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Programa de Pós-Graduação em Relações Internacionais

THE RELATIONSHIP BETWEEN REGIONAL TRADE AGREEMENTS, NON-  
TARIFF MEASURES, AND WTO MINISTERIAL CONFERENCES

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### **Abstract**

The main purpose of this dissertation is to promote a discussion on the relationship between regional trade agreements (RTAs), non-tariff measures (NTMs) and WTO Ministerial Conferences. It consists of an exploratory exercise to assess the effectiveness of large-scale negotiations, such as WTO Ministerial Conferences, and small-scale ones, such as RTAs, to mitigate non-tariff protectionism. This dissertation's hypothesis is the *higher* the number of WTO-plus and WTO-extra provisions in RTAs in force, the *lower* the growth of NTMs notified to the WTO, and the *higher* the number of NTMs withdrawn. To test it, linear regression tests with data on protectionism and trade agreements are employed. The main findings are there is a moderate negative correlation between WTO-plus and WTO-extra provisions and the growth of NTMs, as well as a moderate positive correlation between these provisions and the number of NTMs withdrawn. These results contribute to strengthening theoretical positions on the fact that RTAs are trade creators and, therefore, good alternatives to the WTO for the strengthening of the liberal trading system as well as for the liberalization of international trade.

**Keywords:** Regional Trade Agreements (RTAs); non-tariff measures (NTMs); WTO Ministerial Conferences; WTO-plus provisions; WTO-extra provisions.

## **Resumo**

O objetivo principal desta dissertação é promover uma discussão sobre a relação entre Acordos Comerciais Regionais (ACRs), medidas não tarifárias (MNTs) e Conferências Ministeriais da OMC. Trata-se de um exercício exploratório para verificar a efetividade de negociações de larga escala, como Reuniões Ministeriais da OMC, e de pequena escala, como ACRs, para a mitigação do protecionismo não-tarifário. Defende-se como hipótese que, quanto *maior* o número de provisões OMC-plus e OMC-extra nos ACRs em vigor, *menor* o crescimento do estoque de medidas não-tarifárias notificadas à OMC, e *maior* o número de MNTs retiradas. Para testar a hipótese proposta são empregados testes de regressão linear com dados de protecionismo e de acordos comerciais. Como resultado, verifica-se que há correlação negativa moderada entre as provisões OMC-*plus* e OMC-*extra* e o crescimento do estoque de MNTs, assim como uma correlação positiva moderada entre tais provisões e o número de MNTs retiradas. Tais resultados contribuem para fortalecer posições teóricas sobre o fato de ACRs serem criadores de comércio e, portanto, bons complementos à OMC para o fortalecimento do sistema liberal de comércio, assim como para a liberalização do comércio internacional.

**Palavras-chave:** Acordos Comerciais Regionais (ACRs); medidas não tarifárias (MNTs); Conferências Ministeriais da OMC; provisões OMC-*plus* ; provisões OMC-extra.

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## **Introduction**

### *Context and theme*

From 1995 to 2017, the World Trade Organization (WTO) held eleven Ministerial Conferences (MC). The MC is the WTO's topmost decision-making body. Besides, it usually meets every two years to take decisions on all matters under any of its multilateral trade agreements. Moreover, it brings together all its Members, all of which are countries or customs unions.

Most part of these Conferences, especially those held between 1995 and 2018, achieved timid results due to the great discord as to numerous issues, especially those related to non-tariff matters. Consequently, these successive discords have promoted the stagnation of the WTO negotiating mandate, as well as the discrediting of multilateralism. Conversely, the great exception to this period of stagnation was the Bali Ministerial Conference (2013), in which Members agreed the Bali Package (also known as Doha Light). Briefly, the package covered issues related to trade facilitation, agriculture, and development aid (Fraga, 2014).

In this mixed context of cooperation and discord, it is worth examining how non-tariff measures (NTMs) have behaved. From 1995 to 2018, the number of NTMs notified to the WTO grew more than 14 times. In 1995, the liberal trading system amassed 3.344 non-tariff measures notified by WTO Members. In 2018, more than two decades later, this figure jumped to 46.960. According to UNCTAD (2017), NTMs are policy measures other than ordinary customs tariffs that might have an economic effect on international trade in goods, changing quantities traded, or prices, or both. The significant increase in non-tariff challenges to international trade vis-à-vis a stagnant WTO has led to the creation of alternative regimes aimed at a less ambitious trade liberalization project, which generally falls within the category of minilateral regimes.

According to Naím (2009), a minilateral approach consists of bringing to the table the smallest possible number of actors needed to have the largest possible impact on solving a problem. In addition, the most common trade symbols of minilateralism are Regional Trade Agreements (RTAs), which are defined as any reciprocal trade agreement



between two or more partners that not necessarily belong to the same region (WTO, 2017b). Furthermore, in RTAs it is common to observe three kinds of provisions. First, there are WTO-equal provisions, which are similar to the existing transparency commitments of the WTO. They generally reaffirm or incorporate WTO's agreements. Secondly, there are WTO-*plus* provisions, which mirror a corresponding obligation in an agreement closed within WTO, but introduce new requirements or specifications. Finally, there are WTO-extra or beyond provisions, which create new obligations or transparency instruments that do not exist in the WTO (Dür, Baccini and Elsig, 2014).

From 1995 to 2018, the number of RTAs closed grew more than 500%. In 1995, the number of agreements in force totaled 44; by June 2018<sup>1</sup>, this figure had jumped to 287. In addition, not only the number of agreements grew but their depth also did, especially in non-tariff matters; if in the past RTAs focused on negotiating tariff preferences, today non-tariff matters and the so-called "new themes" dominated their agendas. A proof of it is the fact that WTO-*plus* and WTO-extra provisions in these agreements have grown more than forty times over the last 20 years. Theoretically, WTO-*plus* and WTO-extra provisions have the potential to reduce the number and the effect of non-tariff measures notified to the WTO, something positive to governments and companies, which are both deeply affected by protectionism.

In view of such a scenario, there is a need for a clear sense on the determinants of RTAs and NTMs. On the one hand, governments need this information to better design public policies aimed at developing the national economy. On the other, companies have their freedom to operate hampered by tariff and non-tariff barriers in several markets. Notwithstanding, the current academic production on RTAs and NTMs is insufficient to understand how both phenomena are related. RTAs have been studied by numerous academics of the first wave of regionalism (1944-1970). Nevertheless, such academic production is limited to a dichotomous debate about the potential of RTAs for promoting trade creation or trade diversion<sup>2</sup>. Moreover, this dichotomy deals exclusively with the

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<sup>1</sup> June was the last month of data collection used in this study.

<sup>2</sup> Viner (1950) defines it as a situation in which imports shift away from the most efficient supplier to the country receiving preferential treatment.

relationship between the celebration of RTAs and the variation of tariff preferences. Consequently, non-tariff measures have been left aside.

Based on the foregoing discussion, this study aims at analyzing the relationship between the conclusion of RTAs and variations in the number of NTMs notified to the WTO. Therefore, it is an analysis of non-tariff protectionism made under the lens of two possible independent variables: discord within Ministerial Conferences, as well as the conclusion of RTAs with WTO-*plus* and WTO-*extra* provisions. It is widely known that variations in the levels of trade protectionism have different causes. In detail, the three most frequent ones are the economic conditions of a country, the action of interest groups at the national level, and the perception of the risks of a state in relation to the international system. This study focuses only on the last cause. Consequently, it takes for granted that negotiations taking place within the multilateral trading system impact the global levels of non-tariff measures notified to the WTO.

*Research problem and hypothesis*

There are three possible outcomes of negotiations taking place at Ministerial Conferences and each of them has an expected effect on the number of NTMs notified to WTO, as shown below:

**Table 1 - Possible outcomes of Ministerial Conferences and their effects on NTMs**

<b>Ministerial Conference outcome</b>	<b>Expected effects on the number of NTMs notified<sup>3</sup></b>
Discord	Growth <i>above</i> historical average rate or <i>above</i> this average plus its standard deviation <sup>4</sup>
Cooperation	Growth <i>below</i> the historical average rate or <i>below</i> this average plus its standard deviation

<sup>3</sup> It is worth pointing out that in all three situations it is expected that there will be a growth of non-tariff protectionism, since the history of international trade shows that it is extremely difficult to have a continuous reversal of protectionist tendencies. Instead, history shows us that there are periods in which there is a slowdown in the use of protectionist measures. What changes from one scenario to another, therefore, is the behavior of this growth.

<sup>4</sup> Bob Hancké (2009) describes that the standard deviation gives a sense of the extent to which individual observations deviate from the mean.

Source: Lauria (2017) with adaptations.

An analysis of the results of the last Ministerial Conferences, which was based on the documents about the negotiations and official statements, indicates that most of Conferences resulted in discord, as shown below:

**Table 2 - Cooperation, harmony or discord?**

Year	Ministerial Conference	Outcome
1996	Singapore	Discord
1998	Geneva	Discord
1999	Seattle	Discord
2001	Doha	Discord
2003	Cancun	Discord
2005	Hong Kong	Discord
2009	Geneva	Cooperation
2011	Geneva	Cooperation
2013	Bali	Cooperation
2015	Nairobi	Cooperation
2017	Buenos Aires	Discord

Source: Lauria (2017) with adaptations.

Keohane (1984) defines cooperation as a compatibilization of negotiators' policies in a situation of conflict through a coordination process. According to the author, cooperation does not imply the absence of conflict. On the contrary, it requires a bargaining process in the face of a conflict situation. This process can result in either a positive or negative outcome for the convergence of negotiators. Thus, if a conference was classified with the concept of cooperation, it means that it held negotiations to manage and mitigate conflicts effectively. The expected effect of this outcome on the number of NTMs notified to the WTO, as shown in Table 01, is a growth *below* the historical average rate or *below* this average plus its standard deviation in the years following the conference.

Discord, in turn, appears when members refuse to negotiate a trade matter; or, when they try to do so, they do it without success. The expected effect of discord on the number

of NTMs notified to the WTO is a growth *above* the historical average rate or *above* this average plus its standard deviation.

Harmony, according to Keohane (1984), is the last possible outcome of a negotiation. The author points out it is very rare because it consists of situations in which policies pursued by an actor are facilitators of others actors' goals. Thus, it means the existence of an automatic convergence of preferences (Keohane, 1984).

This study analyzed the growth of non-tariff measures from 149<sup>5</sup> countries in the period between 1995 and 2018. The results are the following:

**Table 3 - Growth of non-tariff measures notified to the WTO**

Year	Ministerial Conference	Period of analysis	Non-tariff measures growth
1996	Singapore	1997-1998	73%
1998	Geneva	1999	25%
1999	Seattle	2000-2001	36%
2001	Doha	2002-2003	30%
2003	Cancun	2004-2005	21%
2005	Hong Kong	2006-2009	53%
2009	Geneva	2010-2011	20%
2011	Geneva	2012-2013	20%
2013	Bali	2014-2015	17%
2015	Nairobi	2016-2017	16%
2017	Buenos Aires	2018	2%

Source: Author.

The objective of this analysis is to assess if the expected results contained in tables 1 and 2 are empirically verifiable through the analysis of protectionism data. To do so, it is necessary to calculate the average and the standard deviation of the growth rates displayed in table 3. The average is 31.1% and its standard deviation is 17.59%. Thus, based on these figures, it is possible to affirm that discord prevailed in Singapore (1996), Seattle (1999), and Hong Kong (2005), since their growth rates are higher than the

<sup>5</sup> In order to avoid both selection bias and biased inferences (King, Keohane and Verba, 1994), this number accounts to all WTO Members who regularly notified non-tariff measures to WTO between 1996 and 2016.

historical average. Conversely, cooperation prevailed in Geneva (1998), Doha (2001), Cancun (2003), Geneva (2009), Geneva (2011), Bali (2013), and Nairobi (2015).

In the face of these results, a research puzzle comes up. While the classification of Ministerial Conferences presented in table 2, which is based on the analysis of documents and speeches<sup>6</sup>, indicates the prevalence of discord in Geneva (1998), Doha (2001), and Cancun (2003), data analyzed on NTMs indicate the opposite scenario. The results are the following:

**Table 4 - Outcome of Ministerial Conferences x effects on NTMs notified to the WTO**

Year	Ministerial Conference	Outcome	What NTM data has shown?	Research puzzle?
1996	Singapore	Discord	Discord	No
1998	Geneva	Discord	Cooperation	Yes
1999	Seattle	Discord	Discord	No
2001	Doha	Discord	Harmony	Yes
2003	Cancun	Discord	Cooperation	Yes
2005	Hong Kong	Discord	Discord	No
2009	Geneva	Cooperation	Cooperation	No
2011	Geneva	Cooperation	Cooperation	No
2013	Bali	Cooperation	Cooperation	No
2015	Nairobi	Cooperation	Cooperation	No
2017	Buenos Aires	Discord	-	-

Source: Author.

The growth of NTMs after such three conferences corresponded to results of cooperation and harmony in negotiations, even though the WTO had failed with discord in all of them. It is necessary to ask, thus, what could be the factor responsible for promoting such patterns of cooperation and discord if the WTO failed at these conferences? In response, we propose RTAs may have been this factor, since their WTO-plus and WTO-extra provisions deal with non-tariff protectionism. Hence, in the form of a hypothesis, we state the *higher* the number of WTO-plus and WTO-extra provisions in RTAs in force, the

<sup>6</sup> This analysis is detailed in Chapter 2.

*lower* the growth of NTMs notified to the WTO, and the *higher* the number of NTMs withdrawn.

### *Methodology*

This dissertation employs several qualitative and quantitative methods. Concerning the analysis and classification of Ministerial Conferences according to the concepts of cooperation, harmony and discord (Keohane, 1984), the main sources employed were the WTO Members' statements during conferences, as well as the description of the events that occurred during them reported by Bridges, which is a report written by the International Centre for Trade and Sustainable Development (ICTSD). Hence, the step-by-step to classify each Ministerial Conference follows below:

1. Analysis of Members' statements and ICTSD reports;
2. Identification of the main agendas;
3. Classification of the results of each agenda negotiated, according to the conditions described below:

**Table 5 - Conditions required to classify issues negotiated in Ministerial Conferences**

<b>Classification</b>	<b>Conditions</b>
Cooperation	There is conflict on the issue. The negotiators, through bargaining and eventual concessions, reach an agreement.
Discord	There is conflict on the issue, but negotiators do not attempt a bargain or, when they try, these bargains are not enough to reach an agreement.
Harmony	There is an automatic convergence of interests on the issue.

Source: author.

4. Calculation of the percentage of cooperation, discord, and harmony of each MC, as shown in Table 06:

**Table 6 - Formula to define the percentage of cooperation discord or harmony**

<b>Classification</b>	<b>Formula</b>
Cooperation	$(\text{Issues classified with cooperation} / \text{all topics}) \times 100$
Discord	$(\text{Issues classified with discord} / \text{all topics}) \times 100$
Harmony	$(\text{Issues classified with harmony} / \text{all topics}) \times 100$

Source: author.

In addition, this dissertation employs a large-N descriptive inference to analyze data on NTMs notified to the WTO by 149<sup>7</sup> Members. The use of this method aims at identifying growth patterns of NTMs in relation to the outcomes of Ministerial Conferences. Besides, the source used to extract data on NTMs was the Integrated Trade Intelligence Portal (I- TIP), a WTO dataset that contains official records on measures notified by its Members.

With respect to data on RTAs, the source used was the WTO Regional Trade Agreements Information System (RTA-IS), a WTO database that has official information and documents on trade agreements celebrated by its Members. This dissertation only analyzes RTAs that entered into force from January 1995 to June 2018, and the analysis of the relationship between RTAs and NTMs aims at assessing if RTAs are really effective to mitigate non-tariff protectionism. In this analysis, the independent variables (King, Keohane, and Verba, 1994; Johnson, Reynolds and Mycoff, 2008; Hancké, 2009) are the WTO-plus and WTO-extra provisions in RTAs, which usually deals with non-tariff measures and have the potential to mitigate non-tariff protectionism. Conversely, the dependent variables are the number of NTMs notified to WTO or withdrawn. The method used to analyze the relationship between these variables was the simple linear regression model<sup>8</sup> (Johnson, Reynolds and Mycoff, 2008)<sup>9</sup>. In addition, the parameters to interpret the R<sup>2</sup> value, which is the main indicator of the simple linear regression, are the following:

**Table 7 - Parameters of interpretation of the R<sup>2</sup> value**

Possible R <sup>2</sup> results	Interpretation
From -1 to -0.9	Strong negative correlation
From -0.9 to -0.5	Moderate negative correlation
From -0.5 to 0	Weak negative correlation

<sup>7</sup> In Lauria (2017), a quantitative analysis on the growth of NTMs notified to WTO by 20 Members was carried out. The current analysis, thus, expands the volume of observations by increasing the number of countries analyzed from 20 to 149. It is important to say that the same methodology created by the author to calculate the variation in the growth of non-tariff barriers reported to WTO is maintained, as well as to analyze them according to the concepts of cooperation, discord, and harmony.

<sup>8</sup> Resorting to the Statistical Package for the Social Sciences (SPSS).

<sup>9</sup> The authors point out that a simple linear regression model shows how the variable that you are interested in will vary due to changes in the independent variables.

From 0 to +0.5	Weak positive correlation
From 0.5 to 0.9	Moderate positive correlation
From 0.9 to 1	Strong positive correlation

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Source: Hinkle, Wiersma, and Jurs (2003).

This dissertation is organized into three chapters. The first one contains a historical perspective on the relationship between multilateralism, unilateralism, and NTMs. The main objective of this chapter is to explain the development of these phenomena based on a brief literature review.

The second chapter presents a classification of all Ministerial Conferences held between 1995 and 2017, in accordance with the concepts of cooperation, harmony, and discord (Keohane, 1984). At the end of this chapter, it will be possible to assess in which situations WTO's large-scale negotiations failed at promoting trade cooperation.

The third section contains a comprehensive data overview of NTMs and RTAs. Beyond explaining the effects of each Ministerial Conference on the number of NTMs notified to the WTO, this section aims at presenting macro-trends on RTAs. These trends are necessary to contextualize the test of the hypothesis proposed. At the end of this section, it will be possible to know how the volume of NTMs notified behaves in relation to the outcome of Ministerial Conferences; to assess whether there is a correlation between RTAs and NTMs; and, finally, to compare the effectiveness of both Ministerial Conferences and RTAs to reduce the number of NTMs notified to the WTO.



## Chapter 01 - The debate on the rise of RTAs and NTMs

The Bretton Woods Conference was a hallmark for the development of a system based on liberal principles. From the 1970s onwards, however, changes in the international system challenged these principles. With a higher number of agendas and greater levels of economic interdependence<sup>10</sup>, sensitivity<sup>11</sup>, and vulnerability<sup>12</sup>, a new order evolved, comprising small actors that were gaining power with the erosion of the hegemonic power of the United States (Gilpin, 1987; Spero and Hart, 2009).

In this scenario, the GATT proved to be fragile. Consequently, the fall of the Bretton Woods system was imminent. The embedded liberalism (Ruggie, 1992), which used to be a corollary of the liberal trading system, lost its legitimacy. The problem was that, in the post-war era, collective action challenges that multilateral arrangements faced were addressed through minilateral coordination among great-powers. In addition, this coordination was disguised by multilateral institutions and by derogations from multilateral principles in the form of bilateralism and regionalism (Kahler, 1992). Consequently, bargains limited to the great powers within multilateral institutions led to the gradual weakening of the system's own political foundations, due to the asymmetric distribution of gains promoted by the liberal order (Spero and Hart, 2009). Thus, in order to change such a scenario and to obtain the cooperation of less powerful states within those institutions, it was necessary to negotiate not only new rules and forms of governance that would incorporate a larger number of participants and their interests but also important new agendas for developing countries (Kahler, 1992).

As a tariff reduction agreement, the GATT needed a reform of rules and agendas to meet the new challenges brought about by shocks that haunted the international economy (Bhagwati, 1988; Spero and Hart, 2009 as cited in Lauria, 2017). Although the GATT made

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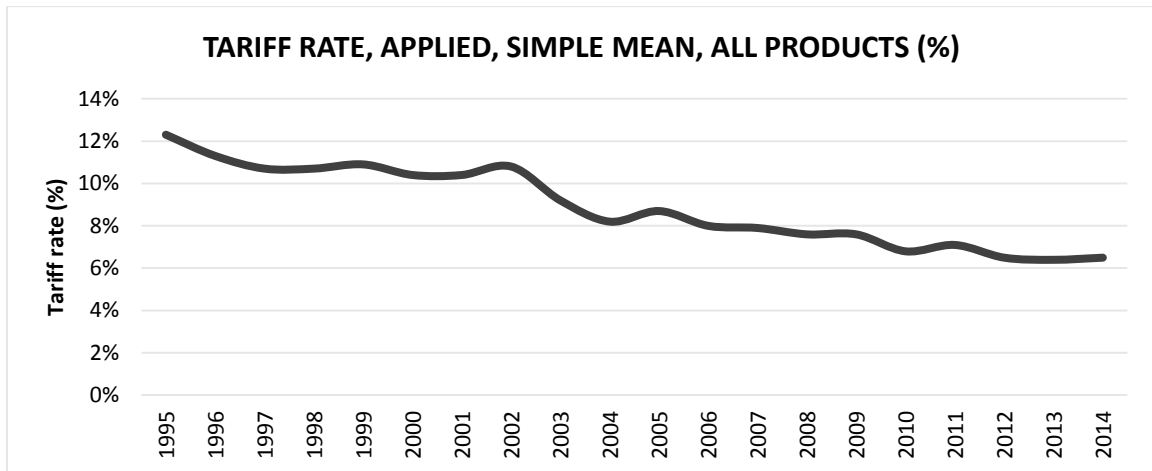
<sup>10</sup> It refers to the sensitivity of economic transactions between two or more nations to economic developments within those nations (Cooper, 1972).

