further increase to 136 billion liters in 2022. PIRES, Adriano and SCHECHTMAN, Rafael. Políticas internacionais de biocombustíveis. In: SOUZA, Eduardo Leão de e MACEDO, Isaias. Etanol e bioeletricidade: a cana-de-açúcar no futuro da matriz energética. São Paulo: Luc Projetos de Comunicação, 2010, p. 204-205.
from raw materials cultivated in high biodiversity areas, such as primary forests\textsuperscript{101}. This last criterion refers to the question known as “indirect use of the land”. Even though implementing such exigencies is still pending, the mere inclusion of those criteria is controversial, and many models have been created to allow identifying the potential biofuels have on the change of the use of the land\textsuperscript{102}.

For instance, at least, the challenge is to meet the criteria, but also to promote and to strengthen the image of the production process in Brazil and its commitment to sustainable patterns defined by the major importing markets. Government has taken, however, a reticent position regarding the recognition of the legitimacy of those requirements included in American and European policies. Once they are considered unfair and protectionist, priority will be placed on questioning them in international trade regulation mechanisms\textsuperscript{103}. Hence, environmental certification for compliance with those requirements has been seen as an option for private sector agents, and not as public policy\textsuperscript{104}.

The verification of these impasses demonstrates the importance of international spaces in which countries can negotiate and question classification and barriers to ethanol, as well as the reasonableness of the sustainability criteria for biofuels.

### 3.3.2 Government's actions for international expansion of ethanol

In order to overcome the obstacles listed above, government has been acting in several fronts. First, it attempts to overcome uncertainty of consumer markets regarding the feasibility of supply. On that matter, the sector itself has made efforts to improve the regulatory framework of ethanol. As the main regulatory framework for the sector was established by Proálcool, legal discipline does not address many of the current demands on the sector\textsuperscript{105}. Alcohol is still considered by law as an agricultural commodity, which contributes to make the dynamics of price formation unstable\textsuperscript{106}. By means of a reform, alcohol would be classified as fuel and would be controlled differently. According to its evaluation, government believes that this would prove the sector is mature and would lead to a greater commitment to stable supply\textsuperscript{107}.

Furthermore, the initiative to revise the classification should not be limited to the domestic sphere. In the WTO, Brazilian government seeks to classify ethanol as an environmental good, for which there is a negotiation mandate aimed at reducing or

\textsuperscript{101} The European Directive was published in July 2009, and should have been implemented by Member States within 18 months. The general objectives to be achieved included: (i) 20% reduction in GHG emissions compared to 1990 levels, (ii) 20% improvement in energy efficiency compared to current forecasts for 2020, (iii) participation of 20% of renewable energy in the matrix of EU energy consumption. Idem.


\textsuperscript{103} Interview with representative of the Ministry of Foreign Affairs, held on September, 20th, 2010.

\textsuperscript{104} Interview with representative of UNICA, held on September, 10th, 2010.


\textsuperscript{106} This instability stems largely from the sugar cane market. That is because a significant portion of the mills still retain the capability to direct the production of sugar or alcohol, according to opportunity costs found in the respective markets in each moment.

\textsuperscript{107} See note 64.
eliminating tariffs in the Doha Round. However, these negotiations failed to reach a definition list that would include this category of goods\textsuperscript{108}.

Another initiative led by the Brazilian government that aims at correcting the precariousness of the ethanol market is to increase the number of producer countries. The government has developed pioneering work with a group of developing countries in Central America and Africa, with the purpose to identify the potential of these countries to the production of ethanol and other biofuels. Information is made available to governments, and lines of credit from the Inter-American Development Bank (IDB) have been created to finance projects based on those studies\textsuperscript{109}. Strengthening Brazilian position as a reference in technology for production (related to the supply of machines and fertilizers) and expanding areas where national producers could invest are other possibilities involved in the initiative to increase the number of ethanol producers.

In order to address market access issues, government and private sector have identified that, in addition to high tariffs and other customs duties, protectionism against ethanol is due to the unpredictability of foreign policies for biofuels. As a response, Brazilian embassies in Washington and Brussels have been closely following the decision-making processes and have been lobbying for the dismantlement of protectionist intents. They have also been supporting the implementation of private sector commercial offices in those cities\textsuperscript{110}.