<sup>11</sup> Sensitivity refers to how quickly do changes in one country bring costly changes in another and how costly are these changes (Keohane, 1977).

<sup>12</sup> Vulnerability refers to the country's ability to offset the costly effects faced according to its level of sensitivity by making policy changes.

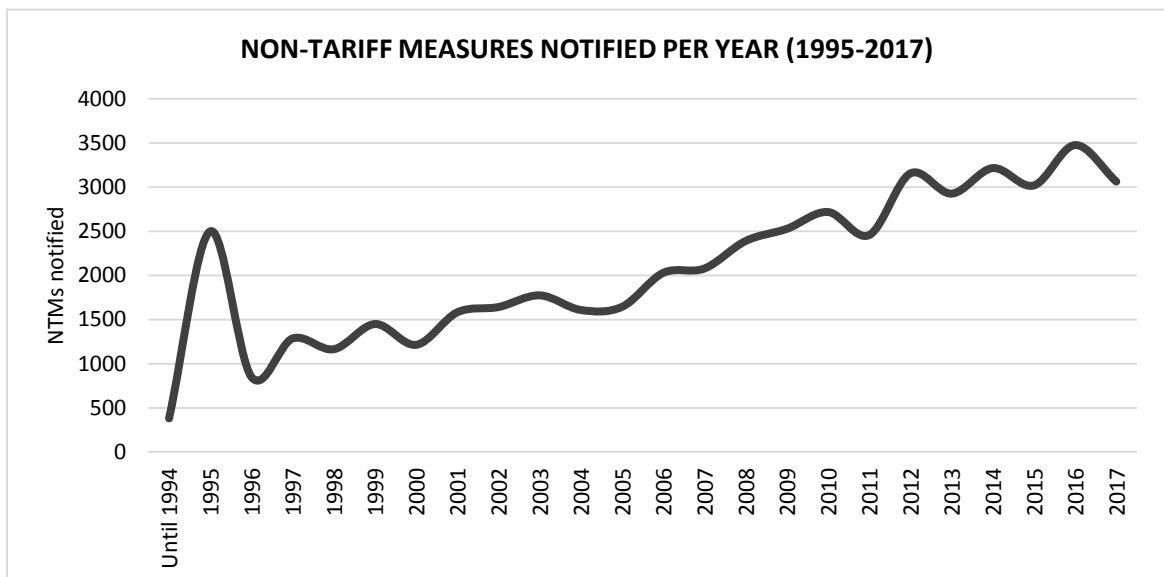
progress in reducing tariffs, non-tariff restrictions made it fragile and vulnerable. In this context, the use of tariffs declined while other forms protectionism rose, although there is not a correlation between the two trends:

**Chart 1 - Tariff rate, applied, simple mean, all products (%) (1995-2014)**



Source: Author with data retrieved from World Bank (2017).

**Chart 2 - Non-tariff measures notified per year (1995-2017)**



Source: Author with data retrieved from World Trade Organization (2018).

The growth of NTMs contributed to a deceleration of the liberalization process initiated in Bretton Woods. Consequently, the idea of creating an international trade regulating institution came back, so the system could go beyond the liberal framework architected at Bretton Woods context (Spero and Hart, 2009). At that time, it was clear the significant increases in interdependence, vulnerability, and sensitivity faced by the international trading system from the 1970's onwards required a strong institution to regulate trade relations and to address new trade matters. Otherwise, minilateral arrangements, such as preferential agreements and free trade agreements, would flourish as alternative paths to the international multilateralism.

The need for a central institution reminded the instabilities that motivated the attempts to create the International Trade Organization (ITO) in 1944. According to VanGrasstek (2013), the ITO project aimed at performing the functions of a global trade ministry, but the Cold War context prevented anything of that sort from emerging. The GATT, which entered into force as an interim arrangement before the ITO came into being, turned out to be the primary instance and a tool to deal with international trade issues for almost fifty years. From its establishment in 1947 until it was subsumed by the WTO in 1995, the GATT hosted eight rounds of multilateral trade negotiations (VanGrasstek, 2013). In 1986, GATT's last round was launched. It took seven and a half years, almost twice the original schedule for it to close. Furthermore, it comprised the most ambitious agenda in GATT's history, covering almost all trade, "from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments" (WTO, 2018a). Consequently, it gave rise to the WTO, a renewed organization with normative provisions to address new agendas and challenges inherent to trade liberalization.

With respect to the new agendas, non-tariff measures stood out for the historical lack of effective negotiations on them since Tokyo (1973-1979) to the Uruguay Round (1986-1994). Ineffectiveness in addressing this issue lasted many years, due to the technical difficulty of understanding, classifying and analyzing them, as they are much more complex and less transparent than tariff barriers. By promoting distortions in

international trade, non-tariff measures have posed a significant political challenge of cooperation for the multilateral trading system. On the one hand, governments rely on the use of these instruments to achieve legitimate public policy goals, including the protection of both human health and the environment. On the other, it is common to observe the use of such instruments to protect the national economy, often through unfair trade practices. The problem lies in the difficulty of knowing how far the goal of protecting the public interest or the market goes, since the verification of the legitimacy of their use, generally, requires a case-by-case analysis. When they raise unnecessary trade obstacles, NTMs harm major trade principles, such as transparency, Most Favored Nation (MFN) and national treatment, for instance. For this reason, WTO considers NTMs one of the greatest trade challenges for the international trading system.

Given the very thin threshold between legitimate trade interests and unfair trade practices in relation to such kind of restrictions, it has been difficult to address them multilaterally. Generally, NTMs deal with agendas not yet effectively complied by all WTO Members, especially by developing economies. That is why these actors generally choose to negotiate them in minilateral arrangements, creating alternative regimes to the WTO system.

In this sense, Robert Gilpin (1987) and Jagdish Bhagwati (2003) both argue that, in the post-Second War period, the world witnessed the emergence of an interconnected network of bilateral and regional trade arrangements commonly divided into two waves (Mansfield and Milner, 1999; Vaz, 2002; Bhagwati, 2003; Prazeres, 2007; Vieira, 2016).

The first significant movement of regional trade agreements in the post-Second World War took place in 1948, with the implementation of Benelux, a customs union between Belgium, the Netherlands, and Luxembourg (Prazeres, 2007). After Benelux, there was the creation of the Economic Coal and Steel Community (ECSC) in 1951, an arrangement aimed at promoting the free movement of coal and steel, ensuring free access to factors of production. The ECSC, in addition to Benelux's countries, comprised France, West Germany, and Italy. Years later, in 1957, these countries created the European

Economic Community, which established a broader customs union and sought to eradicate barriers imposed on the movement of goods and factors of production between their territories (Prazeres, 2007).

With higher levels of interdependence, sensitivity and vulnerability, coupled with both the paralysis of the negotiations in the context of the Uruguay Round, and the discredit of the GATT as a trade liberalization agreement, regionalism returned to the scene in the middle of the 1980's, in a movement known as “the second wave” (Mansfield and Milner, 1999). The United States, in a scenario in which a wide range of minor actors gained power, played an important role in opting for multilateralism as an alternative to the paralysis of the Uruguay Round. From 1985 on, the United States was responsible for promoting free trade agreements with Israel (1985) and Canada (1988); it negotiated the North America Free Trade Agreement ([NAFTA], 1993); and supported the Free Trade Area of the Americas ([FTAA], 1994) (Vieira, 2016).

The same trend towards RTAs as an alternative to large-scale negotiations was seen in Europe and Latin America. In the European context, the Single European Act (1986) and the Maastricht Treaty (1992) were important landmarks to regionalism. Moreover, Latin America witnessed the creation of the Southern Common Market ([MERCOSUR], 1991) as the greatest hallmark of this tendency in the region. In addition to MERCOSUR, attempts to reinvigorate both the Andean Pact and the Central American Common Market (CACM) added to that trend (Vaz, 2002).

According to Bhagwati (2003), the second wave of regionalism was more liberalizing than the first one because its focus would no longer be solely on the import substitution industrialization (ISI). Lawrence (1996) and Prazeres (2007) share this perspective, as they point out the second wave aimed at implementing strategies to increase investments and exports. Besides, it is worth mentioning those initiatives were not only responsible for expanding the range of agendas negotiated in multilateral arrangements, but also for increasing the degree of commitment to those new issues by their Members (Horn, Mavroids and Sapir, 2009). Thus, new issues and deeper commitments were taken in the

face of a stagnant WTO, a fact that prompts a disquieting question about the current reality of international trade. With large-scales negotiations almost stagnant, would not it be better to consider minilateralism as a complementary approach to multilateralism in promoting trade liberalization?

There is no consensus on this question in the literature so far. The combination of increasingly non-tariff challenges, coupled with the spread of RTAs, has raised the concern of many analysts on the possibility of a crisis in the liberal trading system. In addition, this concern - reinforced by the failure of the Doha Round, the PIGS crisis, the Brexit and by Trump's declarations about the advantages of unilateralism in trade relations - is rooted in the current discredit of the global multilateral approach (Mazarr, 2016; Niblett, 2016; Nye, 2016). Moreover, it spreads the idea that global trade cooperation would lead, from now on, to unilateral, bilateral or plurilateral arrangements that generally take the form of Regional Trade Agreements (RTAs).

The review of the literature indicates the existence of an unsolved dilemma regarding the possibilities of trade creation and diversion due to the engagement in RTAs. Most of these analyses, even those pointing to the positive possibilities of trade creation, argue that such agreements would be less liberal<sup>13</sup>, given their smaller number of Members. However, two major considerations are necessary in this regard, as they both structure the argument developed in this analysis. Firstly, most of these analyses misunderstand the notion of multilateralism, since they reduce it to negotiations comprising several actors. Secondly, it is necessary to acknowledge that multilateralism practiced within the WTO system is an extremely ambitious project in which developing countries have never been able to fit in completely.

In relation to the first consideration, it is usual to observe numerous analyses poorly assessing whether a negotiation is multilateral or not considering only the number of parts

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<sup>13</sup> This statement is common because there is a general understanding that free trade agreements are an exception to the Most Favored Nation (MFN) clause. However, it is worth pointing out that this exception is allowed by the WTO's most important agreements, such as the Article XXIV of the General Agreement on Tariffs and Trade, and Article V of The General Agreement on Trade in Services (Prazeres, 2007).

involved. Basically, they state that negotiations taking place at the global level would be more multilateral than those negotiated by a small group of actors. However, it is already common ground that the concept of multilateralism needs to be understood much more qualitatively than quantitatively.

Ruggie (1992)<sup>14</sup> made this clear by stating that a multilateral framework is not necessarily the one that comprises more countries. Instead, it is necessary for this system to comply with two fundamental corollaries: indivisibility of interests and diffuse reciprocity (Ruggie, 1992). The first one refers to the notion that all actors are equal participants in the cooperative endeavor. Besides, Ruggie (1992) points out that in a collective security scheme, for instance, states behave as if peace were indivisible and thereby make it so. Consequently, an attack on any state is perceived as an attack on everyone. With respect to diffuse reciprocity, the author uses the concept developed by Keohane (1986). Briefly, it refers to the idea that concessions and rewards balance out over the long run and states do not need to insist upon a strict tit-for-tat exchange (Ruggie, 1992).

In bilateral arrangements, these principles are weak or non-existent (Ruggie, 1992). According to the author, “it is the GATT Members' adherence to the MFN norm which makes the system of trade an indivisible whole. Bilateralism, in contrast, segments relations into multiples of dyads and compartmentalizes them” (Ruggie, p. 571, 1992). According to this perspective, bilateralism is premised on specific reciprocity, which is marked by the “simultaneous balancing of specific quid-pro-quos by each party with every other at all times” (Ruggie, p. 572, 1992).

Although Ruggie (1992) points out bilateral endeavors do not comply with multilateral principles, the current scenario of the liberal trading system shows that, under RTAs, such principles seem to be much stronger and feasible than in the WTO, given the fact that RTAs have fewer Members and greater flexibility. These two characteristics,

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<sup>14</sup> Ruggie defines multilateralism as a generic institutional form that “coordinates relations among three or more states on the basis of generalized principles of conduct: that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence” (Ruggie p. 571, 1992).

when coupled with the existence of effective enforcement mechanisms (Hoekman and Mavroidis, 2015), promote more convergence between Members who want to cooperate in areas where cooperation is possible. In brief, such agreements promote cooperation more effectively than large-scale negotiations due to lower transaction costs (North, 1992)<sup>15</sup>, which are the result of (i) fewer members , (ii) better-delimited scopes and (iii) effective enforcement mechanisms.

With respect to the second consideration, it is seen that developing countries have been unable to fully honor the basic liberalization commitments preached by the WTO, such as those related to a bureaucracy reduction in trade and intellectual property. If they are not able to meet basic commitments, how can they advance in the liberalization of other issues, such as the non-tariff topics that currently dominate the agenda of international trade debates? The answer to this question has been found in assessing the results of the last Ministerial Conferences held within WTO over the past two decades.

These conferences have been arenas of great conflicts and pressures between developed and developing economies, as seen in table 02. Consequently, this series of discords *stagnated* negotiations and hampered their potential to reduce the use of protectionist measures. Thus, Ministerial Conferences, *per se*, have not been enough to sustain a gradual liberalization of international trade, mainly with respect to non-tariff issues. In this context, minilateral arrangements, such as RTAs, seem to be effective complementary tools to liberalize trade where WTO fails to do so because they strengthen WTO mandate by deepening its agenda with WTO-plus provisions, and they go beyond

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<sup>15</sup> According to North (1992) transaction costs comprise four factors: measurement, enforcement, ideological attitudes and perceptions, and the size of the market. Measurement refers to the calculation of the value of all aspects of the good or service involved in the transaction. Enforcement, in turn, is defined as the need for an unbiased third party to avoid free rider problems and to guarantee that neither party involved in the transaction reneges on their part of the deal. Ideological attitudes and perceptions are everyone's set of values, which influences their interpretation of the world. Lastly, there is market size, which affects the partiality or impartiality of transactions. Transaction costs can be divided into three broad characteristics: bargaining costs, search and information costs and policing and enforcement costs (North, 1992).



this agenda with WTO-extra provisions that comprise issues not yet multilaterally negotiated.

Bearing the foregoing explanations in mind, it is important to show how these reasonings are addressed in the main literature produced until today.

*Do RTAs mitigate trade transaction costs?*

Commonly embodied in RTAs, small-scale trade negotiations seem to better achieve cooperation than large-scale ones. In these negotiations, there are fewer Members, fact that mitigates information<sup>16</sup> and bargaining costs<sup>17</sup>. Moreover, there are effective enforcement mechanisms, which are responsible for reducing enforcement costs<sup>18</sup> (Hoekman and Mavroidis, 2015).

With respect to the small number of actors, there is a broad theoretical basis pointing out for its advantages associated with the mitigation of bargaining and information costs. Shaw (1981) defines small groups as having 20 or fewer Members. In addition, the author points out that group size has several consequences for the Members of the groups. According to Mannix et. al. (1989), size strongly impacts both the process and outcomes of a negotiation. Furthermore, it has effects on the range of abilities, knowledge, and skills that are available to the group, Member participation, conflict, conformity, and performance. According to the authors, as group size increases, organizational problems also become more complex (Mannix et. al., 1989).

According to Olson (1965), if a group of actors wishes to succeed in its endeavors by promoting cooperation, at least three aspects must be present in this group. First, it needs to further the interests of its Members, otherwise, it will probably perish in the long run. Laski (1948) shares this perspective by pointing out that every organization presupposes

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<sup>16</sup> According to North (1992), these are defined as the costs related to overcoming the asymmetry of information among the actors involved in the transaction.

<sup>17</sup> According to North (1992), these are defined the costs required to come to an acceptable agreement with the other party to the transaction, drawing up an appropriate contract and so forth.

<sup>18</sup> According to North (1992) these are defined as the costs of making sure the other party complies with terms of the contract, and taking appropriate action if this turns out not to be the case.

an interest shared by all Members. Additionally, Maclver (1932) emphasizes that organizations exist to achieve purposes or interests shared by a group of actors. However, it is worth mentioning that not only common interests aligned with the self-interests of Members are enough to foster cooperation within a group. These interests must be furthered within a structure comprising a small number of actors and an effective enforcement mechanism (Olson, 1965).

Olson (1965) points out three weaknesses immanent to groups with a large number of Members. The first one is that the fraction of the group benefit received by any individual declines as group size increases; second, larger groups are less likely to exhibit small-group strategic interaction that could help in the collective good provision; and, lastly, organization costs increase with an increase in group size due to information asymmetry and the need for long bargaining to achieve results. Unless the group is small or there are effective mechanisms of coercion to guarantee compliance with the common interest, rational actors will not act to achieve the group's interests (Olson, 1965 as cited in Kahler, 1992).

Simmel (1950) mentions that small groups act more decisively and use their resources better than large groups. James (1951) and Hare (1952) emphasize that, historically, groups that got reasonable achievements were quite small. Likewise, they argue this rationale applies to the extension of the scope discussed. If there are numerous Members and a large scope, the group is supposed to face serious disagreements. Consequently, the likelihood of cooperation is low (Olson, 1965).

Mannix et.al. (1989) point out several factors that hamper cooperation within large-scale negotiations. Among them, there are an increased information demand, as a group negotiation requires an understanding of multiple parties; the need for decision rules determining the conditions that define an agreement; and more complex interpersonal relationships including variable power structures and the potential for coalitions.

Komorita and Hamilton (1984) share this perspective by raising several considerations about the relationship between successful negotiations and the group size. According to them, in small-group negotiations, the power structure, communication

channels, information availability, and the size and strength of each negotiator's constituency are easier discerned than in large groups. In addition, the authors argue the balance of power within large groups is unbalanced<sup>19</sup>. Consequently, low power players, to improve their positions, form coalitions. These coalitions, which are commonly in opposite positions, make negotiations more difficult and stagnant (Komorita and Hamilton, 1984).

With respect to the balance of power within negotiations, Lax and Sebenius (1986) conclude that unequal power balances leads group Members to focus more on distributive<sup>20</sup> than on integrative<sup>21</sup> strategies. Moreover, Mannix (1993) and Giebels et al. (2000) found that imbalances in power positions of group Members lead them to focus on their individual outcomes instead of collective ones. Consequently, in larger groups unanimity becomes increasingly difficult and the likelihood of impasses may outweigh its benefits. As more members take in the negotiation, the number of agendas is likely to increase, and the pattern of preferences convolutes. In such a context, reaching an integrative agreement is difficult because it requires that group Members reveal their preferences to, and understand the preferences of, multiple parties (Kramer, 1991; Mannix, 1993; Mannix et. al., 1989). Thus, the reduction of information and bargaining costs due to smaller Members is clearly seen in RTAs, which have been considered effective tools to promote transparency for the liberal trading system (Lejárraga, 2013).

Although WTO agreements have never defined what transparency means, the WTO glossary states that transparency is the degree to which trade policies and practices are open and predictable (WTO, 2017c). However, such a broad and unspecific definition opens space for shortcomings and challenges to the promotion of transparency in international

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<sup>19</sup> In the context of a negotiation, power may be defined as the negotiator's comparison level for alternatives, which implies that negotiators gain power by improving the quality of their alternatives (Thibaut and Kelley, 1959). Thus, the if negotiator's alternatives relative to others are greater, it will be in a position of greater strength and therefore will probably have the greater share of the results (Komorita and Hamilton, 1984; Chertkoff and Esser, 1976; Thibaut and Faucheux, 1965).

<sup>20</sup> It refers to how negotiators distribute resources among themselves and is present in every bargaining process Mannix et.al. (1988).

<sup>21</sup> It refers to how negotiators increase the total benefit available to the disputing parties through the search for creative solutions that satisfy their individual interests Mannix et.al. (1989).

trade. Consequently, transparency has been analyzed by numerous scholars, such as Kaufmann (2006), who urges the need for “transparenting transparency” as an important step for assessing it within the WTO system. Although there is not a consensus on the practical definition of the term, the history of WTO negotiations has shown this term relates to the process of notifications of trade-related measures across WTO agreements. RTAs, in this context, have been a major leveling force to promote transparency in international trade (Lejárraga, 2013).

In the last 20 years, little attention has been paid to the evolution of corresponding disciplines in RTAs, even though transparency clauses are present in more than 90% of the recently concluded agreements. These agreements are responsible for introducing clauses that not only deepen multilateral transparency rules (WTO-plus) but expand them to cover issues never addressed multilaterally (WTO-beyond), reducing information asymmetries.

Numerous scholars have written about information asymmetries in trade. Besides, they point out that markets with greater information asymmetries are more likely to remain closed even when there are no tariff or non-tariff barriers in force. If the key information required to trade with foreign markets remains costly to obtain, exporters and importers may not be able to take full advantage of open markets (Lejárraga, 2013). In addition, several studies have shown that closing information gap matters for countries to benefit more from international trade. Roberts (1997), Rauch (1999), Rauch and Watson (2003) and Helble et al. (2009), for instance, demonstrate how costly it is for firms to get acquainted with foreign markets, showing that information opacity is as a market-entry cost.

Freund and Weinhold (2004) share this perspective by pointing out the effects of the internet on trade flows of goods. The authors conclude internet reduces export costs by improving information about foreign markets. Lejárraga (2013), in turn, goes further to show that trade policy reform efforts should focus not only on the restrictiveness of measures but also on their transparency. Moreover, Anderson and Marcouiller (2002) enrich this discussion arguing that the lack of transparency and contractual enforcement

have a significant adverse impact on trade volumes similar to or even larger than a tariff. Baccini (2008) argues that developing countries with stronger levels of transparency are preferred by developed countries, as counterparts to close trade deals. De Groot et al. (2004), in turn, find positive correlations between institutional quality and increases in bilateral trade flows, stressing the importance of transparency for trade promotion. Lastly, Ala'i (2008) points out countries with a lack of transparency are more likely to engage in disputes that allege transparency claims in the WTO.

Thus, RTAs, in this context, seem to be effective tools to prevent transparency related disputes, since they reduce transaction costs deriving from information asymmetry not only among their Members but also within the whole multilateral system. Once a country has already implemented transparency obligations required by the first trade agreement it closed, extending these provisions to new trading partners in other regional or multilateral fora is likely to entail low marginal costs. According to Lejarraga (2013), most of the trade policy transparency that is being supplied through regional fora is not being supplied on a discriminatory basis but benefitting non-Parties to the RTA as well. Furthermore, the author points out that transparency provisions in RTAs are already *de facto* extended on a most-favored-nation basis, even if they may be considered preferential *de jure*, as they are inscribed in an RTA. Besides, Lejarraga (2013) points out the existence of a considerable level of homogeneity in WTO-plus transparency clauses across most RTAs closed in the last two decades. Consequently, this may facilitate convergence and the adoption of these clauses at the multilateral level, a process known as the multilateralization<sup>22</sup> of regionalism (Baldwin and Low, 2009).

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<sup>22</sup> According to Baldwin and Low (2009), a process of multilateralization occurs when existing preferential arrangements are extended in a non-discriminatory manner to additional parties. The authors develop a very fruitful discussion regarding multilateralization of RTAs, pointing out five ways that the design of RTA provisions could promote multilateralization. The first one is the geographical expansion of these agreements; secondly, the inclusion in FTAs of *de jure* MFN provisions in respect of particular policies, such as investment performance requirements that applied to any foreign investor regardless of national origin; thirdly, rules agreed to within an RTA, which by their nature apply on a *de facto* basis, such as the reduction of bureaucracy in a customs administration; fourthly, the inclusion of third-party MFN clauses, which ensure that signatories to existing agreements do not undermine the acquired benefits of preferred parties by extending more favorable treatment in subsequent arrangements; lastly, the inclusion in RTAs of provisions

Pauwelyn (2009) affirms numerous PTAs concessions are, *de facto*, extended to all other countries. Moreover, the author describes the effects of regulatory or transparency reforms in services, arguing it is difficult to conceive how or why countries would do this on a country-by-country basis. Besides, the author points out multilateralizing regionalism must be a two-way road. On the one hand, it involves the WTO and the multilateral control over regional deals (including through Article XXIV and the new transparency mechanism). On the other, as such agreements abide by WTO rules and jurisprudence, they play an important role in fostering multilateralization.

Following the provisions of GATT's Article X, the structure of such agreements has been enhanced to improve the effectiveness of information disclosure. The growing importance of Article X-related clauses follows the expansion of behind-the-border measures, which require higher degrees of regulatory transparency. In this context, RTAs have provided means to guarantee that information disclosure is complete and easy to locate (Lejárraga, 2013). Aside from promoting transparency, RTAs often do have strong and sound dispute settlement mechanisms that consistently mitigate enforcement costs (North, 1992). If the rules of the game are available and the rule-making process is legitimate, but the enforcement is not credible or predictable, protectionism remains strong and markets remain closed (Lejárraga, 2013).

In view of the existence of a consensus on the fact that RTAs and small-scale negotiations reduce transaction costs, we proceed to analyze the debate in the literature on the effects of RTAs on trade liberalization.

*Are RTAs stumbling or building blocks for trade liberalization?*

Generally, RTAs are a consequence of economic integration between the most diverse markets. According to Kang (2016), economic integration refers to both institutionalized economic structures provided by regional agreements and the process of integration driven by trade and investments. Therefore, regionalism is a product of these

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that prevent actions allowed under WTO agreements from being taken in a manner that results in discriminatory treatment.

processes. Besides, it refers to any form of institutionalized regional concertation comprising more than two countries. Moreover, regionalism differs from multilateralism especially in terms of the number of members of its agreements and the size of their scopes (Kang, 2016).

Over the last decades, many scholars have written about integration. The work of Bela Balassa (1961), entitled “Towards a Theory of Economic Integration”, became a reference on this matter by establishing five stages of integration. The first one is a free trade agreement (FTA), which usually dismantles tariff and non-tariff barriers to trade. After FTAs there are Customs Unions (CU), which consists of a further step in relation to FTAs, given the establishment of a common external tariff. The next step is the establishment of a Common Market, which consists of a CU with free trade of services and free movement of factors of production, such as labor and capital. Going deeper, there is the economic union, which requires harmonizing economic policies and adopting common rules. Lastly, there is the Monetary Union, in which Member countries adopt a common currency (Balassa, 1961). Generally, WTO considers all these integration arrangements as RTAs (2017b).

These agreements have always co-existed with the multilateral trading system, as the WTO rules permit their formation under certain conditions. Such conditions are described in Chapter XXIV of the GATT, as well as in Chapter V of the General Agreement on Trade in Services (GATS). The Article XXIV of the GATT-1994 legally supports the existence of RTAs in the multilateral trading system. Besides, this article represents an exception to one of the fundamental principles of the multilateral trading system, which is precisely non-discrimination. According to the Most-Favored-Nation (MFN) clause, a tariff preference granted to a country must be immediately extended to all others. RTAs, by definition, confer preferences to a limited group of participants and, thus, diverge from the MFN clause. Article XXIV, paragraphs 4, 5, 7 and 8, of the GATT-1994, in this context, become the main reference in defining the conditions that make RTAs compatible with the rules of the multilateral trading regime.

Paragraph 4 states that the Parties recognize the desirability of promoting trade through agreements that encourage a rapprochement between Members of the multilateral trading system. The Parties also recognize that the purpose of customs unions or free trade zones should be to promote trade among their Members rather than to increase trade barriers vis-à-vis non-Members.

Paragraph 5, on the other hand, states that the provisions of the GATT-1994 should not preclude the formation of a customs union or a free trade area, or the adoption of an interim agreement necessary for the formation of such arrangements, provided that such arrangements do not hamper the possibility of third countries accessing the market of those that come to form the block. More specifically, it establishes that the tariffs resulting from the formation of the customs union should not, overall, be higher or more restrictive to third countries than the general incidence of tariffs and trade regulations applied by Member countries of that regional grouping prior to its formation.

Paragraph 7, in turn, contains general obligations related to the notification of RTAs. Members must make information available and allow WTO Members to make their own considerations and recommendations regarding the agreement, in view of the obligations assumed by RTAs' Members at the multilateral level.

Paragraph 8, finally, presents the definitions of a customs union and free trade zone, and it does so from two perspectives: internal and external (Prazeres, 2007). From the internal point of view, these agreements must substantially eliminate all restrictions on regional trade. From the external, the paragraph requires that the customs union adopt substantially the treatment for products originating from third markets.

Prazeres (2007) points out the WTO regime guarantees a more flexible assessment of RTAs formed by developing countries. The rules about it are covered by the Enabling Clause, a legal device introduced in 1979 by the Contracting Parties to the GATT-1947, and that it was incorporated into the WTO legal norms.



The Enabling Clause provides for the possibility for developing countries to form regional agreements aimed at the mutual reduction or elimination of tariffs and non-tariff measures. Thus, it consists of a waiver of the rules of the regime, with a view to making agreements between these countries possible without having to extend benefits to other WTO Members. Furthermore, the Enabling Clause supports not only the elimination but also the *reduction* of tariff and non-tariff barriers among developing countries. This, in fact, is a substantive change from Article XXIV, which foresees the need to *eliminate* barriers between the Members of the agreement. These special rules for developing countries, however, apply only to regional agreements on trade in goods. Hence, when the bloc also covers services, even developing countries must comply with GATS rules.

The Uruguay Round (1994) included the services agenda in the rules of the multilateral regime. The GATS, which has been in force since 1995, includes provisions on RTAs under the name of Economic Integration Agreements (EIA). The GATS' Article V defines the compatibility between the agreement and regional arrangements that privilege services. Besides, it provides that such agreements shall facilitate trade between Members. Moreover, it establishes that members *shall* not increase the overall level of barriers to trade in services vis-à-vis another WTO Member that is not a part of the agreement.

Whereas Article XXIV of the GATT provides for the requirement to extend the agreement on "substantially all trade" between the partners, in GATS, conversely, the equivalent clause provides the agreement "must have substantial sectoral coverage" and "must ensure the absence or elimination of substantially all discrimination between the parties" in the sectors or subsectors covered by the agreement.

Taking into account the recommendation of both agreements on not creating unnecessary barriers to trade for non-Members, Prazeres (2007) argues the GATS's mechanism is more accurate as it forbids raising or increasing barriers within sectors or sub-sectors. In other words, this means a Member cannot argue in his own defense that the increase of barriers in a given sector would have been offset by the reduction of barriers in

another sector. Besides, the GATS defines rules on transparency and notification of such agreements, establishing for its Members the obligation to provide the information requested by other parties.

The information provided in the preceding paragraphs provides strong evidence of the existence of a wide range of rules governing the operation and coexistence of RTAs. Therefore, they are indeed compatible with trade multilateralism practiced within the WTO. However, despite the existence of rules to regulate them, the recent growth of RTAs has raised many concerns regarding their impact on the multilateral trading system and on the rules that WTO Members trade under (WTO, 2015). The debate has evolved around those who consider RTAs as building blocks and those who consider them stumbling blocks for global trade liberalization.

Those who consider RTAs "building blocks" to further trade liberalization have made two reasonings about them, usually focused on tariffs. First, many have pointed out empirical evidence that RTAs are predominantly trade-creating, thus, arguing that such agreements support further multilateral liberalization. The second reasoning has focused on the fact that RTAs allow Member to liberalize trade beyond the extent that can be achieved multilaterally, a fact that reinforces, deepens and complements WTO agreements depending on the clauses agreed regionally (Krueger, 1995).

Many scholars have written about the first reasoning. Usually, they emphasize RTA's potential to create trade and promote welfare. Baldwin and Freund (2011), for instance, are one of the most interesting references on this topic. Briefly, they analyze preferential trade agreements (PTAs) and conclude they are building blocks for freeing trade because preferential liberalization creates a political-economy momentum that makes multilateral liberalization easier. Further elaborating on this statement, the authors put forward four logics to support the argument that PTAs ease multilateral liberalization. The first one is the juggernaut logic, which states that liberalization begets liberalization, given the fact that an initial reciprocal tariff cut starts a liberalization juggernaut rolling due to the economic redesigning that takes place during the phase-in of the initial tariff cuts

(Baldwin and Freund, 2011). According to the authors, governments taking part in multilateral trade negotiations find that their politically optimal tariff in the next negotiation is below the levels that they found politically optimal during the previous negotiation. Therefore, new tariff cuts continue to exist and the juggernaut continues to roll forward. Hence, PTAs, according to this logic:

“(...) reconfigure Members’ economies, making export sectors larger and import-competing sectors smaller. Thus, the PTA can alter the Member governments’ stance toward MFNs, making it politically optimal to cut MFN tariffs to levels that would not have been politically optimal without the PTA. Of course, if a PTA results in higher external tariffs, then it can start the juggernaut rolling backward” (Baldwin and Freund, p. 127, 2011).

The second logic is the so-called Frankel and Wei momentum, developed by Frankel and Wei (1998), which illustrates another juggernaut-like mechanism. According to this model, information asymmetry makes governments uncertain as to whether they will win or lose from global free trade. PTAs, however, have the potential of mitigating this asymmetry, because once members sign a PTA, they reveal their true comparative advantage. Then, other governments will know whether they will win or lose. Therefore, in some cases, global free trade might be politically feasible only after a PTA, because it changes the political economy's landscape with useful information (Frankel and Wei, 1998, as cited in Baldwin and Freund, 2011).

The third logic is the Kemp-Wan theorem (Kemp and Wan, 1976, as cited in Baldwin and Freund, 2011). Briefly, it states the formation of a trade bloc, despite raising the collective welfare of its Members, triggers a domino effect that leads to multilateral free trade. However, this condition is only true if Members have access to international lump-sum transfers or to a complete set of commodity taxes and subsidies (Dixit and Norman 1980, as cited in Baldwin and Freund, 2011).

The fourth logic is veto avoidance. Briefly, it states although bloc Members can veto multilateral trade liberalization on the grounds that a stronger reciprocity might be achieved regionally, they cannot veto further PTAs that may cut tariffs globally.

Not only Baldwin and Freund (2011) and the authors they quote have written about the advantages of PTAs for reducing tariffs. Summers (1991), for instance, asserts that all types of liberalization - unilateral, bilateral, or multilateral - are very likely to be good and that regionalism gives governments a way to sustain trade liberalization. Moreover, Nordstrom (1995) argues RTAs might provide trading blocs with stronger incentives to pursue multilateral trade liberalization. Both state these agreements allow small economies to deal more effectively with large trading blocs in areas where cooperation is politically feasible. In addition, Irwin (1996) shows that bilateral agreements during the nineteenth century induced broader tariff liberalization.

Ludema (1996), focusing on the effect of regional trade agreements on multilateral trade negotiations, finds that RTAs have positive effects for reducing external tariffs of Members. Besides, Baldwin (1997) argues that NAFTA triggered pressures for such agreements in a kind of domino effect, and this effect has built a path of tariff liberalization. Furthermore, Foroutan (1998), after analyzing numerous cases, affirms RTA's Members and non-Members have reduced their tariff-trade barriers, suggesting that regionalism is positive for the liberal trading system.

Freund and McLaren (1999), in turn, found that the longer a country is part of a PTA, the more trade creation benefits it faces. In addition, Lawrence (1999) argues that regional liberalization through PTAs strengthens the hand of exporters and pro-trade forces, a fact that contributes to global trade liberalization. Moreover, Riezman (1999) points out RTAs can make free trade easier to achieve by inducing uncooperative countries to cooperate in areas where cooperation is possible. Furthermore, the author points out that not allowing bilateral agreements can result in more protection and lower world welfare. Bohara et al. (2004), and Estevadeordal et al. (2008) both reach the same conclusion affirming that regionalism fosters external liberalization, mainly in the case of developing countries.

Koo et. al. (2006) analyze the effects of preferential trade arrangements on agricultural trade. The overall effects of those arrangements, according to the author, are

positive and significant, indicating that PTAs, in general, increase trade volume of Member countries through inter and intra-industry trade. The author also points that, although the benefits of PTAs are greater for Member countries than for non-Members, PTAs are not harmful to non-Member countries, because it improves global welfare by increasing agricultural trade volume among Member countries and, to a lesser degree, among non-Member countries.

Estevadeordal, Freund, and Ornelas (2008), stating that that regionalism is a building block for free trade, emphasize that there is no clear evidence that trade preferences lead to higher tariffs or smaller tariff cuts. Furthermore, the authors show evidence that preferences foster a more rapid decline in external tariffs.

Calvo-Pardo, Freund, and Ornelas (2009) reinforce the tendencies found by other authors; they also find a correlation between regionalism and unilateral tariff reductions. Baldwin and Seghezza (2010), studying the relationship between preferences and most favored nation (MNF) tariffs in 23 developed and developing countries, find that regionalism has not led to significantly higher external tariffs. Calvo-Pardo et al. (2010), studying the behavior of ASEAN's Members FTA, find evidence that preferences have induced a deeper decline in external tariffs.

Bearing in mind the relationship between RTAs and tariff cuts or trade creation, it is worth pointing out that many authors have also analyzed the relationship between RTAs and multilateral trade liberalization. There are numerous analyses stating that RTAs can strength, deep and complement trade multilateralism within the WTO system.

Snape (1993) argues that the exception allowed by GATT and GATS for the existence of RTAs is vital for keeping the multilateral trading system stable because some Members might opt out if it were not possible. Perroni and Whalley (1996) conclude that increasing regionalism is not a threat to the multilateral trading system and that regional concertations have the potential to liberalize trade incrementally. Baldwin (1997), Ethier (1998) and Lawrence (1999), in turn, refer to regionalism much more as a complement to multilateralism or, in other words, as a building block rather than a stumbling block.

Winters (1998) affirms that reducing the number of players in multilateral negotiations could simplify the process of reaching agreement at the multilateral level, and that is why liberalization through regional agreements is effective. Ethier (1998) and Freund (2000), analyzing RTAs from a different perspective, see regional initiatives as the result of the success of multilateralism. Ethier (1998), more specifically, points out that regionalism is the means by which new countries try to join the multilateral system and compete among themselves for direct investment. Mansfield & Reinhardt (2003), examining the relationship between the expansion of the WTO and RTAs formation, find that more RTAs surge during multilateral negotiations than at other times. The explanation for this pattern is that countries, among other causes, negotiate and conclude RTAs to escape from free riders and pressures for liberalization occurring within the WTO system. Thus, PTAs enable countries that want to pursue deeper trade liberalization to evade the free-rider problem (Baldwin and Freund, 2011).

Baier and Bergstrand (2004), Evenett (2005), Bond (2005) and (Bergstrand, 2006) all emphasize that the proliferation of RTAs consists of a trade liberalization process that supports global integration and strengthens the liberal trading system. Ornelas (2008) shows that RTAs help, in any case, the world to get closer to free trade. According to the author (2008), if a group of economies within an RTA cut tariffs, the complementarity between external and preferential tariffs will foster a redesign of the cooperative multilateral agreement that incorporates lower aggregate trade restrictions.

Matsushita (2010) argues FTAs' proliferation has been a result of the failure of international trade negotiations at the WTO. Furthermore, the author emphasizes there is a complementary relationship between the two in that PTAs can accomplish trade liberalization in the areas in which WTO negotiations are not successful, such as the Singapore Issues<sup>23</sup>. Thus, PTAs accomplish liberalization when WTO fails to manage it.

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<sup>23</sup> The term refers to four working groups set up during the Singapore Ministerial Conference held in 1996. These groups aimed at discuss: transparency in government procurement, trade facilitation, trade-related investment issues, and competition policy, which during most ministerial meetings were the subject of great discord between developed and developing economies (Fergusson, 2018).

Besides, Saggi and Yildiz (2010) point out if PTAs are not permitted, a country may oppose a multilateral free trade agreement because its Members can free ride on the liberalization efforts of others. Hence, PTAs can reverse that situation by offering the liberalizing countries a way to stop the outsider from free riding.

In view of numerous scholars stating the benefits of RTAs, there are also others who point out their risks besides the benefits. Yi (1996) argues that regionalism is a building block to free trade if it is open. If it is not, the agreement turns into a stumbling block for multilateral trade liberalization. Moreover, Saggi and Yildiz (2010) argue that regionalism can be either a stumbling or building block when there are asymmetries in endowments or costs. Furthermore, Winters (1996, 1998) has argued that it is not yet possible to determine whether regionalism encourages or discourages evolution towards globally freer trade, but affirms that RTAs are like street gangs: “you may not like them, but if they are in your neighborhood, it is safer to be in one” (Winters, p. 201, 1998).

Other scholars point only to the risks of RTAs. Those who consider RTAs stumbling blocks foresee the possibility of a world of trading blocs with relatively high barriers between them, in which trade diversion becomes the norm. Secondly, they state that economies engaging in RTAs do so to avoid further multilateral liberalization, given that when trade diversion takes place as an outcome of these agreements, those benefiting from trade diversion will probably oppose further multilateral liberalization. Lastly, scholars have pointed out that the use of scarce resources to concentrate on the formation of RTAs may distract attention from multilateral liberalization (Krueger, 1995).