Resort to the Dispute Settlement Body (DSB) of WTO has also become an important tool for Brazil to defend commercial interests protected by agreements in the multilateral system. Such a system is considered an option for challenging both the excessive tariff protection and the environmental requirements for ethanol. In this sense, the Brazilian government has stated on several formal and informal occasions that it is considering the possibility of initiating a dispute against the taxes imposed on ethanol imports by the U.S.\textsuperscript{111}. Such threats gain weight after the success of the aggressive posture of Brazil in the cases of sugar and cotton, which involved sectors that are also

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\textsuperscript{108} On the issue, the IPC and REIL reports clarify: “Paragraph 31(iii) of the Doha Ministerial Declaration calls for ‘the reduction or, as appropriate, elimination of tariffs and non-tariff barriers to environmental goods and services’. Negotiations pursuant to 31(iii) had been taking place in the Special Session of the WTO Committee on Trade and Environment (CTE-SS). When the Doha Round was formally suspended, little progress had been made in these negotiations even in defining the parameters of what may be included as an ‘environmental good’.[…] The issue remain unresolved”. International Food & Agricultural Trade Policy Council e Renewable Energy and International Law. \textit{WTO disciplines and biofuels: opportunities and constraints in the creation of a global marketplace}. IPC Discussion Paper, Oct 2006.

\textsuperscript{109} Idem note 100.


\textsuperscript{111} The demands of environmental nature of the new European biofuel policy may lead to the opening of a dispute over Brazil. According to the government and the private sector, the high degree of unpredictability in the criteria to be used in the implementation of RED is a strong evidence of protectionism. The WTO agreements provide support for the autonomy of member states to adopt environmental policies, even if the exercise of this right results in violation of general rules of liberalization. However, the jurisprudence of the OSCC has outlined the accepted limits to restrictions to trade as a result of policies aimed at protecting the environment. Idem note 100.
traditionally protected in those markets\textsuperscript{112}. The experience of the sugar dispute was emblematic for the sugar-ethanol industry\textsuperscript{113}.

In addition to that institutional resource, Brazilian government (via the Brazilian Trade and Investment Promotion Agency, APEX-Brazil), along with the private sector, has sought to promote the image of Brazilian ethanol from sugarcane as clean energy abroad. This objective has been accomplished by means of marketing actions and business intelligence studies\textsuperscript{114}. In the opinion of high-level officers of the Ministry of Foreign Affairs, the biggest challenge lies on overcoming the fallacies that biofuels represents a threat to environment and food security, and that its production is based on degrading working conditions.

Those arguments have based heavy criticisms in international forums like the World Bank and the Convention on Biological Diversity (CBD). Such criticisms were supported by developed countries, at first, but their points were soon absorbed into the discourse of many developing countries. That is particularly relevant if one considers that, beyond representing a barrier to consumption, the incorporation of these stigmas means an impediment to the development of supplier markets, since it discourages tropical countries to produce biofuels. In this sense, government efforts focus on dismantling the labels attributed to biofuels through information and awareness work done by Brazilian officials in international meetings\textsuperscript{115}.

In addition, government seeks to establish quality criteria and to promote harmonization of standards with the aim of encouraging their use both in the domestic sphere and the international trade, in specialized forums on biofuels – such as the Tripartite Task Force US-EU-Brazil and the International Biofuels Forum. In another multistakeholder forum, the Global Bioenergy Partnership, government works to dissociate the creation of sustainability criteria and indicators from commercial objectives\textsuperscript{116}.

In the bilateral sphere, several memoranda of understanding have been signed over the last years. Such agreements celebrate joint initiatives to establish criteria and standards harmonization, areas for the transfer of technology and research funding for the sector\textsuperscript{117}. Among these documents, it is notable for its relevance the Memorandum signed with the U.S., which, in addition to the above mentioned items, includes the clause of production funding in third countries. Studies on the viability of producing biofuels in Central America were carried out under this provision of joint incentive\textsuperscript{118}.

Presenting ethanol as a differentiated product is a topic that the government seeks to

\textsuperscript{112} WT/DS266 - European Communities - Export Subsidies on Sugar (2002) e WT/DS267 - United States of America — Subsidies on Upland Cotton (2002).