Viner (1950) argues RTAs do not necessarily improve Members’ welfare. According to him, the preferential removal of tariffs may lead to trade diversion. Each agreement, thus, incrementally generates inefficiencies in world production, which is harmful to the liberal trading system. Krugman (1991), using a monopolistically competitive model, argues that regional trade agreements can potentially increase external tariffs, pointing out that PTAs might be stumbling blocks to the liberalization of world trade.

Bhagwati (1992) raises numerous concerns about the negative effects of regionalism, pointing out that RTAs divert attention from the multilateral trading system. Furthermore, the author rejects arguments about the need for an alternative to the GATT for countries willing a faster liberalization of trade. Bhagwati and Panagariya (1996), in turn, concluded that regional trade agreements, mainly preferential trade agreements, are mostly welfare-reducing since the Members of the agreement might end up with severe welfare losses, due to trade diversion. Baldwin (1995), though recognizing that PTAs significantly liberalize trade, criticizes them for diverting trade. According to the author, an initial agreement reduces the profits of non-Member exporters. In the face of the agreement closed, these non-Members, who are negatively affected, have their incentives to liberalize trade preferentially increased. This results in an enlargement of the PTA. As this expansion harms other non-Members, it promotes another plea for Membership. Therefore, the region keeps expanding, and trade is increasingly liberalized.

Krueger (1993), in turn, argues this sort of agreement constitutes a potential threat to the world trading system. According to the author, a PTA, despite diverting trade, leads to the formation of new interest groups who oppose the multilateral tariff reductions. In this context, McLaren (2002) finds that a PTA induces private agents in each Member country to invest and specialize in each other. This constrains the *ex-post* gains from multilateral free trade. Thus, regionalism creates its own demand. As a result, countries lose interest in multilateral liberalization once they engage in regional initiatives.

Vamvakidis (1999) shows that economies have grown faster, on average, in both the short and the long run, after broad liberalization promoted by multilateral agreements, but not after joining RTAs. Moreover, Limão (2006) argues that, regardless of the type of agreement, an RTA induce higher tariffs against outsiders when the goal of the agreement is to promote cooperation in non-tariff areas, such as drugs or labor standards issues. Finally, other authors, such as Bhagwati (1991, 1995), Greenaway and Panagarya (1998), Krishna (1998) and Coulibaly (2008) affirm that regional arrangements have the potential



to fragment the world economy into trading blocs in antithesis to GATT-wide multilateral free trade, a fact that creates the so-called spaghetti bowls effect<sup>24</sup>

Although more literature on the positive effects of RTAs has been found and reviewed, the academic writing, in general, indicates the existence of an unsolved dilemma regarding the potential of RTAs to promote trade creation or diversion. Furthermore, it shows us the lack of studies overcoming this dichotomous debate, which focus significantly on tariff preferences and ignores the existence of non-tariff measures<sup>25</sup>.

#### *The relation between RTAs and non-tariff measures*

From the literature analyzed so far, it is possible to note that very few authors have developed studies relating RTAs to non-tariff measures and barriers, since almost all of them focus on the impact of RTAs on preferences. From the relevant literature found about non-tariff measures and RTAs, it is worthy citing Lesser (2007), Baldwin and Low (2009) and Dür, Baccini, and Elsig (2014).

Lesser (2007) emphasizes that RTAs, though their provisions related to both conformity assessment procedures and harmonization of technical regulations, do not contradict the Agreement on Technical Barriers to Trade; rather, it aims at advancing it, by encouraging greater cooperation among Members. According to the author, RTAs that call on Parties to harmonize their technical regulations and standards. Besides, they foster the convergence of national technical regulations and conformity assessment procedures towards international standards and guides, as required by the TBT Agreement. Furthermore, RTAs call for the establishment of regional TBT committees to monitor the implementation as a forum for consultations and exchange of information on TBT matters among their Parties. RTAs that call for more intense TBT-related cooperation among

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<sup>24</sup> It refers to “a messy maze of preferences as PTAs formed between two countries, with each having bilaterals with others and different countries, the later in turn bonding with yet others, each in turn having different rules of origin (...) for different sectors, and so on” (Jagdish Bhagwati, 2002)

<sup>25</sup> It is worth highlighting that most of the studies found on non-tariff measure focused only on analyzing specific cases and their impacts on international trade flow among countries involved. Therefore, few scholars have built a more holistic analysis on NTMs and these are quoted by this dissertation..

Parties have the potential to facilitate and strengthen the implementation of the WTO TBT Agreement. The study carried out by the author (2007) reveals that most provisions regarding technical barriers to trade (TBT) included in bilateral and regional trade agreements converge towards the multilateral trading system. If implemented effectively, these provisions can complement and strengthen the implementation of the WTO TBT and SPS agreements by setting the pace for improved regulatory practices (Lesser, 2007).

Baldwin and Low (2009), in turn, analyzing the possibilities of multilateralizing regionalism, try to assess the extent to which RTAs could have created a spaghetti bowl with non-tariff measures in six different areas: trade in services, government procurement, competition policy, investment performance measures, technical barriers to trade, and trade remedies. The authors conclude that from the six different areas analyzed, RTAs have lightly provoked the so-called spaghetti bowl effect in only two areas: services and government procurement. In all other areas, such as competition policy, investment performance measures, technical barriers to trade, and trade remedies, RTAs have not promoted such effect, not even lightly. This study relativizes conclusions reached by Bhagwati (1991), Bhagwati (1995), Bhagwati, Greenaway, and Panagarya (1998), Krishna (1998) and Coulibaly (2008), because, in such studies, the authors concluded that RTAs promote the spaghetti bowl effect, but they only analyzed tariff preferences without considering non-tariff measures, which today stand as significant obstacles to trade liberalization.

Dür, Baccini and Elsig (2014), showing the advantages of RTAs for both tariff and non-tariff liberalization of trade, argue that RTAs, beyond lowering tariffs, increase competitiveness of its Members due to their provisions on trade in services, government procurement, mutual recognition of standards, investments, intellectual property, and on competition policy.

With respect to services, the authors show that many RTAs have provisions granting national treatment to service providers from other Members, a fact that facilitate trade in services and, as much trade in goods depends on the provision of services, services

liberalization consequently have a positive effect on trade in goods. According to the authors, the same rationale applies to the liberalization of government procurement. RTAs provisions related to government procurement enable exporters to compete for public contracts, thus increasing trade in goods and services (Dür, Baccini and Elsig, 2014).

Relating TBT and SPS matters, they point some agreements also foresee the mutual recognition of standards or the adoption of international standards, provisions that reduce the costs and lead to an increase in trade. Some PTAs also have investment and competition-related provisions, allowing Member countries to attract more foreign direct investments (FDI), increasing vertical intra-industry trade. Finally, the authors argue that provisions on intellectual property rights have stimulated trade to the extent that they curtail the domestic production of counterfeited goods (Dür, Baccini and Elsig, 2014).

#### *Concluding remarks*

The main objective of this chapter was to describe the relationship between multilateralism, unilateralism, and non-tariff measures based on a literature review. Briefly, we saw that RTAs, which are significant representatives of unilateral trade arrangements, have the potential of promoting cooperation more effectively than large-scale negotiations. Moreover, such potential results from their (i) fewer members, (ii) better-delimited scopes, and (iii) effective enforcement mechanisms. Together, these characteristics mitigate transaction costs, which often prevent economies from cooperating on a wide range of matters.

Bearing in mind this potential to reduce transaction costs, we proceeded with an analysis of the debate on the effects of RTAs on trade liberalization. All the literature reviewed indicates the existence of an unsolved dilemma regarding the possibilities of RTAs leading to trade creation or to trade diversion. In addition, the literature also indicates the lack of studies overcoming this dichotomous debate, which focus significantly on tariff preferences and ignores non-tariff measures.

In the light of the foregoing paragraphs, we proceed to the next chapter with an analysis of the results of each Ministerial Conference occurred from 1996 to 2017. In later

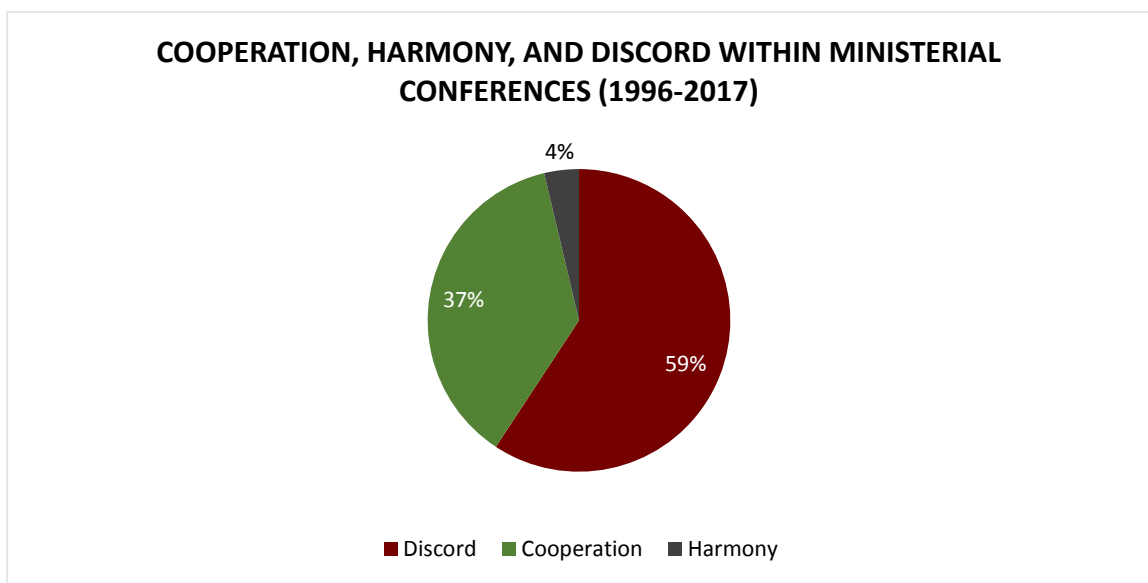
chapters, these results will be compared with the volumes of NTMs notified annually. The objective of this analysis is to assess the effectiveness of Ministerial Conferences to reduce NTMs. Such possible effectiveness will, then, be compared to the theoretical effectiveness of RTAs to mitigate NTMs. The results will allow us to make two findings. Firstly, to know how the WTO and unilateral arrangements mitigate non-tariff protectionism. Secondly, to confirm or deny the proposed hypothesis.

## Chapter 02 - Cooperation, Harmony, and Discord within Ministerial Conferences

### *General overview*

This chapter aims to present the analysis of the result of the main negotiations held within Ministerial Conferences, based on the method defined in Table 05<sup>26</sup>. The chart below displays the distribution of discord, cooperation, and harmony in these Conferences:

**Chart 3 - Cooperation, Harmony and Discord within Ministerial Conferences**



Source: author.

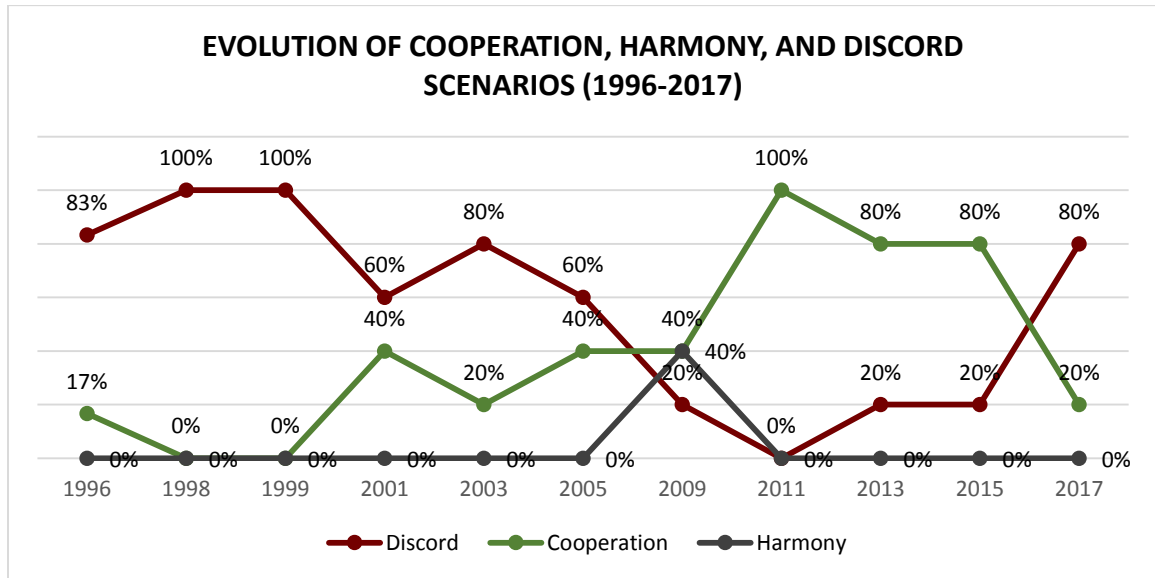
Keohane (1984) points out that situations of discord prevail in the international trade negotiations. Cooperation, in turn, sometimes occurs and harmony is very rare. The information in Chart 03 confirms Keohane's reasonings. At least 59% of all negotiations held at the last eleven Ministerial Conferences resulted in discord, which means that, in view of a conflict on a specific trade matter, negotiators did not attempt a bargain or, when they tried, they could not reach an agreement (Keohane, 1984). Cooperation prevailed in 37% of the negotiations and harmony in only 4%. Despite the prevalence of discord in the

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<sup>26</sup> Information available in page 14.

negotiations analyzed, it is interesting to note a growing trend of cooperation over the years following the creation of the WTO, as seen in Chart 04:

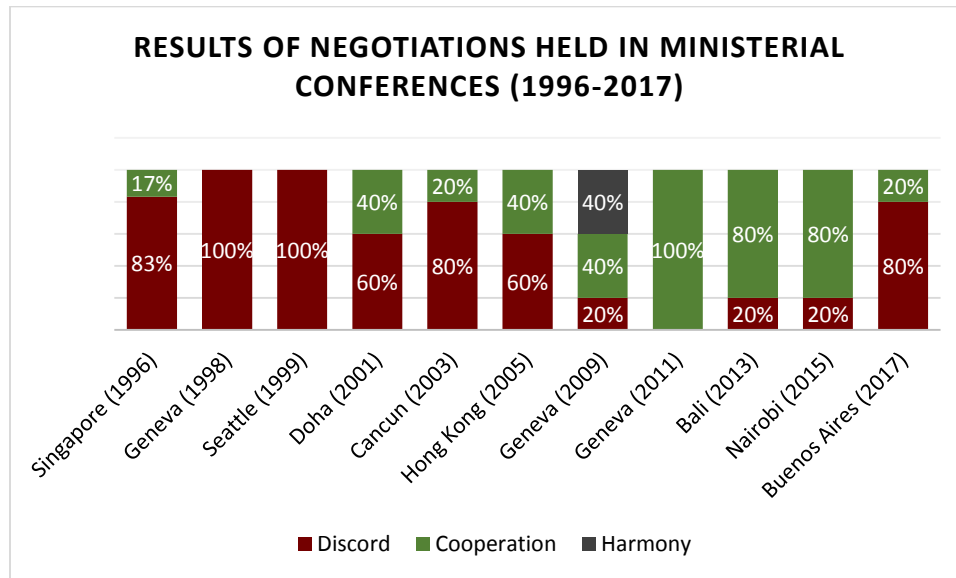
**Chart 4 - Evolution of cooperation, harmony, and discord scenarios (1996-2017)**



Source: author.

A detailed analysis of Chart 04 shows that since 1996 cooperation rates have grown more than discord ones. This trend has been accentuated since 2001 when the Doha Ministerial Conference happened, and it was interrupted in 2017, with discord prevailing in negotiations held in Buenos Aires. More details about such trends can be seen in Chart 05, which displays the levels of cooperation, discord, and harmony in each Ministerial Conference analyzed:

**Chart 5 – Results of negotiations held in Ministerial Conferences**

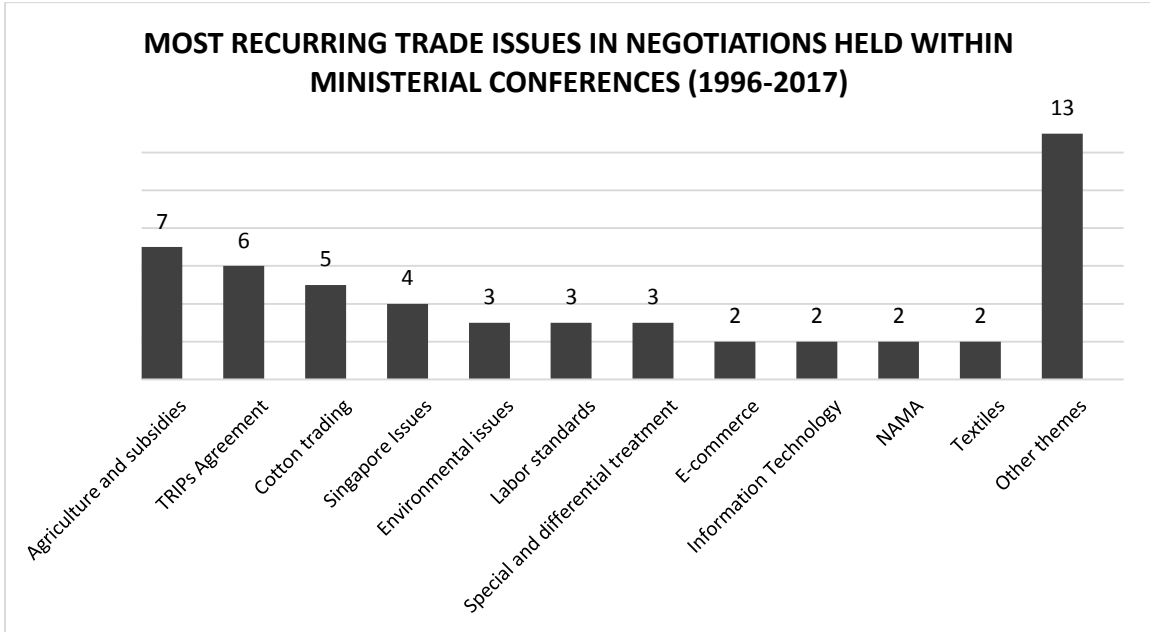


Source: author.

Chart 5 only reinforces the fact that discord prevails in trade discussions. According to the chart above, it prevailed in most of the negotiations held between 1996 and 2017, especially in Singapore (1996), Geneva (1998), and Seattle (1999). This pattern has changed since 2001. From this year on, the Conferences held in Geneva (2009 and 2011) and Bali (2013) stood out, given their predominance of cooperation over discord. Harmony, in turn, only prevailed in some negotiations carried out in Geneva (2009).

The most recurrent themes within these meetings were agriculture and subsidies (13,46%), which were negotiated in seven conferences; TRIPs Agreement (11,53%) in six conferences; and cotton trading (9,62) in five conferences, as seen in Chart 6:

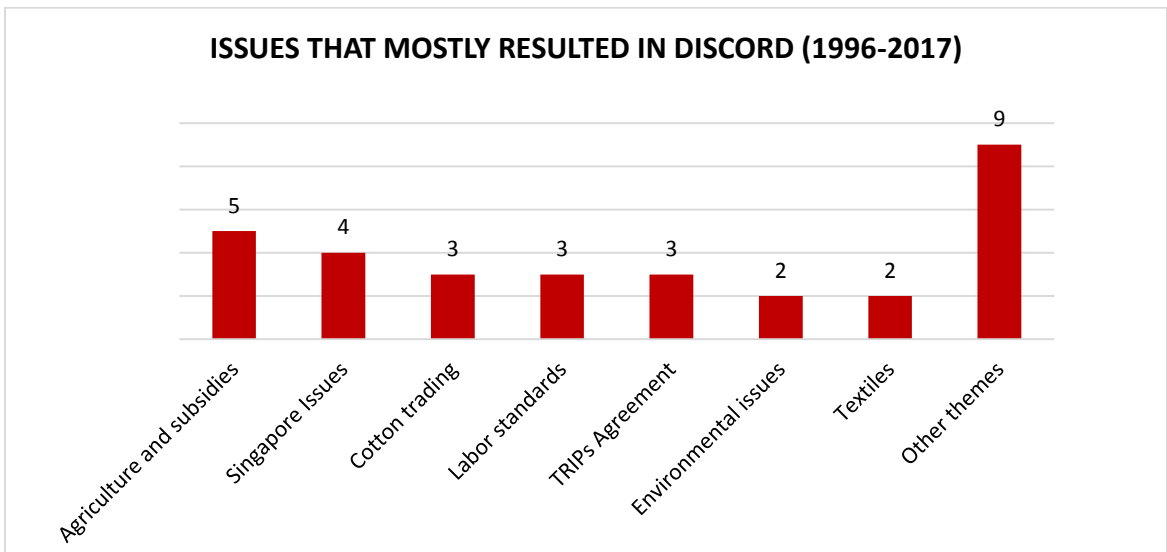
**Chart 6 - Most recurring trade themes in negotiations held within Ministerial Conferences**



Source: author.

More important than verifying which were the most recurring negotiating issues is to highlight which of them have mostly resulted in discord, as shown in Chart 07:

**Chart 7 - Issues that mostly resulted in discord**

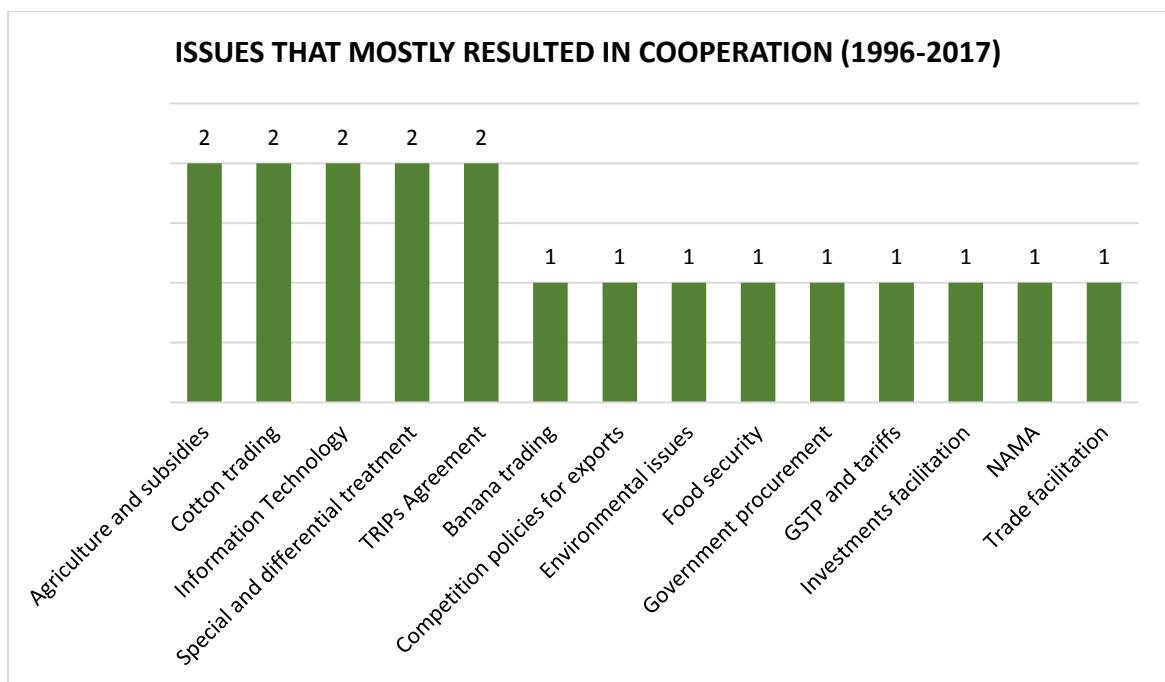


Source: author.



According to Chart 07, agriculture and subsidies (16%), and Singapore issues (13%) were responsible for almost 30% of all the discord situations that occurred in Ministerial Conferences from 1996 to 2017. Other themes such as cotton trading (10%), labor standards (10%), and TRIPs agreement (10%) hold together the third position as the most discord promoters. Conversely, when analyzing the themes that most promoted cooperation, there is less concentration in few matters. The results follow in Chart 08:

**Chart 8 - Issues that mostly resulted in cooperation**



Source: author

Bearing in mind the foregoing charts, the next section contains a detailed analysis of all Ministerial Conferences that occurred from 1996 to 2018 and their results.

*First Ministerial Conference – Singapore (1996)*

*Context*

In 1994, the Uruguay Round produced an imbalanced outcome for developing countries, due to the number of commitments created they needed to comply with. The Singapore Ministerial Conference was the first to take place after the establishment of the

WTO. There, trade, foreign, finance and agriculture Ministers from more than 120 Member governments and from those in the process of acceding to the WTO took part of negotiations. The meeting took place in Singapore from 9 to 13 December 1996. Besides, it included plenary meetings and various multilateral, plurilateral and bilateral sessions, which assessed WTO's first two years of activity, and the implementation of the Uruguay Round Agreements. Furthermore, expectations for the conference were very high, since developing and developed countries had different goals for it. For the developing countries, the Round would serve to correct the imbalances created by Uruguay Agreements. For developed ones, conversely, it would be a great opportunity to strengthen such agreements. With high expectations, opposite goals, and a comprehensive and challenging agenda, discord prevailed in most part of negotiations.

*The meeting and its agenda*

The agenda for the meeting was challenging and comprehensive. In detail, Ministers addressed debates about the so-called "Singapore Issues", and also about the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), information technology trade, development and technical assistance, textiles and, finally, about labor standards. These agendas are set out in Table 08 with their negotiation results:

**Table 8 - Main issues negotiated in Singapore**

<b>Year</b>	<b>Ministerial Conference</b>	<b>Agenda</b>	<b>Outcomes</b>
1996	Singapore	Singapore Issues	Discord
		Labor standards	Discord
		TRIPs agreement	Discord
		Textiles	Discord
		Development aid	Discord
		Information Technology	Cooperation

Source: Author.

Singapore Issues were the agenda of the greatest discord. The commitments made during the Uruguay Round concerned developing and least developed countries. For them, it seemed impossible to negotiate new agendas, such as government procurement,

investments, competition policies, and trade facilitation, while the Uruguay Agreements imposed heavy imbalances on their participation in the multilateral trading system (Fergusson, 2018). Notwithstanding, Canada<sup>27</sup>, European Union<sup>28</sup>, United States<sup>29</sup>, and Japan<sup>30</sup> successively pressed LDCs and developing countries to agree to negotiate such themes.

Despite the clear objection from developing countries, especially from Indonesia<sup>31</sup>, which represented the smaller economies in several speeches, developed countries managed to introduced<sup>32</sup> the four Singapore Issues as guidelines for the Ministerial Conference. Furthermore, they established four working groups about them (ICTSD, 1996a). The formation of these groups, consequently, was considered one of the most controversial moments of the Conference since most developing countries were not invited to take part in discussions. Within these groups, the smaller economies reported high levels of asymmetry and pressure from developed countries (Lauria, 2017). In view of such a scenario, discord prevailed in relation to all Singapore Issues.

Similarly, discord prevailed in negotiations on labor standards, an old issue within the multilateral trading system. During preparations for the Singapore Ministerial Conference, both the United States and Norway made proposals for WTO to establish minimum labor standards along with the International Labor Organization (ILO) in the

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<sup>27</sup> “We must begin discussion on issues such as investment and competition policy, which are of central importance to the trading system. Foreign direct investment is now growing faster than trade, and it is a major contributor to growth, development and job creation” (Eggleton, pp. 1-2, 1996).

<sup>28</sup> “WTO must also pick up the new subjects like investment and competition. I hope once we have been able to take a hard look over the next few years, we will see that the time has come to move to negotiations in these areas (Brittan, pp. 1-2, 1996).

<sup>29</sup> “Public confidence in the integrity of government procurement decisions would be enhanced if all WTO countries agreed to basic standards of transparency and due process. We believe this is the time to take the first step toward a WTO agreement on transparency in government procurement” (Barshefsky, pp. 1-2, 1996).

<sup>30</sup> “Japan is proposing that the work relating to “trade and investment” and “trade and competition policy” should be initiated in the WTO as new challenges for the future” (Ikeda, pp. 1-2, 1996).

<sup>31</sup> With respect to the Singapore Issues, “we believe that they are essentially outside the scope and competence of the WTO” (Ariwibowo, pp. 1-2, 1996).

<sup>32</sup> The introduction was made through a letter from the Director-General of the WTO to the Ministers present. It was suggested that, as long as there was no consensus on the handling of new issues within the WTO General Council, the discussion should be promoted within the framework of the Ministerial Conferences (ICSTD, 1996a in Lauria, 2017).

context of global trade liberalization. However, the scenario during Singapore talks was an antagonized one. While developed countries wanted to discuss such agenda, both LDCs and developing countries argued that efforts to bring labor standards into the arena of multilateral trade negotiations were a smokescreen for protectionism. According to them, it consisted of a bid by industrial nations to undermine the comparative advantage of lower wage trading partners (WTO, 1996). Thus, all Ministers from these countries, especially those from Mexico<sup>33</sup>, India<sup>34</sup>, Indonesia<sup>35</sup>, Hong Kong<sup>36</sup>, and Cuba<sup>37</sup>, argued the WTO would not be the appropriate institution to address labor issues because the ILO was supposed to regulate labor standards internationally. Hence, no agreement was possible in discussions on labor standards held at the conference.

LDC and developing countries, which were under pressure from developed countries, demanded a full revision of the commitments from the Uruguay Round. For them, a revision would be paramount to rebalancing the multilateral trading system, starting with the TRIPS Agreement (Lauria, 2017). The developing economies came together to express their great dissatisfaction with it, especially India<sup>38</sup>, and Indonesia<sup>39</sup>.

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<sup>33</sup> “On the issue of labour standards, Mexico is convinced that the only appropriate forum to deal with this issue is the International Labour Organization (ILO). Raising the issue of labour in the WTO could provide an excuse for using trade measures for protectionist purposes” (Mendoza, pp. 1-2, 1996).

<sup>34</sup> “We do not see any purpose in bringing this subject into the WTO” (Ramaiah, pp. 1-2, 1996).

<sup>35</sup> “In our view, to link labour standards and trade will easily run the risk of creating a new form of protectionism which does not help in meeting the ultimate objective of the WTO” (Ariwibowo, 1996).

<sup>36</sup> “I can see no role for the WTO in the promotion of labour standards. The ILO is clearly the right forum” (Chung-Yee, pp. 1-2, 1996).

<sup>37</sup> “Pressure is being exerted to introduce new topics in the Organization's working agenda, some of them having no connection with trade, such as labour standards, at a time when developing countries have not yet been able to assimilate the provisions of the Uruguay Round Agreements” (Ruiz, pp. 1-2, 1996).

<sup>38</sup> “A case in point is the TRIPS Agreement, which was largely the result of an initiative taken by the developed world. Concerns have been expressed in our country regarding the possible adverse effects of this Agreement on prices of pharmaceutical products and agro-chemicals. There is a feeling that the developing countries may have to incur heavy costs in implementing this Agreement by way of higher royalty payments, increased administrative costs and possible transnational monopolistic control in some sectors. I would hope that we will collectively find ways and means of addressing these concerns” (Ramaiah, pp. 1-2, 1996).

<sup>39</sup> “It is obvious that, for developing countries, implementing the commitments that they have undertaken, both procedural and substantive, in the Uruguay Round has not been an easy exercise, in particular when it comes to new and complex areas, such as services, TRIPS and TRIMS. In spite of their enormous efforts, there have been genuine difficulties that they still have to overcome. Hence, the special and differential treatment provision and its consistent application accorded to the developing countries meet their relevance. Therefore, in order to ensure the full and effective implementation of the Uruguay Round commitments by

For them, the agreement was very costly to implement. Besides, they argued that technical assistance and the establishment of flexibilities would be necessary to guarantee the fulfillment of their commitments. The larger economies, however, did not consider any of these claims. On the contrary, they demanded the enforcement of TRIPS' clauses to guarantee legal security for the technological innovation of companies based in their territories (ICTSD, 1996b). Consequently, no common ground was possible in TRIPS negotiations.

Discord also prevailed in discussions on development aid, despite the comprehensive action plan for technical assistance to LDCs adopted during the conference. There was a consensus among LDCs and developing countries on the need for real actions from developed economies. The plan adopted during the conference was considered only a formal element with no practical result. Consequently, LDCs and developing countries, such as Cuba<sup>40</sup>, and Colombia<sup>41</sup>, criticized it for its inefficiency in promoting real economic capabilities for them.

The textile discussion also ended in discord. LDCs and developing countries criticized the actual effectiveness of the WTO Textile Monitoring Body, as well as the validity of the Multi-Fiber Arrangement (MFA). The MFA regulated the world trade in textiles from 1974 to 2004. Moreover, it established quotas on the number of textile products that developing countries could export to developed ones. The main point raised by developed countries to enforce the arrangement was the fact that textile exporting countries had a comparative advantage in textile production due to their labor-intensive production and their supposedly fragile social insurance systems that allowed them low labor costs (Brambilla, Khandelwal, and Schott, 2010). Conversely, many developing

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all, there is an urgent need to intensify technical assistance to developing countries with the view to facilitating the fulfilment of their commitments” (Ariwibowo, pp. 1-2, 1996).

<sup>40</sup> Developing countries are called upon to rapidly advance in their economic liberalization, while big nations strengthen their border protection, especially those of the non-tariff type (Ruiz, 1996).

<sup>41</sup> It is clear that while the developed countries have expanded market access for their goods and services, adapted multilateral agricultural subsidy policies to their own needs and substantially increased the protection of their intellectual property rights, the developing countries still face serious restrictions in their access to external markets for products in respect of which they are naturally competitive. This is particularly true for the agriculture, textile and fisheries sectors (Jaramillo, 1996).

countries such as Hong Kong<sup>42</sup>, Indonesia<sup>43</sup>, and Cuba<sup>44</sup> demonstrated their dissatisfaction. Notwithstanding, no progress was possible on this issue and the agreement only expired on 1 January 2005 (WTO, 2018b).

Cooperation only prevailed in the conclusion of the Information Technology Agreement (ITA), through the “Ministerial Declaration on Trade in Information Technology Products. Signed by 29 Members, it consisted of a plurilateral agreement aimed at liberalizing IT trade. Moreover, it comprised developed and developing Members, such as Mexico<sup>45</sup>, Hong Kong<sup>46</sup>, Indonesia<sup>47</sup>, United States<sup>48</sup>, and Denmark<sup>49</sup> (WTO, 2018c). The agreement entered into force 1 July 1997 and, since then, a formal Committee was set under the WTO to monitor its implementation. During the MC held Nairobi, in 2015, Members agreed the expansion of the ITA, which is currently considered the most successful attempt at trade liberalization of the WTO since its creation in 1995 (WTO, 2018d).

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<sup>42</sup> “Since the Agreement on Textiles and Clothing came into force, the trend thus far has been towards further restriction, rather than relaxation of restraints” (Chung-Yee, pp. 1-2, 1996).

<sup>43</sup> “We are concerned as to the large number of anti-dumping investigations that have been conducted against developing countries as well as the proliferation of safeguard actions by some developed countries that have accompanied the implementation of the Agreement on Textiles and Clothing” (Ariwibowo, pp. 1-2, 1996).

<sup>44</sup> “On the other hand, the minimum commitments adopted in relation to these countries are not complied with, as occurs in the textile sector” (Ruiz, pp. 1-2, 1996).

<sup>45</sup> “Mexico supports the negotiation of an agreement on information technology products, always provided that there is flexibility in defining the range of products and the timescale for tariff reduction and that the great majority of WTO Members participate” (Mendoza, pp. 1-2, 1996).

<sup>46</sup> “We also strongly support the proposed agreement to liberalize trade in information technology products. Such an agreement will demonstrate our commitment to the ongoing process of progressive trade liberalization” (Chung-Yee, pp. 1-2, 1996).

<sup>47</sup> “We also stand ready for an Information Technology Agreement, provided that some flexibility in its implementation will be accorded to the developing countries. We feel that efficient services and information technology sectors are indeed critical for our economic development, as we are entering the information age of the twenty-first century” (Ariwibowo, pp. 1-2, 1996).

<sup>48</sup> “(...) the Information Technology Agreement would be the first concrete demonstration of the WTO's ability to move forward in concert with the changing world around us. By creating a tariff-free environment for trade in information technology products, we can help lower consumer costs, make our businesses more competitive and give our entire economies the benefits that flow from access to greater information” (Barshefsky, pp. 1-2, 1996).

<sup>49</sup> “An agreement to bind tariffs on information technology equipment at zero would be a major step, beneficial to all parties - exporters and importers. Such an agreement would demonstrate the ability of the WTO to keep pace with the information society” (Nielson, pp. 1-2, 1996).

Bearing in mind the foregoing paragraphs, it is seen that 83% of negotiations held in Singapore ended in discord. This scenario would be the same two years later at the Geneva Ministerial Conference, which is described in the following section.

### *Second Ministerial Conference - Geneva (1998)*

#### *Context*

The Second Ministerial Conference was held in Geneva, Switzerland, between 18 and 20 May 1998. Although it was the fiftieth anniversary of the multilateral trading system, the context was complex because several WTO Members were facing huge financial imbalances. The Geneva Conference was a meaningful opportunity to stress that keeping all markets open would be key to mitigate such a scenario. Despite the distrust WTO created in numerous LDCs and developing countries over the real possibilities of trade cooperation, much due to the results of negotiations held in Singapore, many countries such as Congo, Democratic Republic of Congo, Mongolia, Niger, and Panama acceded to the Organization. In addition, another 31 applicants were negotiating accessions, a fact that would require from WTO greater ability to resolve conflicts between Members of different levels of development (WTO, 1998).

The conference was planned to set the Millennium Round negotiation agenda to be launched the following year in Seattle (1999). The round aimed at, in the fashion of the largest economies, inserting new topics in the negotiating table. Consequently, Geneva witnessed the repetition of a scenario very similar to that of Singapore, where discord prevailed in most negotiations.

#### *The meeting and its agenda*

The agenda negotiated in Geneva was leaner than of Singapore, but it was not less conflicting since none of the negotiations were integrative<sup>50</sup> enough to promote cooperation. The main issues negotiated follow below:

**Table 9 - Main issues negotiated in Geneva**

Year	Ministerial Conference	Agenda	Outcomes
1998	Geneva	Labor standards	Discord
		Singapore issues	Discord
		Technical assistance and development aid	Discord
		Agriculture and subsidies	Discord
		E-commerce	Discord

Source: Author.

Discussions on labor standards and Singapore issues remained strong in Geneva, despite discord at the previous conference. Again, developed economies, notably Japan<sup>51</sup>, the United States<sup>52</sup>, Norway<sup>53</sup>, Canada<sup>54</sup>, and Slovenia<sup>55</sup>, preached the need of bringing such issues to the umbrella of the WTO. For them, liberalizing such agendas was necessary to meet the new challenges posed by globalization. Conversely, LDCs and developing economies such as Brazil<sup>56</sup>, for instance, have kept up the discourse on the fact that such issues would create new barriers to their exports. Negotiations on these topics, although

<sup>50</sup> Integrative bargaining is a negotiation strategy in which parties collaborate to find a "win-win" solution to their dispute. It focuses on developing mutually beneficial agreements based on the interests of both disputants (Fisher, Ury, and Patton, 2011).

<sup>51</sup> "Japan supports the idea of comprehensive negotiations for trade liberalization, including industrial tariffs, rules on investment and other new areas, in addition to the "built-in agenda" as a result of the Uruguay Round" (Hashimoto, pp. 1-2, 1998).

<sup>52</sup> "(...) the WTO and the International Labour Organization should commit to work together, to make certain that open trade lifts living conditions, and respects the core labour standards that are essential not only to workers rights, but to human rights everywhere" (Clinton, pp. 1-2, 1998).

<sup>53</sup> "Although ILO has the main responsibility, labour standards should also be an issue for the WTO" (Bondevik, pp. 1-2, 1998).

<sup>54</sup> "Trade and investment liberalization is increasingly a necessity rather than an option in this interdependent world" (Chretien, pp. 1-2, 1998).

<sup>55</sup> "The major challenges now are trade and environment, labour standards, protected farm trade, new directions on investment, competition policy, and so on. The World Trade Organization must bring us into the new century on the wings of new ideas in a similar way as the founders of the GATT have brought forward a new era in economic history in the middle of this century" (Drnovšek, pp. 1-2, 1998).

<sup>56</sup> "With regard to the issue of a relationship between trade and labour standards, it would seem to us unjust and senseless, given the very philosophy that inspires GATT, to seek guarantees for the improvement of working conditions through punitive trade measures whose only consequence would be to aggravate the social question" (Cardoso, p. 1, 1998).



long, did not result in any agreement. The discord on new issues caused great concern for the smallest economies, which strongly supported the speech led by Cuba<sup>57</sup> in the plenary of the organization.

Discord also prevailed in discussions on technical assistance and development aid. LDCs and developing countries complained about the lack of assistance and aid, which were promises made by the most developed economies during the Uruguay Round. Few countries, such as the United Kingdom<sup>58</sup>, declared support for LDCs in the form of international aid. Aid and assistance, according to LDCs, would be key to ensuring continuity in the implementation of the agreements negotiated in the last round, especially in the context of the great financial crisis that plagued several economies during the 1990s. In negotiations, the smallest economies raised two main flags. The first one was the access to zero tariffs for products from their markets, and the second was the immediate application of special and differential treatment measures in favor of their economies. Even after long bargains, no agreement was possible.