\textsuperscript{113} Editorial, Diplomacia e pressão - como a entidade conseguiu que a OMC punisse a barreira da Europa e dos Estados Unidos ao açúcar brasileiro, Anuário de Comércio Exterior, 2006.

\textsuperscript{114} In 2008, Apex-Brazil and UNICA signed an agreement providing for joint investments for this purpose. See: UNICA. Apex-Brasil e UNICA investem para promover etanol brasileiro. Available at: \url{<http://www.unica.com.br/apex/>}. Access on Aug 18, 2010

\textsuperscript{115} See note 100.

\textsuperscript{116} The components of the Global Bioenergy Partnership agreed that the criteria and indicators developed under the initiative cannot be used for commercial purposes. See: \url{<http://www.globalbioenergy.org/>}.

\textsuperscript{117} Brazil has signed memoranda of understanding with the U.S., Panama, Chile, Mexico, Netherlands, Denmark, Sweden, Mozambique, Economic and Monetary Union of West Africa (UEMOA) and among the Mercosur countries, and a trilateral agreement with South Africa and India.

insert in bilateral agreements and understandings, whether they are directly related to trade or not.

3.3.3 The mobilization of the private sector

Since its deregulation, sugar-ethanol sector has acted and has been able to present its positions in an articulate manner to the Brazilian government, to foreign governments and institutions, as well as to international forums and coalitions. This movement has been headed by UNICA, which has consecrated itself as the main representative of the private sector since 1997\textsuperscript{119}. Since its creation, UNICA has conveyed the interests of the sector, being an active representative at government level, international forums (such as the WTO Ministerial Conferences and the Conference of Parties of the UNFCCC) and in direct representations in other countries (with offices in Washington and Brussels)\textsuperscript{120}.

UNICA has performed creative alternatives to face some market access barriers, such as compliance requirements for the production process, particularly those imposed by the main destinations of Brazilian ethanol: U.S. and European Union. According to a representative of the entity, in order to move forward in compliance with such requirements, the private sector itself will bear the costs involved in adaptation and certification required – creating certification mechanisms internationally recognized\textsuperscript{121}. Indeed, UNICA has actively participated in the Better Sugarcane Initiative (BSI), the organization aimed at developing comprehensive indicators and standards for the production, including sustainability requirements. Adhesion to established criteria is voluntary and enables the acquisition of a certification, after independent verification of compliance\textsuperscript{122}.

Though compliance with that private certificate criteria does not guarantee \textit{per se} that the product is acceptable for purposes of compliance with American and European requirements, it is seen by private sector as an additional mechanism to favor a better understanding of its production process as well as to emphasize the sector’s commitment to those requirements. One may also say that, nowadays, certifications are part of the reliability dynamics process in the market and that they convey greater and greater recognition to their holders in specific markets\textsuperscript{123}.

\textsuperscript{119} UNICA was originated from the merger of several industry organizations in the State of São Paulo, and today represents 50\% ethanol and 60\% of sugar produced in Brazil. See <http://www.unica.com.br> (History and Mission), Access in Sep 2010.

\textsuperscript{120} As Sylvio Henrique Neto and Marcelo de Oliveira state, UNICA has performed an important role towards government in increasing sector’s international participation, which allows for greater influence in forging foreign policy when it comes to ethanol. HENRIQUE NETO, Sylvio; OLIVEIRA, Marcelo Fernandes. \textit{Política externa brasileira: análise do caso da UNICA no processo de sensibilização da política externa comercial do governo Lula}, 2009. Available at: <http://prope.unesp.br/xxi_cic/27_36902898820.pdf>. Acesso em: 04 fev. 2011.

\textsuperscript{121} According to UNICA’s representative declaration. Interview with representative of UNICA, held on September, 9th, 2010. Representative’s name is omitted, interview transcript kept by the authors.

\textsuperscript{122} The criteria developed under the BSI are defined based on five principles: (i) obedience to law, (ii) respect for human rights and labor standards, (iii) efficient management of inputs, production and processes in order to improve sustainability, (iv) management of biodiversity and ecosystem services, (v) continuous improvement of key business areas. \textit{Better Sugarcane Initiative}, available at: <http://www.bettersugarcane.org/>. Access on Aug 16, 2010.

\textsuperscript{123} CAFFAGGI, F. \textit{Private Regulation, Supply Chain and Contractual Networks: The Case of Food Safety}, EUI/ RSCAS working paper 2010/10.
Amongst other private sector initiatives, Instituto de Estudos do Comércio e Negociações Internacionais (ICONE, in the Portuguese acronym) has played an important role as an information mechanism that inspires policies to the sector.\textsuperscript{124} The creation of a methodology to calculate the impacts of sugarcane production on the land, produced by ICONE, offers a counter position to the studies presented by the American Agency for Environmental Protection (AEP): the Brazilian Model of Use of the Land. The model tries to clarify which vectors and criteria should be taken into account when evaluating the impacts of the use of the land for the production in Brazil\textsuperscript{125}. Taking those new references into account, AEP started to cooperate with Brazilian researchers in order to set a common and adequate model\textsuperscript{126}.

### 3.3.4 Articulation in drawing up priorities and strategies

The resumption of the importance of ethanol in national economy and in government's agenda indicated the need to review the institutional and legal framework in which public policies for ethanol were to be created. The powers and functions of those structures that had been dismantled over the 1990s were reassigned throughout various bodies within the Executive Branch\textsuperscript{127}. Then, in 2000, the creation of CIMA (Conselho Interministerial do Açúcar e do Álcool, Interministerial Council for Sugar and Ethanol), chaired by MAPA (Ministério da Agricultura, Pecuária e Abastecimento, Ministry of Agriculture) and integrated by MIDC, MME (Ministério de Minas e Energia, Ministry of Energy) and MF (Ministério da Fazenda, Ministry of Finance) was an attempt to reverse the fragmentation in the structure responsible for formulating policies for the sector. It was a CIMA decision that kept the mandatory blending of ethanol to oil\textsuperscript{128}.

Still, from 2002, it was realized that actions from various bodies were being conducted in a disconnected way, without communication with other bodies interested or involved. Thus, it was created an informal working group to address the linkages between all ministries and departments, complementing CIMA’s work. This informal group, known as “ciminha” (“little” CIMA), is coordinated by Civil House and has the objective to

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\textsuperscript{124} ICONE is a think-tank formed by major Brazilian agribusiness organizations, among which UNICA. Its studies and projects base the definition of public policies and negotiation strategies in international trade arena. See: <http://www.iconebrasil.org.br/pt/?actA=1&areaID=3&secaoID=1&conteudoID=1>. Last access: Feb, 2011.


\textsuperscript{127} According to Carlos Araújo, deregulation resulted in the abolition of state institutions for planning and program control, “without the construction of replacement mechanisms and processes that come to fill the centrality of state planning”. The author explains that at the time the government chose not to define the bodies responsible for drawing up new rules and policies for the sector. ARAÚJO (2008), op. cit. This option was explained due to the high turnover of bodies responsible for managing and planning the activities of the sugarcane complex. The assignments that were made by IAA were made by Secretariat of Regional Development of the Presidency. Idem, p. 8.

\textsuperscript{128} CARVALHO e CARRIJO (2007), op. cit.
map the actions related to ethanol and their results and to identify needs and obstacles to the growth of the sector in order to base the development or adaptation of policies\textsuperscript{129}.

Since ethanol agenda regained strategic importance for government during Lula’s administration, it was determined that actions could no longer be taken in isolation. Thus, at all levels of government, any action related to ethanol must be reported to “ciminha”. The Civil House has carried out the mapping of these activities in order to consolidate them into a single database. The Ministry of Foreign Affairs actions before international forums serve as an example of such joint efforts. If, previously, agreements and international cooperation initiatives that included ethanol were signed without prior discussion with other bodies, today those acts began to be reported and discussed in “ciminha”. Such articulation has enabled to more precisely identification of the origin and contents of the demands and based the formulation of public policies for the sector\textsuperscript{130}.

Regarding the organization of domestic market, one of the main demands identified by this initiative is the need for collaboration between government and the sector to ease the sharp fluctuations in production, causing supplies uncertainty\textsuperscript{131}. Once it was determined that the percentage of ethanol mandatory blending to gasoline will not be expanded, it is clear that government and industry must find new mechanisms to influence the market. Regarding the foreign market, the working group has dedicated itself to identify and deconstruct fallacies built on biofuels, and more specifically ethanol. Since 2007, the organization of workshops and round tables with participation of involved bodies and world experts have been intensified in order to scrutinize the difficulties in transforming ethanol into an international commodity\textsuperscript{132}.