Expectations to negotiate the liberalization of agricultural trade were high for the conference. LDCs and developing countries, well organized in the so-called Cairns Group<sup>59</sup>, expected the US<sup>60</sup> and EU to eliminate subsidies, as well as to provide better market access conditions for their products. However, both countries did not even consider such requests

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<sup>57</sup> “The Third World countries have been losing everything: custom tariffs that protected their emerging industries and produced revenues; agreements on basic commodities; producers associations; price indexation; preferential treatment; any instrument protecting their exports value and contributing to their development. What are we offered? Why isn't the unfair and unbalanced trade mentioned? Why is the unbearable weight of the external debt no longer discussed? Why is the official Development Aid being reduced?” (Ruz, p. 02, 1998)

<sup>58</sup> “I am pleased to announce that the UK is setting aside \$10 million for technical assistance for these countries to help prepare for liberalization over this year and next. The Least-Developed Countries in particular need special attention. We must all commit to zero tariffs for their exports” (Blair, p. 1, 1998).

<sup>59</sup> The Cairns Group of Fair Trading Nations is an interest group founded in August 1986. It was aimed at liberalizing agricultural products global trade. In particular, its Members aimed at abolishing export subsidies and trade-distorting domestic support for agricultural products and seek to improve market access for agricultural exports. At that time, the groups comprised 14 developing countries: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Uruguay (The Cairns Group, 2018).

<sup>60</sup> “we should aggressively begin negotiations to reduce tariffs, subsidies, and other distortions that restrict productivity in agriculture” (Clinton, 1998).

because they were concentrated on negotiating the so-called New Transatlantic Marketplace (NTM), which was considered to be the most important trade agreement of the decade, covering matters related to TBT, services, government procurement, and investments. According to Sir Leon Brittan, European Commission Vice-President:

"The New Transatlantic Marketplace is a specifically tailored package of measures to address the real barriers that exist in the EU/US trading relationship. It represents a huge leap forward for Europe's relationship with the US, bringing not only strong economic benefits for both business and consumers, but also a new political momentum to the relations across the Atlantic" (Brittain, 1998).

Hence, as the NTM figured as an obstacle to the bargains in the agricultural area between the Cairns Group, EU, and the USA, discord prevailed in this agenda (Lauria, 2017).

Finally, discord also prevailed in e-commerce discussions. Developed countries wanted better market access conditions, but developing countries were irreducible. While the larger economies, which themselves produced electronics, pleaded for a customs exemption on such a mode of trade, developing countries were unwilling to give up, since taxing such goods would be beneficial to their balance of payments. Consequently, the only possible action was to establish a work program to examine all issues relating to global electronic commerce. This work program was described in the Ministerial Declaration on Global Electronic Commerce.

Bearing in mind the foregoing discussion, we see that all negotiations held in Geneva resulted in discord. One year later, WTO Members would try to change this scenario in Seattle.

### *Third Ministerial Conference – Seattle (1999)*

#### *Context*

The WTO Ministerial Conference of 1999 took place in Seattle over the course of three days, beginning Tuesday, 30 November 1999. Its objective was to launch a new round

of multilateral trade negotiations, known as "The Millennium Round" (WTO, 1999). Besides, the scenario for the conference was highly conflicting. LDC and developing countries became uncooperative due to their exclusion from previous talks, mainly due to the fact that the USA and EU focused on trying to agree the New Transatlantic Marketplace (ICTSD, 1999a). A week before the meeting, many delegates from developed countries admitted failure to agree on the negotiating agenda, pointing out the presence of deep disagreements with developing countries (Wighton, 1999). In addition, negotiations were overshadowed by massive street protests outside the Washington State Convention and Trade Center. These protests have become known as the Battle of Seattle. Considered an anti-globalization movement, protests comprised a diffuse coalition of labor unions, student groups, nongovernmental organizations (NGOs), industrial workers, media activists, and others (Smith, 2001).

*The meeting and its agenda*

In addition to the context unfit for good negotiations, Seattle witnessed a complicated trading agenda. It comprised labor standards, subsidies for agriculture, TRIPs agreement, and Singapore Issues. These agendas undoubtedly built one of the tensest negotiation in WTO history since its inception. Table 10 displays the outcome of bargains held during the meeting:

**Table 10 - Main issues negotiated in Seattle**

<b>Year</b>	<b>Ministerial Conference</b>	<b>Agenda</b>	<b>Outcomes</b>
1999	Seattle	Singapore issues	Discord
		Labor standards	Discord
		Environmental issues	Discord
		Agriculture and subsidies	Discord
		TRIPS Agreement	Discord

Source: Author.

Seattle's results on Singapore issues, labor standards and environmental protection were the same as in previous meetings. LDC and developing countries, such as India<sup>61</sup>, Bangladesh<sup>62</sup>, Mexico<sup>63</sup>, Indonesia<sup>64</sup>, China<sup>65</sup>, Colombia<sup>66</sup>, and Malaysia<sup>67</sup> claimed they could not negotiate new items due to two reasons. Firstly, they were unable to comply with the agreements of the Uruguay Round; secondly, they argued there were more appropriate fora than WTO to discuss several of the new themes proposed. Even so, the US and the EU<sup>68</sup> pressed them to negotiate such new items. Consequently, Brazil<sup>69</sup>, Singapore<sup>70</sup>, and many others criticized both great powers for using new themes as ways of protecting their markets.

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<sup>61</sup> "India resolutely rejects renewed attempts to introduce these in the WTO in one form or another. Any further move will cause deep divisions and distrust that can only harm the formation of a consensus on our future work programme" (Maran, pp. 1-2, 1999).

<sup>62</sup> "There seems to be a misperceived "fear" of cheap labour in the developed importing countries which has given rise to misdirected allegations of "sweat shops" and "violation of human rights" that, in turn, have prompted the adoption of unilateral, trade-restrictive action in the form of anti-dumping duties" (Ahmed, pp. 1-2, 1999).

<sup>63</sup> "Given the benefits of trade, it is strange to hear voices around this conference calling for a halt to the process of liberalization on the pretext of protecting the environment or labour standards. They do not realize that in so doing they are achieving the opposite objective of the one they pursue. We cannot let these interests contaminate the WTO's agenda. Solutions to environmental and labour issues must be found in their own multilateral forums, not in the WTO. Introducing these issues into the WTO would open the door to protectionist interests wrecking the essence and success of this institution" (Mendoza, pp. 1-2, 1999).

<sup>64</sup> "Nevertheless, Indonesia has serious difficulties with the proposal that the WTO should pursue further work in these areas" (Kalla, pp. 1-2, 1999).

<sup>65</sup> "The new round of multilateral trade negotiations should focus on discussing issues related to trade. China holds that those issues that are not related to the functions of WTO such as labour standards should not be incorporated into the agenda" (Shi, pp. 1-2, 1999).

<sup>66</sup> "It is a paradox that some of the countries that place the greatest emphasis on the linkage between trade and labour rights have not yet signed most of the Protocols of the International Labour Organization" (Rincón, pp.1-2, 1999).

<sup>67</sup> "We cannot undertake negotiations in areas where there has been insufficient preparation" (Kamaludin, pp.1-2, 1999).

<sup>68</sup> "(...) on trade and labour, I urge you to look again at our proposal for an ILO/WTO forum" (Lamy, p. 01, 1999).

<sup>69</sup> "Protectionism in developed countries is on the rise. Now and then, peoples genuine concerns and good faith are used as a disguise. Environment and labour standards – which the international community has created specific rules for, and entrusted specialized agencies with – are two of such new issues being brought to the trade agenda in a way that leaves much room for suspicion" (Lampreia, pp. 1-2, 1999).

<sup>70</sup> "All of us desire good governance, environmental protection and core labour standards. It cannot be that those who live far away care more for these issues than we ourselves do. The key is to observe clearly the motivations behind the proposals. When the motivations are protectionist, let us recognize them for what they are" (Yeo, p. 02, 1999).

Negotiations on subsidies also resulted in discord. Unprecedentedly, the US recognized the importance of ending subsidies that promoted distortion in trade relations between developed, developing, and least developing countries. However, while on the one hand, there was a convergence between the developing economies and the USA, on the other, the European Union and Japan<sup>71</sup> opposed the elimination of subsidies, alleging there was no distortion. In reaction, Brazil<sup>72</sup>, India<sup>73</sup>, and Colombia<sup>74</sup> gave speeches in plenary demonstrating their great dissatisfaction.

Any concession made by developed countries on subsidies would be conditional on the negotiation of new themes, especially the Singapore Issues. In this sense, both the US and EU presented their different proposals for starting discussions. Although their proposals were not conflicting, they could not reach an agreement. The US intended to create a working group on trade and labor issues. The EU, in turn, proposed the creation of a forum between the WTO and the ILO. The result was the stagnation of negotiations and, therefore, discord (ICTSD, 1999b).

Discord also prevailed in negotiations relating to the TRIPs agreement. Many developing countries, especially Argentina<sup>75</sup> and India<sup>76</sup> claimed the agreement has created

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<sup>71</sup> “We have come to address new issues such as trade in services and intellectual property” (Kono, p. 01, 1999).

<sup>72</sup> “Export subsidies are prohibited for manufactured goods but lavishly allowed in order to enable rich countries to sell their farm products and defeat fair competition at any cost” (Lampreia, p. 01, 1999).

<sup>73</sup> “Asymmetries and inequities in several of the agreements including those relating to anti-dumping, subsidies, intellectual property, TRIMs and the non-realization of expected benefits from agreements such as textiles and agriculture during implementation have been a matter of great concern. The special and differential treatment clauses have remained virtually inoperative” (Maran, p. 01, 1999).

<sup>74</sup> It is regrettable that while in many cases we, the developing countries, have eagerly opened up our economies and pursued strategies to increase production so as to enter international markets, the developed countries have taken undue advantage of trade remedies against our exports by applying countervailing duties, initiating investigations and annual reviews for anti-dumping duties, or have imposed on us new sanitary rules or continued with the excessive granting of subsidies to their agricultural trade (Rincón, p. 01, 1999).

<sup>75</sup> “To Argentina, which consolidated the obligation to preserve its generous unilateral opening of trade in goods and services, as well as to provide a comparatively ambitious degree of protection for intellectual property, the protectionist obsession discernible in the proposals of some of the most prominent Members of the OECD seems neither acceptable nor rational. Those Members should be at the forefront of this new stage in the liberalization of trade, and not disrupt the process” (Tella, p. 01, 1999).

<sup>76</sup> “The TRIPs Agreement places the rights of a patent holder on a higher pedestal than obligations. However, it does not confer corresponding rights to countries or indigenous communities whose bio-resources or traditional knowledge are put to use” (Maran, p. 01, 1999)

a vulnerability for small producers, farmers, and indigenous groups. In addition, they emphasized its asymmetry, mainly due to the fact that it allowed bioprospection and even biopiracy. Despite developing countries' concern about the need to revise the agreement, there was no concession from developed economies. The only positive point was that the TRIPS Council committed to encouraging discussions on revisions in the implementation of the agreement since the deadline for implementation was the following year (ICTSD, 1999c).

To sum up, we observe that the context of massive protests along the complex agenda of discussions made Seattle's results a total failure. WTO members would partially mitigate this scenario two years later at the Doha Conference.

#### *Fourth Ministerial Conference - Doha (2001)*

##### *Context*

Preparation for Doha talks began in January 2000, shortly after the unsuccessful Conference held in Seattle (WTO, 2001a). Failure to strike a deal at the conference could cause a shattering blow to the global economy (Blustein, 2009). Added to this was the global context of counterterrorism created after the attack on the World Trade Center in the United States, a few weeks earlier. More than ever, it was necessary to show that the WTO remained strong and that the international system would not be shaken by terrorist threats. Cooperation, therefore, would be key not only for WTO, but for the balance of the system (Blustein, 2009).

##### *The meeting and its agenda*

The Ministerial meeting was supposed to pave the way for the launch of the Doha Development Round. Thus, to make the launch of a new Round possible, concessions from the developed world would be necessary more than ever, since LDCs and developing countries were totally against the launch ("Developed world accused of...", 2001). The meeting's agenda was divided into three pillars: market access, export subsidies and

distorted modalities of domestic support to trade. Table 11 displays the five main issues debated:

**Table 11 - Main issues negotiated in Doha**

Year	Ministerial Conference	Agenda	Outcomes
2001	Doha	Agriculture and subsidies	Discord
		Textiles	Discord
		SPS Agreement implementation	Discord
		TRIPS agreement	Cooperation
		Environmental issues	Cooperation

Source: Author.

Contrary to previous meetings, Doha had a greater openness to dialogue between developed and developing economies. Notwithstanding, most of the negotiations held resulted in discord, mainly due to the fact that the most important claim from LDCs and developing countries was not met. These countries claimed for the creation of the Development Box. In detail, delegations such as Cameroon<sup>77</sup>, representing LDCs, gave speeches in its favor, affirming the box would allow them to have additional flexibilities to provide domestic support, especially in relation to agricultural and rural development. The box would include:

“Investment subsidies which are generally available to agriculture in developing country Members, agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members, and domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops” (WTO, pp. 1-3, 2018e).

The WTO terminology identifies subsidies as “boxes”. These boxes are given the colors of traffic lights. The green color represents the modalities of subsidies that are permitted. Besides, the amber one represents those modalities that need a decrease. Lastly, the red color represents the forbidden modalities of subsidies. In agriculture, this system

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<sup>77</sup> With regard to agriculture, in view of the sector's importance for our economy, Cameroon proposes that the strengthening of the rules and disciplines governing agricultural trade should be done in such a way as to promote development by creating a "development box" and taking into account our countries' non-trade concerns such as food security, sustainable rural development and poverty reduction (Bouba, p. 01, 2001).

becomes more complex due to the existence of the blue box. The WTO defines it as the amber box with conditions designed to reduce distortion (WTO, 2018e).

Developed countries were against promoting changes in the Agreement on Agriculture (AoA) for the creation of the box. Thus, in place of such changes, they proposed to add to the final text of the Doha Ministerial Declaration provisions on special and differential treatment for developing countries. According to the document, such treatment would need to be considered in all negotiations. In addition, developed countries also included in the Doha negotiating mandate a commitment to the gradual and complete elimination of all forms of export subsidies (ICTSD, 2001a). However, only the requested changes in the AoA would address the real problems of the smallest economies. In response to the refusal from developed countries to negotiate such changes, numerous developing countries such as Argentina<sup>78</sup>, Brazil<sup>79</sup>, Benin<sup>80</sup>, Chile<sup>81</sup>, Colombia<sup>82</sup>, and Peru<sup>83</sup> spoke in protest.

Discord also prevailed in negotiations on textiles. The scene of deep disagreements seen at the Singapore ministerial meeting was kept constant. Moreover, tariff and non-tariff measures, especially quantitative quotas, continued to be the greatest complaints from the smallest economies. LDCs and developing countries, once again, criticized the effectiveness of the WTO Textile Monitoring Body. In addition, they condemned the

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<sup>78</sup> (...) particularly notable is the inequity in the agricultural sector, where, despite the commitments undertaken, the developed countries are subsidizing and protecting production and trade at higher levels than at the end of the Uruguay Round (Chiaradia, pp. 1-2, 2001).

<sup>79</sup> "The current levels of subsidies and protection can no longer be tolerated" (Lafer, pp. 1-2, 2001).

<sup>80</sup> "(...) the question is why the United States of America and the European Communities, for example, are maintaining their domestic barriers and are not only continuing to subsidize their agricultural exports but are also, and exponentially, granting subsidies for their domestic production" (Sehoueto, pp. 1-2, 2001).

<sup>81</sup> "We cannot accept that, on account of subsidies, the developing countries should be made to bear the cost of protectionist agricultural policies. It will not be our peasant farmers who pay for such protectionism" (Muñoz, p. 01, 2001).

<sup>82</sup> "How can we describe as fair a system of world trade in which a few rich and developed countries with large fiscal budgets - with which to subsidize their farmers - compete on equal terms with a number of poor countries with per capita income levels of barely \$5 a day?" (Rincón, p. 01, 2001).

<sup>83</sup> "To encourage and realize its export potential, Peru deems it a matter of priority and urgency for developed countries substantially to reduce their domestic support to agriculture and move towards eliminating all forms of agricultural export subsidies, as these distort trade and discourage production in developing countries" (Voto-Bernales, p. 01, 2001).



Multi-Fiber Arrangement (MFA) and claimed for a revision of the Agreement on Textiles and Clothing (ATC) (ICTSD, 1999b). Despite the intense debates, the texts remained unchanged, especially due to the difficulties created by the USA and Canada (ICTSD, 2001a).

In relation to the implementation of the SPS agreement, no cooperation was possible. Less developed countries, such as Cameroon<sup>84</sup>, along with other developing countries criticized larger economies for promoting unfair trade through SPS measures. Furthermore, they called for a relaxation of the agreement and stated the inspection and certification procedures for their products during customs clearance in developed countries were slow, rigid and prevented entry of products already produced internally (ICTSD, 2001a). Despite such claims, discussions stagnated and Members reached no consensus on the issue.

The TRIPS flexibilization was the only agenda on which cooperation was possible. Since negotiations held in Seattle, the TRIPS Council has committed to encouraging discussions on revisions in the implementation of the agreement. In Doha, two years later, LDCs and developing economies wanted to see the results of that commitment. At that time, public health issues were the focus of discussions. For these countries, no WTO agreement could put health protection at risk. Benin<sup>85</sup>, Brazil<sup>86</sup>, Cameroon<sup>87</sup>, Hong Kong<sup>88</sup>,

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<sup>84</sup> “Sanitary, phytosanitary and technical rules and standards must not be used as unjustified obstacles to trade: hence our plea that technical assistance and the Marrakesh Decision be made operational with a view to better implementation of the WTO Agreements” (Bouba, p. 01, 2001).

<sup>85</sup> “We strongly support the idea that the protection of local or traditional knowledge, including pharmacopoeia and medicine, should be clearly indicated in the Agreement. Similarly, it would only be fair to grant farmers the same rights as those obtained by plant breeders” (Sehoueto, p. 01, 2001).

<sup>86</sup> “The commercial exploitation of knowledge must not be valued more highly than human life. if circumstances so require it, Brazil, like many other countries, will not hesitate to make full use of the flexibility afforded by the TRIPS Agreement to legitimately safeguard the health of its citizens” (Lafer, p. 01, 2001).

<sup>87</sup> “With regard to TRIPS, we would stress that the benefits stemming from the regimes applicable to intellectual property must be fairly shared between inventors/owners and users/consumers of technology. After all, the protection of intellectual property should encourage innovation and technological development. But we would also state once again that TRIPS must be flexible enough to allow developing countries to adopt measures to protect public health and ensure access to medicines at reasonable prices” (Bouba, p. 01, 2001).

<sup>88</sup> “I urge all my fellow colleagues to work together and identify an outcome that is acceptable to all and which promotes access to medicines for those desperately in need” (Chau, p. 01, 2001).

India<sup>89</sup>, Mozambique<sup>90</sup>, and South Africa<sup>91</sup> were the delegations that most called for results. Likewise, developed countries such as Belgium<sup>92</sup> and Denmark<sup>93</sup> clearly supported their pledges. At the end of negotiations, discussions resulted in the publication of the Declaration on Trade-Related Aspects of Intellectual Property Rights and Public Health (ICTSD, 2001a). The document was considered a remarkable advance because it eased the access to medicines and the use of safeguards for the protection of public health (WTO, 2001b).

Encouraged by the cooperation reached on TRIPs issues, WTO Members agreed to start negotiations in three environment-related areas: (i) the relationship between WTO rules and commercial obligations under multilateral environmental agreements (MEAs); (ii) procedures for exchanging regular information between MEA secretariats; and (iii) reducing and eliminating tariff and non-tariff measures to environmental goods and services (Lauria, 2017). Historically, the debate on environmental matters has always been

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<sup>89</sup> “Availability and affordability of essential medicines is a universal human right. WTO should not deny that right. This Conference must send out a clear message to the world that nothing in the TRIPS Agreement shall prevent governments from taking measures to protect public health” (Maran, p. 01, 2001).

<sup>90</sup> “Mozambique reaffirms that the flexibility provisions contained in the TRIPS Agreements, whereby Members can take actions to allow for easy access to affordable medicines to combat communicable diseases, in particular HIV/AIDS, tuberculosis and malaria, be upheld. My delegation reiterates the need for the protection of traditional knowledge, through an adequate multilateral legal framework” (Namburete, p. 01, 2001).

<sup>91</sup> “We must review the TRIPS Agreement with a view to ensuring that it serves public policy objectives that go beyond narrow commercial and trade interests” (Erwin, p. 01, 2001).

<sup>92</sup> “We attach great importance for the developing countries, stricken by epidemics, to benefit from the flexibility existing in the TRIPS Agreement as regards the access to medicines essential to the treatment of those diseases” (Neyts-Uyttebroeck, pp. 1-2, 2001).