Involved in the redefinition of state articulation and industry rearrangement, the sector has also faced the need to create a new management model. According to Vian and Belik, that task has proved to be extremely difficult. On the one hand, there are difficulties in obtaining consensus among key stakeholders representing the industry – as UNICA, Copersucar and Cepaal (Coligação das Entidades Produtores de Açúcar e Álcool, Coalition of Producers of Sugar and Alcohol)\textsuperscript{133}. On the other hand, it is quite clear the need for review of state articulation, to regulate the sector so as to promote its expansion amid new demands- as those coming from foreign markets and from new interest groups organized around the issue and the sector, such as environmentalists and human rights group.

D. A final balance: Brazilian current international trade framework advances and bottlenecks and the example of ethanol

\textsuperscript{129} See note 25.
\textsuperscript{130} See note 64.
\textsuperscript{131} Regarding this front, it is highlighted the retaken of incentives for storage by the private sector as a way to reduce the vulnerability of producers to shocks by crop failures or changes in international prices. See MAPA. Volume de etanol estocado cresce 57% na segunda quinzena de agosto. (14/09/2010). Available at: <http://extranet.agricultura.gov.br/pubacs_cons/lap detalhe notícia_cons_web?p_id_publicacao=18032>. Access on Sep 14, 2010.
\textsuperscript{132} This kind of initiatives have helped to point the path to the development of the best practices, as which resulted in the Commitment to Improve Labor Conditions. See note 121.
\textsuperscript{133} VIAN and BELIK (2003), op. cit., p. 161.
In this brief article we tried to identify some challenges for the insertion of Brazil in international trade. The concern about Brazilian insertion in international trade is bound by the objective of increasing the share the country holds in that area of international economy. In 2009, Brazil was still the 24th position in world trade, accounting for only 1.2% of the commerce flow. The country has come close to the goal set in the Brazilian Export Strategy 2008-2010 (EBE)\(^\text{134}\), to represent 1.25% of global exports of goods in world trade by 2010. But it is known that those numbers are far below from those that the 8th largest economy in the world can obtain.

On the field of national policies reviews, proposals presented on EBE – tax relief, facilitation of customs procedures, facilitation of access to credit, improvement of infrastructure and information and coordination systems – are meant to confront culture and institutional arrangements inherited from the period of imports substitution. According to Maria Regina Soares, one of the strongest points of this policy was its strong bureaucratic structures, as well as the support of political and economic elite of the country\(^\text{135}\), that having been lost in the Brazilian economy process of liberalization. The ethanol case portrayed shows much of this relationship. After a decade of crisis, this sector – like many others in the Brazilian economy – is reaffirmed in the context of an incipient pact.

Either the overview of the bottlenecks to trade development in Brazil and the case of ethanol elucidate the difficulty of coordinating domestic policy and the bodies involved to formulate sound strategies and, especially, in partnership and dialogue with the private sector and civil society. In general, CAMEX and CONEX risk their legitimacy by fitting in and being ineffective bodies that do not meet all purposes assigned to them by country’s legislation. As described international trade and trade-related issues are wide and they address an agenda that demands the involvement of different public sector agencies with the articulation- as well as with the credibility- of the private sector and civil society in this partnership. CIMA and the emergence of an informal group called “ciminha” suggest similar difficulties for effective engagement in the Executive Branch, in the case of ethanol.

Two peculiarities of the example of ethanol that convey a lesson that might be useful in other sectors are its ability to combat the stigma over its production process and its image, and the mobilization of private sector in initiatives to face limits in the access to international markets. The recognition of these initiatives- and even of their legal validity- and the promotion of similar ways of solving problems of access to markets and gain competitiveness can be strengthened once they are absorbed in the government agenda.

Internationally, a cross reading and understanding of the different levels of articulation, negotiation and dispute resolution (multilateral, regional, bilateral and international) have become vital. Thinking about the themes proposed by EBE to this area – market access, trade promotion, overcoming tariff barriers and non-tariff barriers, internationalization of companies and coordination between economic growth and other

\(^{134}\) EBE was developed under the Productive Development Plan. Additional information available at: <www.mdic.gov.br/arquivos/dwnl_1220468182.pdf>.

social and environmental goals – brings us closer to the issues that are under negotiation now in these spheres or that depend on new regulatory proposals in other countries. For ethanol, as described, given the importance that the industry plays for Brazil in recent years, Brazilian government has invested in special provisions and concessions in bilateral agreements and memoranda, in addition to the standard strategy in the WTO and those other negotiations to liberalize the agricultural sector.

Non-tariff barriers increasingly represent the most significant barriers to access to major consumer markets of the world, U.S., EU and Japan. To overcome them, negotiations to harmonize technical standards and procedures for the establishment of requirements for imports, at different levels of articulation and negotiation, are fundamental. It is also true that mapping these barriers is a fundamental step to recognize the real obstacle to market access. In this sense, INMETRO’s work with database on technical barriers and its consolidation within public and private sectors is essential in order to such a database integrate analytical work prepared under MDIC or other ministries and the definition of strategies by the national Executive Branch. The initiative in the ethanol industry to set up offices in other countries is also a way to help in the mapping of those barriers and possible resources for its questioning (which may be in national or even regional instances). Ultimately, the arbitrary imposition of non-tariff barriers can be questioned in the dispute settlement system of WTO. And at that point, Brazil has a comparative advantage over other midsize countries, in view of its knowledge and success in the use of such mechanism. For this reason, among others, preserving the structure of work within the Brazilian government and its relationship with the private sector becomes highly desirable.

The example of ethanol is peculiar in the international area, because it is not limited to the access to markets through the reduction of tariff and non-tariff barriers. The most relevant strategy to this sector nowadays is how to demarcate market, that is, its classification (in a tariff line or another) and its qualification (as an environmental good, for example). Those initiatives can change completely the market structure in question. Not all products and sectors profit from that room to define themselves, but it is true that there is much to be still explored in these fields, regarding other items of Brazilian exports.

The fact that international trade regulation and its understanding have extrapolated traditional subjects reaffirms the ties they hold with the Brazilian strategy for companies’ internationalization. If exports are considered a first step in this process, the next steps depend greatly on the regulation of issues related to trade, such as intellectual property (which also involves technology transfer) and investments. It is also important to note that, in this process, MDIC data indicate that 59.3% of Brazilian investments abroad were in the service sector – that means that regulation and liberalization of trade in services also joins the list of Brazilian interests in any negotiation. What the trading partners in the process of internationalization of Brazilian companies are and how to regulate this relationship issues are part of the Brazilian international trade agenda. In the case of ethanol, its attempt to create an international market, even by means of incentives for new producers, may be in line with the strengthening of the internationalization process of the Brazilian companies to the extent that domestic investments and technology are included in this expansion.
The relationship established between trade and other issues impacts the current format of agreements and regulatory systems of international trade, as well as it impacts the expanding of the alternative or cumulative international forums to be joined as channels to coordinate the objectives of economic growth with other development objectives. Examples of this relationship have been experienced by Brazil in some paradigmatic foreign policy cases – such as the case of TRIPs and public health, trade and environment in the case of tires. Similarly, the expansion of ethanol exports and its promotion as a clean fuel worldwide involve concerns of trade expansion and the strengthening of commitments to environmental protection and reduction of GHG emission goals in climate change negotiations. Those relations, in circumstances still not addresses, can be caricatured as mediate or belonging to specific interest groups. For this and other reasons, coordination between different spheres that deal with the same theme or sector in the domestic context is crucial, in exercises that align the interests of economic growth with those related to the concept of sustainable development, seeking to promote a better articulation of the state privileged strategies – government and society – at international level.

Finally, it is a current need to recover the understanding of trade as a part of a set of economic policies and is closely related to the performance of each one – the link exchange keeps to the flow of commerce, in view of the monetary policies implemented by major players in the system is a current example. This final reminder aims to draw attention to the fact that, depending on the setting, initiatives in the trade field to overcome barriers and limits for the development may be insufficient to correct the system’s flaws. However, it is also true that getting the homework done, step-by-step, helps to identify the extent of the remaining problems.

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