<sup>93</sup> “In the area of intellectual property rights, assistance must be rendered and flexibility must be shown for developing countries in their implementation of the TRIPS Agreement. The flexibility of the TRIPS Agreement must be fully utilized” (Riis-Jorgensen, p. 01, 2001).

conflicting, since the use of “green barriers” from the part of developed countries to impede imports was frequent, as pointed out by India<sup>94</sup> and Malaysia<sup>95</sup>, Australia<sup>96</sup> and France<sup>97</sup>.

In view of the last paragraphs, we observe better results in Doha than in previous Ministerial discussions. Unprecedentedly, cooperation prevailed in 40% of the negotiations and members were confident they could improve this number at the next Ministerial Meeting, held in Cancun. Thus, high expectations were taken to Cancun, a fact that probably was one of the causes of its failure.

### *Fifth Ministerial Conference - Cancun (2003)*

#### *Context*

The Fifth Ministerial Conference took place in Cancun, Mexico, from 10 to 14 September 2003. There, the main objective was to measure the progress in negotiations under the Doha Development Agenda (DDA). The meeting was as a midterm review of the Doha Round, which was originally scheduled to be completed in 2005 (Vangrasstek, 2013). Moreover, it was also supposed to define how negotiations would be held from that moment onwards. According to Wolfe (2004), Cancun would serve to create an ambitious package to be complied with as a Single Undertaking to conclude the Doha Round. However, in the face of an ambitious agenda, negotiations deadlocked along North-South lines (Barton, Goldstein, Josling and Steinberg, 2008). Thus, plans for Cancun failed and discord prevailed as the only possible result.

#### *The meeting and its agenda*

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<sup>94</sup> “On environment we are strongly opposed to the use of environmental measures for protectionist purposes and to imposition of unilateral trade restrictive measures” (Maran, p. 01, 2001).

<sup>95</sup> “The linking of environment to trade has been and will continue to be contentious, as there is the valid concern that the environment factor can indeed be used for protectionist purposes” (Aziz, p. 01, 2001).

<sup>96</sup> “Australia places the highest priority on the retention of disciplines which prevent Members from misusing trade measures in the name of environmental protection, or imposing environmental standards unilaterally” (Fahey, p. 01, 2001).

<sup>97</sup> “The WTO must contribute decisively to the regulation of international trade by clarifying the relationship between trade and environmental rules (Fabius, p. 01, 2001).

Cancun held numerous negotiations on complex trade matters. The agenda consisted of discussions on Agriculture, Singapore issues, NAMA, Cotton trading, and TRIPS. The results of each negotiation are the following:

**Table 12 - Main issues negotiated in Cancun**

Year	Ministerial Conference	Agenda	Outcomes
2003	Cancun	Agriculture and subsidies	Discord
		Singapore issues	Discord
		Non-agricultural market access	Discord
		Cotton trading	Discord
		TRIPS Agreement	Cooperation

Source: Author.

The Doha mandate established that at Cancun Members would discuss the opening of agricultural markets. Developed countries, thus, would need to phase out all forms of export subsidies and eliminate the use of domestic support. Discussions on the elimination of subsidies were supported by most developing countries, such as Brazil, Argentina, Colombia, and South Africa, which were opposed by the US, EU, and Japan. The latter had robust policies of domestic support, in addition to tariffs, and non-tariff barriers to protect their agricultural markets.

Weeks before the conference, the US and EU submitted a joint proposal on subsidies. Briefly, it kept EU export subsidies and the US export credit program; maintained high limits for the use of distortionary domestic subsidies; proposed the use of a blended formula that did not meet the demands of tariff cuts suggested by developing countries; and, finally, changed the Special and Differential Treatment clause by arguing that it needed adjustments for net exporting countries of food (Fraga, 2016). Developing countries considered the document as a setback for discussions on subsidies (Carvalho, 2010).

In response to the proposal introduced by the US and EU<sup>98</sup>, numerous developing countries such as Brazil<sup>99</sup>, India<sup>100</sup>, South Africa<sup>101</sup>, and other 17 issued a counterproposal entitled “Agriculture - Framework Proposal”. At that moment the G20 emerged (Carvalho, 2010). Angola<sup>102</sup>, Colombia<sup>103</sup>, Singapore<sup>104</sup>, and many other countries gave remarkable speeches supporting the document. Basically, it included a (i) substantive reduction of distortionary domestic subsidies adopted by developed countries; (ii) the adoption of a blended formula for tariff reduction in developed countries; (iii) provisions on market access improvements for all products from developing countries; and, finally, a (iv) commitment from developed countries to eliminate all their export subsidies within a

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<sup>98</sup> “On agriculture, we have shown repeatedly our willingness to look for agreement, from the ambitious proposals we put on the table in January, to the agreement we concluded - at the urgings of our partners - with the United States over the summer” (Lamy, p. 01, 2003).

<sup>99</sup> “Perhaps no other area of trade is subject to so much discrimination as agriculture. Distortions in agricultural trade do not simply harm developing countries by denying them market opportunities. Domestic and export subsidies in developed countries depress prices and incomes throughout the world, cut into the export earnings of competitive exporters and increase food insecurity in developing countries. Their addictive power does not contribute to productivity or creation of wealth. They only generate dependency on one side and deprivation on the other (Amorim, p. 01, 2003).

<sup>100</sup> “The commitment by the developed countries to eliminate distortions in world agriculture caused by their policies holds the key to resolving differences amongst us in this area. It is no surprise that over the past few years, agricultural exports from developing countries to developed countries grew at just half the rate they did to other developing countries. Agricultural subsidies in developed countries are not targeted to keeping small struggling family farms in business but to provide hefty rents to large farmers or corporates” (Jaitley, pp. 1-2, 2003).

<sup>101</sup> “It is therefore inevitable that agriculture, and the outcome in this area, is decisive in whether we succeed or fail in Cancun. It is through addressing the inequities in the current global agricultural trade regime that we can begin to seriously address the widespread poverty in which so many millions of our people live in the developing world, and in Africa in particular” (Erwin, pp. 1-2, 2003).

<sup>102</sup> “Agriculture is deemed to be the backbone of the economy in developing countries and accounts for around 40 per cent of the GDP, provides over 60 per cent of export earnings, and employs some 70 per cent of the working population. Paradoxically, however, this sector is still facing constraints and there are many imbalances in the participation of developing and least-developed countries in international trade in commodities. It is quite obvious that agricultural exports from these countries to developed countries come up against obstacles such as the high level of tariffs, tariff escalation, non-tariff obstacles, massive production and export subsidies for certain products” (Akplogan, pp. 1-2, 2003).

<sup>103</sup> “The liberalization of external markets and the elimination of distortions, especially with regard to agricultural products, is the kind of response that many developing countries expect from more prosperous nations in order to balance the benefits of free trade” (Botero, pp. 1-2, 2003).

<sup>104</sup> “On agriculture, I make a plea to the developed countries to rise above their domestic politics and be more generous to developing countries. The hundreds of billions of dollars of subsidies spent every year by the developed countries make a mockery of the global trading system which developing countries are constantly being asked to support” (Yeo, p. 01, 2003).

defined period (Fraga, 2016). The US, EU and Japan strongly opposed the document, fact that promoted conflicts and discord.

Discord also prevailed in negotiations on the Singapore issues. Once again, the smaller economies reported great pressure on the part of the larger ones for the negotiation of such trade matters (Fraga, 2016). Controversially, the preliminary text of the Ministerial Declaration provided for the launch of negotiations on the Singapore issues, except for the competition policy agenda, at the request of the United States. The Indian<sup>105</sup> delegation, followed by numerous developing economies, such as Mozambique<sup>106</sup>, Thailand<sup>107</sup>, and Nigeria<sup>108</sup> opposed it. According to them, the Declaration did not have enough provisions for technical assistance in relation to Singapore Issues. Moreover, such countries argued that no consensus was reached to start discussions, a fact that paralyzed the discussions and promoted discord.

Discord was also evident in discussions on NAMA. According to WTO (2018g), NAMA refers to:

“All products not covered by the Agreement on Agriculture. In other words, it includes manufacturing products, fuels and mining products, fish and fish products, and forestry products. They are sometimes referred to as industrial products or manufactured goods” (WTO, p. 01, 2018g).

During negotiations, the US, EU, and Canada introduced a proposal on NAMA. According to the authors, its main goal was a meaningful tariff reduction. Notwithstanding,

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<sup>105</sup> “In our view the draft Cancún Ministerial Text is grossly inadequate on implementation issues and would severely affect the interests of developing countries in agriculture, industrial tariffs and Singapore issues. We cannot escape the conclusion that it does not accommodate the legitimate aspirations of developing countries and instead, seeks to project and advance the views of certain developed countries. Multilateral rules, binding in nature, in respect of trade facilitation and transparency in government procurement would entail high costs for developing countries” (Jaitley, pp. 1-2, 2003).

<sup>106</sup> “On Singapore Issues, we are of the view that these need more clarification. Technical assistance should be provided to developing countries, especially LDCs, in order to ensure their effective participation in this clarification process” (Morgado, pp. 1-2, 2003).

<sup>107</sup> “I believe that by linking all of these issues together we are further complicating the negotiations and impeding any decisive actions” (Bodharamik, p. 01, 2003).

<sup>108</sup> “My delegation, therefore, calls for more time to fully understand the implications of these issues, including the implication of entering into multilateral agreements on them. In the meantime, effective and appropriate technical assistance with a long-term perspective should be provided to build our capacity on these issues” (Waziri, p. 02, 2003).

the smallest economies considered the proposed tariff cuts very comfortable for the developed countries. In addition, China<sup>109</sup>, India<sup>110</sup>, Thailand<sup>111</sup> and Uganda<sup>112</sup> expressed their concerns about NAMA and affirmed that negotiations on that matter would not progress without meaningful results in discussions on subsidy elimination (Fraga, 2016).

Discussions on cotton trading also resulted in discord. The Cotton-4 (C4), comprised of Burkina Faso<sup>113</sup>, Benin<sup>114</sup>, Chad<sup>115</sup> and Mali<sup>116</sup>, strongly criticized subsidies on cotton production from the largest economies. According to them, the proposed text for the Ministerial Declaration did not reflect their two main flags. The first one was the elimination of such subsidies. The second, a BATNA for the first flag, was the payment of compensation for the negative impacts that such subsidies caused to exports from the

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<sup>109</sup> “We hold that NAMA negotiations should aim to substantially reduce tariff peaks and eliminate tariff escalation and should observe the principle of “less than full reciprocity” to genuinely safeguard the interests of Members whose economy are at the level of developing countries” (Lu, pp. 1-3, 2003).

<sup>110</sup> “It is only when the developed countries agree to take five steps forward in the removal of trade-distorting subsidies that the developing countries can take one step forward in the area of market access” (Jaitley, p. 01, 2003).

<sup>111</sup> “On market access, high tariffs and tariff peaks must be capped before the application of tariff reduction formula and tariff rate quota volume should be expanded to ensure real market access for agriculture products. There must also be substantial reduction commitment in all trade-distorting domestic support and an end date must also be set for the elimination of all forms of export subsidies” (Bodharamik, p. 02, 2003).

<sup>112</sup> “For there to be meaningful benefits and make the weak economies truly partners in trade, it is imperative that developed and developing countries use the results of these negotiations to help us by providing our agricultural export products with easier market access conditions, addressing other trade-distorting practices as well as protectionist policies in their economies. These concerns in agriculture include domestic support, export subsidies, tariff peaks and escalations as well as certain non-tariff barriers” (Rugumayo, p. 01, 2003).

<sup>113</sup> “With regard to export subsidies, we propose their rapid elimination and the introduction of a discipline on export credits” (Ouattara, p. 01, 2003).

<sup>114</sup> “The subsidies given for the production and export of cotton by some Members of our Organization (...) is prejudicial to least-developed countries that produce and export cotton and has harmful effects on their economy and on social conditions in the communities producing cotton in these vulnerable countries, which are increasingly marginalized” (Akplogan, p. 01, 2003).

<sup>115</sup> “Despite its competitiveness and economic importance in WCA countries, the cotton sector of West and Central Africa is unquestionably in jeopardy, for it is suffering the impact of the export subsidies and domestic support granted by various WTO Members to their producers, contrary to certain provisions of the Doha Declaration” (Mahamadi, p. 01, 2003).

<sup>116</sup> “If it were priced at its proper worth, our cotton would generate considerable income, enough to secure social well-being for millions of men, women and children, allowing them to eat their fill, receive proper care and go to school. But the agricultural support and subsidies that some Members grant to cotton production directly affects plummeting world cotton prices, now at their lowest level for several decades” (Maiga, p. 01, 2003).

African, Caribbean, and Pacific Group of States (ACP). Although both alternatives were presented, no agreement was possible on the matter.

Conversely, cooperation prevailed in negotiations on the implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. The paragraph dealt with the situation of WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector, such as Burkina Faso<sup>117</sup>. These countries faced difficulties in making effective use of compulsory licensing under the TRIPS Agreement. Thus, the solution was the adoption by the WTO General Council of the so-called August Decision. Roughly, it consisted of a waiver make it easier for poorer countries to import cheaper generics made under compulsory licensing (WTO, 2003; Fraga, 2016).

Summing up, the expectations for Cancun watered down. Despite the progress seen in TRIPs discussions, discord prevailed in 80% of the negotiations. Cancun's outcomes demonstrated the great paralysis of the Multilateral Trading System in the face of the challenging Doha Development Agenda (DDA). After Cancun, Members resumed negotiations at a meeting of the WTO General Council held in Geneva in July 2004. The intention there was to reset negotiations in progress before the Sixth Ministerial Conference. Regardless of the agenda, the meeting objective was to reach an agreement at any cost and Members manage to achieve so. The so-called "July Package", adopted in August 2004, provided a framework on which negotiations would be able to progress. Besides, it covered recommendations for negotiations on services, agriculture, NAMA, and trade facilitation (Vangrasstek, 2013). Moreover, the main points of the "July Package" were negotiated by a group called "Five Interested Parties" (FIPs), formed by the US, EU, Brazil, India, and Australia (Fraga, 2016). Two years later, in Hong Kong, these five countries would be responsible for moving forward with the package and seeking cooperation.

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<sup>117</sup> "Finally, I welcome the favourable outcome recently achieved in connection with the trade related aspects of intellectual property rights (TRIPS) and public health. Indeed, the promotion of access for all, at affordable prices, to essential medicines is a measure capable of bringing relief to millions of sick people, particularly in Africa (Ouattara, p. 01, 2003).



## *Sixth Ministerial Conference - Hong Kong (2005)*

### *Context*

Excited with the results achieved with the July package, WTO members returned to negotiations in Hong Kong with high expectations (Lee and Wilkinson, 2007). The plan was to make the July package a series of strong commitments that would finalize the Doha Round (Fraga, 2016). The plan, however, failed once again, triggering one of the biggest institutional crises WTO ever faced.

### *The meeting and its agenda*

In Hong Kong, Members negotiated numerous trade matters in accordance with the three pillars of the Doha Development Agenda. Table 13 displays the results of the main negotiations held:

**Table 13 – Main issues negotiated in Hong Kong**

<b>Year</b>	<b>Ministerial Conference</b>	<b>Agenda</b>	<b>Outcomes</b>
2005	Hong Kong	Agriculture and subsidies	Cooperation
		Non-agricultural market access	Cooperation
		Services	Discord
		Cotton trading	Discord
		TRIPS Agreement	Discord

Source: Author.

Once again, Agriculture was the central theme. The US and EU<sup>118</sup> took a leading role in negotiations on agricultural subsidies. Both countries introduced different proposals on the matter. The US proposed a meaningful reduction in the allowable limits for its own agricultural subsidies. To comply with the cuts proposed, however, the US required greater reductions in the allowed subsidies from the EU and Japan. In addition, it required, from

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<sup>118</sup> “Agriculture is important. Trade distorting subsidies must be cut back. Substantial improvements in market access must take place. We have to complete work that was begun in the Uruguay Round. That includes eliminating export supports and disciplining programmes which do not simply feed the hungry but also reward the already well-fed” (Mandelson, p. 01, 2005).

all WTO Members, the liberalization of trade in services, tariff reductions in agricultural products and NAMA (Fraga, 2016).

A few days later, the EU introduced its proposal and received a lot of criticism due to its shallowness, especially from the parts of the G20 and the Cairns Group. In this sense, statements given by Mexico<sup>119</sup> and Brazil<sup>120</sup> stood out. In response, the EU came up with a new version of the document. Although it had better positions on NAMA, it was considered, once again, a setback for the liberalization of agricultural trade (ICTSD, 2005a).

Neither proposal was good for the developing countries, who saw themselves without options. This impasse reduced expectations about the possibilities for cooperation, as observed in the statements given by Nigeria<sup>121</sup> and Mexico<sup>122</sup>. The conclusion of the Doha Round thus went further and further, especially due to the fact that it was not possible to define the values and formulas for tariff cuts of agricultural and industrial goods.

Given the lack of success on tariff cuts, WTO Members discussed miscellaneous issues on agriculture. Developing countries asked once again for the elimination of

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<sup>119</sup> “In agriculture especially, developed countries need to show a real commitment to development by adopting decisions which allow us to move forward in the opening of their markets and in the substantial reduction or elimination of trade-distorting subsidies that affect producers in developing countries” (Alba, p. 02, 2005).

<sup>120</sup> “The major economies cannot expect more concessions from developing countries than what they are willing to offer. This would be tantamount to S&D in the reverse. It just won't happen. The development deficit results from the inadequacy of the rules that apply to agriculture as compared to other economic activities. The agricultural gap compounds the development gap. For some time, even after Doha, developed countries tried to camouflage these realities. They attempted to sell to the rest of the world a round on the cheap. In Cancun, developing countries had to raise their voice against such a move. They stood firm against a meagre agreement that would not even scratch the structure of privileges and injustices built into world trade, notably in agriculture” (Amorim, p. 01, 2005).

<sup>121</sup> “Agriculture is very critical to the economy and livelihood of most developing countries. For Nigeria, it provides employment and means of livelihood for over 70 per cent of the population. It is our expectation that full modalities on agriculture would be attained at this Conference. We believe that it holds the key to the success of the entire Doha Development Agenda (DDA) negotiations. However, since this is no longer possible due to lack of convergence and irreconcilable differences among Members, we call on all parties to be more flexible and to demonstrate the requisite political will, so that genuine progress can be made in the negotiations” (Waziri, p. 01, 2005).

<sup>122</sup> “The negotiations have not advanced as far as we would have liked. This sixth session of the Ministerial Conference will not result in an agreement on modalities in agriculture or NAMA or in any firm agreements on services; nor will any significant progress be made on anti-dumping measures or fishing subsidies” (Alba, p. 01, 2006).

distorting subsidies. Conversely, the European Union, as usual, was against deep discussions on the matter. Notwithstanding, after long negotiations between the EU and G20, the EU gave in to a point that seemed insurmountable at that time. Consequently, they agreed that 2013 would be the deadline for the definitive elimination of all export subsidies (ICTSD, 2005a). Although much of the agricultural negotiations failed in the conference, such commitment to 2013 is considered as an element of cooperation.

Cooperation also prevailed in NAMA discussions. On this respect, Members reached an agreement on the structuring of the process of tariff cuts. According to the text, 2006 would be the deadline for the implementation of a broad tariff cutting process by all members. Numerous flexibilities were created for developing countries, while the largest economies were required to make greater cuts.

Discord, in turn, prevailed in discussions on services. Developing economies and LDCs, such as Dominica<sup>123</sup>, Tanzania<sup>124</sup>, Bangladesh<sup>125</sup>, Nigeria<sup>126</sup>, India<sup>127</sup> and Indonesia<sup>128</sup> argued the draft of the Ministerial Declaration proposed by developed countries was harmful to service providers in their territories. According to them, the lack of flexibility in relation to the fourth modality of service provision was the cause of such harmfulness. In addition, these countries affirmed the draft was weak because it did not force the largest economies to liberalize trade in services. Conversely, the European Union warned that in case of any change in the text, no agreement on the matter would be possible

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<sup>123</sup> “Dominica is concerned at proposals being made which could have the effect of removing the flexibilities crafted into the GATS for developing countries, thereby making it more difficult for a small resource strapped country like Dominica to participate effectively in the negotiations” (Savarin, p. 02, 2005).

<sup>124</sup> “Even more important, we cannot over-emphasize the need for opening up market access opportunities for services, especially on Mode IV, in favour of the LDCs, given the fact that Mode IV provides the most practical avenue for LDCs to benefit from the multilateral trade in services” (Mwandosya, p. 01, 2005).

<sup>125</sup> “We seek a regime to facilitate the movement of temporary service providers, under Mode 4 of the Services Agreement” (Choudhury, p. 01, 2005).

<sup>126</sup> “On services, our objectives in the negotiations are to address key issues of concern such as the liberalization of Mode 4 relating to movement of natural persons” (Waziri, p. 01, 2005).

<sup>127</sup> “The services negotiations need a clear direction, without undermining the flexibilities available to developing countries under the GATS architecture” (Nath, p. 01, 2005).

<sup>128</sup> “On the issue of services, we wish to emphasize that such an agreement should not erode developing countries flexibilities or negate the policy space as carefully negotiated in the Uruguay Round” (Pangestu, p. 01, 2005).

(ICTSD, 2005b). Consequently, discussions stagnated and discord was the only possible outcome.

The negotiations on cotton trading also resulted in discord. Although the Ministerial Declaration required the end of subsidies for cotton production by 2006, developing countries claimed the text did not solve their problem. Conversely, it is true that the Declaration created better market access conditions for their products in developed countries. Notwithstanding, cotton exports from these countries to developed markets were almost negligible since their target markets were the developing economies, where cotton subsidized by developed countries continued to be the most competitive (Lauria, 2017).

Discord also prevailed in negotiations on intellectual property. According to developing countries, the Convention on Biological Diversity allowed biopiracy and the misappropriation of traditional knowledge for commercial purposes. These countries, especially India<sup>129</sup>, claimed for numerous amendments to the TRIPS agreement, with the objective of making patent applicants comply with four requirements. Firstly, to prove the origin of genetic resources; secondly, to demonstrate what traditional knowledge relates to the material under protection; thirdly, to show evidence of prior consent from the people impacted by the patent; and, finally, to distribute a kind of remuneration to the people affected (ICTSD, 2005c). Once again, no agreement was possible.

In the year following the conference, Members did not fulfill any deadlines or commitments. In 2007, for the first time in history, WTO suspended the biennial Ministerial Conference established by the Marrakech Agreement (Vangrasstek, 2013). Thus, it became clear to all that WTO negotiations were a political disaster.

In July 2008, around thirty Members met again in a mini-Ministerial held in Geneva. The goal was to repair the damage caused to the Multilateral Trading System. Most of the

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<sup>129</sup> On the unfinished agenda of development inherited from the Uruguay Round is the imbalance in the TRIPs Agreement between private IPRs and the intellectual heritage of communities. There is growing popular discontent among developing countries over bio-piracy and the misappropriation of their traditional knowledge for commercial gain. The Hong Kong Ministerial must pave the way for the launch of negotiations on the issues pertaining to the relationship between the TRIPs Agreement and the Convention on Bio-Diversity (Nath, p. 01, 2005).

negotiations were held in a narrow group, the so-called G7<sup>130</sup> and, in some cases, the group was even smaller due to the absence of China and Japan (Fraga, 2016). Besides, the mini-meeting witnessed conflicts between India and the United States, especially in negotiations on special safeguards mechanisms (SSM). This constant scenario of disagreements reduced expectations for the subsequent Ministerial Conferences, held in Geneva in 2009 and 2011 (Vangrasstek, 2013). These conferences did not even produce Ministerial Declarations and thus were classified as mere "housekeeping exercises" (Fraga, 2016).

*Seventh Ministerial Conference – Geneva (2009)*

*Context*

The Seventh Ministerial Conference took place in Geneva, Switzerland, from 30 November to 2 December 2009. The expectations for the conference were very low, and rightly so. The Conference happened after the outbreak of the 2008 crisis. In addition, it was the first meeting to happen after the longest institutional gap of the WTO since its inception. After four years without a Ministerial Conference, Geneva talks were not even considered a negotiating session. Instead, the conference was classified as a mere opportunity for Ministers to review the functioning of the WTO, including the Doha Round (WTO, 2009).

*The meeting and its agenda*

Low expectations and a non-conflicting agenda made cooperation and harmony, for the first time, prevail in a Ministerial Meeting. Table 13 displays the result of discussions held during the Conference:

**Table 13 - Main issues negotiated in Geneva**

<b>Year</b>	<b>Ministerial Conference</b>	<b>Agenda</b>	<b>Outcomes</b>
2009	Geneva	Banana trading	Cooperation
		TRIPS	Harmony
		E-commerce	Harmony
		GSTP and tariffs	Cooperation

<sup>130</sup> Australia, Brazil, China, USA, India, Japan, and EU.

		Environmental issues	Discord
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Source: Author.

With respect to banana trading, negotiators from EU and Latin America held discussions and reached an agreement on tariffs imposed by the EU on imported bananas. On this respect, the EU would make progressive cuts on its MNF tariff. In exchange, Latin American producers would drop all WTO litigation on the matter. The agreement was part of a broader discussion that started in Doha on the fullest liberalization of tropical products (ICTSD, 2009).

Cooperation also prevailed in negotiations on tariff liberalization under the Global System of Trade Preferences among Developing Countries (GSTP). Briefly, the GSTP is a PTA signed on 13 April 1988 that aims at increasing trade between developing countries in the framework of the United Nations Conference on Trade and Development ([UNCTAD], 2004). On this respect, members agreed to promote a round of tariff cuts of more than 20% on products traded among them. Moreover, the cuts would cover around 70% of the manufactured and agricultural products of each Member, being considered a positive movement to foster South-South trade (ICTSD, 2009).

On e-commerce, ministers agreed on a moratorium to extend the ban of tariffs on goods sold for download on the internet, such as movies or songs. WTO Members approved the ban for the first time during the second Ministerial Conference in 1998. At that time, they agreed to refrain from "imposing customs duties on electronic transmissions". In 2009, no member opposed the maintenance of that ban and, thus, it is possible to affirm harmony prevailed on this agenda.

Harmony also prevailed in discussions on non-violation complaints under the TRIPS agreement. Although WTO allowed such complaints about trade in goods and services, in 1995 Members agreed to ban IP-related cases for five years. In the following meetings, they agreed on moratoriums to extend such ban and the same strategy was adopted in 2009. Consequently, members agreed, with no conflict, to extend the moratorium once again and to negotiate the matter at next ministerial meetings.

Discord only prevailed in discussions on environmental goods. Developed countries, such as Canada<sup>131</sup>, Netherlands<sup>132</sup>, Japan<sup>133</sup>, Portugal<sup>134</sup>, and Australia<sup>135</sup> were very interested in closing an agreement on the matter as soon as possible. The context was favorable since discussions were held the same year during the United Nations Climate Change Conference. For these countries, the liberalization of this category was a positive move for the mitigation of the environmental crisis arising from climate change. Developing countries, such as Indonesia<sup>136</sup>, however, did not share the same position. Once again, they saw the debates on environmental matters as a smokescreen for protectionism (ICTSD, 2009). Hence, although interesting discussions on the relationship between trade and environmental protection occurred, Members did not reach consensus.

For the first time, WTO witnessed a Ministerial Conference with more positive than negative outcomes. Three facts explain these results. Firstly, no complex negotiations took place; secondly, Members did not produce a Ministerial Declaration; finally, there were no high expectations for the meeting. A very similar result prevailed two years later, during the next Ministerial Conference.

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<sup>131</sup> “Canada also welcomes the suggestion that we ramp-up efforts to define early actions on environmental goods which would be a benefit not only for efforts on climate change but also in achieving freer and open trade here at the WTO” (Day, p. 02, 2009).

<sup>132</sup> “Climate change should also be addressed urgently: we need to work on early liberalization of environmental goods like solar panels and windmills and services as part of the DDA. We should also work constructively on a way to take account of sustainability concerns in a practical, non-discriminatory way. But first things first: take what is on the table in the DDA, fill in the last gaps and sign a deal (Heemskerk, p. 01, 2009).

<sup>133</sup> “Some like-minded nations, including Japan, are considering conducting discussions with a view to achieving an early agreement to liberalize trade in environmental goods. I hope that other interested Members will join these discussions, and provide fresh impetus to the Round as a whole” (Naoshima, p. 01, 2009).

<sup>134</sup> “Our immediate focus should be in Copenhagen and on how to achieve a good outcome for global action, while being aware that trade policy will have to contribute to the objectives of the environmental agenda” (Lourtie, p. 01, 2009).

<sup>135</sup> “We need to accelerate in my view the outcome in environmental trade in goods and services. It is all very well to talk about aid for climate change” (Crean, p. 01, 2009).

<sup>136</sup> “Developing countries need to be able to conduct their trade-related activities in a manner that is consistent with environmental goals and sustainability and we must also ensure that there will be consistency and coherence between the WTO framework and the emerging international climate change regime” (Pangestu, p. 01, 2009).

## *Eighth Ministerial Conference - Geneva (2011)*

### *Context*

The Eighth Ministerial Conference was held in Geneva, from 15 to 17 December 2011. In parallel to the Plenary Session, there were three Working Sessions to discuss the following agendas: the importance of the Multilateral Trading System and the WTO; trade and development; and the DDA (WTO, 2018g). The main objective of the conference was, again, to evaluate the progress of the WTO's work (ICTSD, 2011a).

### *The meeting and its agenda*

In plenary, discussions focused on three agendas that historically resulted in discord. The outcomes of these discussions are the following:

**Table 14 - Main issues negotiated in Geneva**

<b>Year</b>	<b>Ministerial Conference</b>	<b>Agenda</b>	<b>Outcomes</b>
2011	Geneva	Cotton trading	Cooperation
		Government procurement	Cooperation
		Special and differential treatment	Cooperation

Source: Author.

For the first time, WTO Members reached an agreement on cotton trading. Historically, the US distorted world cotton trade by maintaining subsidies on its production. These subsidies undermined the competitiveness of developing countries, especially those in West Africa, such as Benin<sup>137</sup>. Although the US, once again, did not eliminate its subsidies, it proposed to the C4 Group an agreement to improve their market access conditions through a technical assistance program for West African countries. In view of the proposed agreement, African cotton producers became partially satisfied, knowing that they achieved progress (ICTSD, 2011c).

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<sup>137</sup> “The C4 is, therefore, seizing the opportunity provided by this forum to appeal once again to all WTO Members, and in particular the United States, to show flexibility in order for us to make headway on this matter as quickly as possible. Cotton is, now more than ever, a pressing issue for the WTO, and the Organization must, at the risk of losing its credibility, find a quick and fair solution to this issue which has remained pending since it was first raised in 2003” (Sephou, p. 01, 2011).



Cooperation also prevailed in government procurement talks. In 1994, WTO Members closed the Government Procurement Agreement (GPA). Two years later, in 1996, its Members initiated a process of renegotiation. From 1996 to 2011, no progress was possible due to divergences between the EU, Japan, and the US. In 2011, during the MC8, however, forty-two Members signed a new version of the GPA to eliminate trade discrimination within their public procurement systems for goods and services. At that time, GPA's provisions were considered more flexible for developing countries. They finally perceived it as an opportunity for creating jobs, growth, and competitiveness. Therefore, several Members welcome the agreement, such as Spain<sup>138</sup>, South Korea<sup>139</sup>, and Hong Kong<sup>140</sup>. The new version of GPA entered into force on 6 April 2014 and further negotiations were scheduled to progressively eliminate discriminatory measures in government procurement (WTO, 2018h).

Finally, cooperation also prevailed in discussions on special treatment to LDCs. Many LDCs and developing countries, such as Mozambique<sup>141</sup>, Central African

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<sup>138</sup> “We are also very pleased at the agreement reached yesterday to revise the Agreement on Government Procurement, which already includes 41 WTO Member countries and which, we hope, further countries will soon join” (Bonet, p. 02, 2011).

<sup>139</sup> “First of all, there is no doubt that we should keep the trade liberalization talks moving. I would like to refer to the impasse of the DDA as a crisis of confidence. Based upon a sober assessment of where we are, we should redouble our efforts to deliver any modest outcome, which can go a long way towards regaining the credibility of the multilateral trading system. In this regard, I congratulate on the conclusion of negotiations to upgrade the Government Procurement Agreement” (Kim, pp. 1-2, 2011).

<sup>140</sup> “I am very pleased that those Members who are parties to the WTO Agreement on Government Procurement (GPA) have, this morning, been able to agree to an improved and updated agreement comprising expanded commitments. It is also very encouraging that several WTO Members are actively pursuing accession to the GPA, most particularly China, which has tabled a new improved offer. GPA Membership brings many benefits, and we would encourage others to consider joining too” (Kam-leung, p. 01, 2011).

<sup>141</sup> “We strongly believe that WTO should continue to commit itself to providing assistance for developing countries, the LDCs in particular, with a view to facilitate their integration into the multilateral trading system. To this regard, WTO should aim to support more integrated initiatives on trade and capacity building. These undertakings should be among the main priorities of the WTO future activities in order to ensure the integration of LDCs in the global economy” (Marizane, p. 01, 2011).

Republic<sup>142</sup>, Nigeria<sup>143</sup>, Uganda<sup>144</sup>, Singapore<sup>145</sup>, Hong Kong<sup>146</sup>, and India<sup>147</sup>, were all excited with the results of the previous conferences. At this conference, their focus was on achieving flexibilities in favor of their markets. Unprecedentedly, WTO Members agreed to create a waiver to grant special and differential treatment for services offered by LDCs. Until 2011, Members adopted waivers only for trade in goods. Even so, such waivers were complex, because they consisted of a relaxation of the MFN principle. The outcome of these negotiations may have been the most important of the whole conference, being applauded by the smaller economies (ICTSD, 2011d).

For the first time, cooperation prevailed in 100% of the main negotiations held in Ministerial Conference. This outcome paved the way for the progress achieved two years later in the Conference held in Bali, which is described in the following section.

### *Ninth Ministerial Conference - Bali (2013)*

#### *Context*

The Ninth Ministerial Conference was held in Bali, Indonesia, from 3 to 7 December 2013. After two Conferences that produced timid, but good results for the relations between developed and developing countries, Ministers adopted the Bali Package.

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<sup>142</sup> “My country also favours the continuation of the negotiations on the basis of the progress already achieved, with due respect for the development dimension and taking into account the major concerns of the LDCs” (Roosalem, pp. 1-2, 2011).

<sup>143</sup> “Nigeria is pleased to note that, in spite of the prevailing challenges, MC8 has been able to take some important decisions on (...) the LDC services waiver” (Kigbu, p. 01, 2011).

<sup>144</sup> “Uganda recognizes the importance of Capacity building for trade. We therefore appreciate the progress made so far with the Aid for Trade initiative and reiterate that priority should be attached to effective and progressive implementation of the Enhanced Integrated Framework” (Kyambadde, p. 02, 2011).

<sup>145</sup> “Singapore welcomes the decisions we will adopt in the next few days, especially those which benefit the LDC Members. In our Trade and Development Session, it will be important to focus our minds on what it really means to fully integrate developing countries into the multilateral trading system” (Hong, pp. 1-2, 2011).

<sup>146</sup> “With regard to least developed countries (LDCs), I would like to welcome the small but positive steps we are taking at this Ministerial to help LDCs to better integrate into the global trading system: the Services Waiver; the LDC Accession Decision further to streamline, strengthen and operationalize the 2002 guidelines; and the extension of the transition period under Article 66.1 of the TRIPS Agreement. But more must be done, including on cotton and on Duty-Free Quota-Free market access for LDCs” (Kam-leung, p. 01, 2011).

<sup>147</sup> “India welcomes the LDC-related decisions for adoption at this Ministerial. While this is less than what we have strived for over the last several months, these decisions will send out a positive signal about WTO's commitment to the Development Agenda. India has always accorded high priority to the Services Waiver for LDCs and we welcome the decision in this regard” (Sharma, p. 01, 2011).

It consisted of a series of decisions aimed at streamlining trade and helping LDCs and developing countries to develop from it. (WTO, 2018i). The progress Members achieved in Bali went down in history as the most significant sign that the WTO was, indeed, alive. In this sense, WTO could finally feel that the possibilities of ending the Doha Round were very close.

*The meeting and its agenda*

Unlike the previous two conferences, ministers witnessed a very challenging agenda. Bali would be a turning point for the legitimacy of the WTO as the regulator of the international trading system. Negotiations focused on trade facilitation, food security, and, once again, on special treatment for LDCs. Their outcomes are the following:

**Table 15 - Main issues negotiated in Bali**

Year	Ministerial Conference	Agenda	Outcomes
2013	Bali	Trade facilitation	Cooperation
		Food security	Cooperation
		Special and differential treatment	Cooperation

Source: Author.

The Bali Package was the best possible outcome for the conference. It included agreements on trade facilitation, as well as decisions related to food security programs and special and differential treatment for developing countries (Fraga, 2014).

The Trade Facilitation Agreement (TFA) was the first multilateral agreement Members concluded after the creation of the WTO. Its goal was to reduce bureaucracy in trade. For instance, it created the concept of Single Window for trade procedures. As the main guideline of the Agreement, it seeks to establish a unique interface between the private sector government. Through it, all the procedures necessary to trade are described and executable. Academics in international trade recognize the broader benefits of the agreement. Miles (2014), for example, estimates the TFA can add \$ 1 trillion to the world economy and create 21 million jobs, most of them in developing countries (ICTSD, 2013).

It is worth mentioning the TFA also concerned several developing countries, such as India<sup>148</sup>, Brazil<sup>149</sup>, South Africa<sup>150</sup>, Argentina<sup>151</sup>, and Cuba<sup>152</sup>. These countries argued the TFA was costly to implement, especially the Single Window concept (ICTSD, 2013). Notwithstanding, the TFA was considered a victory after 12 years of paralysis since the beginning of the Doha Round. Developing and developed countries made numerous concessions and adjustments for closing a text. The European Union<sup>153</sup>, United Kingdom<sup>154</sup>, Rwanda<sup>155</sup>, and many other countries welcomed the TFA, giving remarkable speeches in plenary sessions.

Food security discussions also resulted in cooperation, although much conflict was raised due to the fact that food security programs are usually based on subsidies to domestic

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<sup>148c</sup> On a few issues of grave concern to India and many other WTO Members, the text on trade facilitation has eluded consensus. Till these issues are successfully resolved, it may not be possible for us to collectively reach a balanced agreement” (Sharma, p. 02, 2013).

<sup>149</sup> “We have worked constructively to shape the agreement on trade facilitation. This common endeavor coincides with efforts underway in Brazil to reduce costs and streamline customs procedures. These objectives are shared by all Members. This agreement will entail, however, implementation costs that may be burdensome, especially for LDCs. Therefore, the implementation of this agreement will require political commitment to fulfill its obligations as well as to provide developing countries and LDCs with the technical assistance and capacity building required” (Machado, p. 01, 2013).

<sup>150</sup> “The proposed Trade Facilitation text is expansive and contains many new obligations for most developing countries, which will disproportionately bear the burden of implementation. There is also no certainty that the capacity building and assistance that would be necessary for implementation would be forthcoming” (Davies, p. 01, 2013).

<sup>151</sup> “In our view, the Trade Facilitation Agreement is not an agreement which favours the poorest countries or provides widespread benefits, but one that benefits some Members more than others” (Timerman, p. 02, 2013)

<sup>152</sup> “The package seeks to impose a legally binding Trade Facilitation Agreement which would mainly benefit the developed countries, while the latter are placing heavy burdens on the developing countries without guaranteeing, in the form of a binding commitment, the technical and financial assistance needed to overcome them” (Mordoche, pp. 1-2, 2013).

<sup>153</sup> “After many months of discussions and long periods of uncertainty, we have reached agreement on the flexibilities available to developing countries in the implementation of the Trade Facilitation agreement, which addresses all concerns and ensures that developing countries and particularly the Least Developed Countries will be able to implement the agreement according to their own country-specific requirements” (Gucht, p. 01, 2013).

<sup>154</sup> “I welcome the agreement we have so nearly reached on trade facilitation. Everyone here is aware of its significance both for jobs and growth in our economies, and in particular land locked Least-Developed Countries” (Green, p. 02, 2013).

<sup>155</sup> “It is on this basis that Rwanda supports the adoption of a Trade Facilitation Agreement. I cannot stress enough the importance of Trade Facilitation for Africa as a whole, and for Rwanda in particular. Trade Facilitation is part of our national agenda” (Kanimba, p. 01, 2013).

food production (Fraga, 2014). After long negotiations, especially between India<sup>156</sup> and EU, a consensus was possible. From Bali onwards, litigation on legitimate food security programs would no longer be possible in the Dispute Settlement Body (DSB) (ICTSD, 2013).

WTO Members adopted several other provisions to promote special and differential treatment for LDCs, such as the promotion of tariff cuts for their products; the relaxation of rules of origin; as well as the reaffirmation of the services waiver negotiated at the previous MC (ICTSD, 2013).

Bali was undoubtedly a success since cooperation prevailed in 100% of the main agendas negotiated. Members would partially reproduce this positive result two years later during the Nairobi Ministerial Conference, which is described in the next section.

#### *Tenth Ministerial Conference - Nairobi (2015)*

##### *Context*

The Tenth Ministerial Conference was held in Nairobi, Kenya, from 15 to 19 December 2015. With high expectations, the Conference resulted in the adoption of the "Nairobi Package", which consisted of a series of Ministerial Decisions on agriculture and LDCs. In addition, the conference resulted in the expansion of the Information and Technology Agreement (ITA) (WTO, 2018j).

##### *The meeting and its agenda*

As in Bali, Nairobi had a challenging agenda. The results of the main discussions held are the following:

**Table 16 - Main issues negotiated in Nairobi**

Year	Ministerial Conference	Agenda	Outcomes
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<sup>156</sup> “For India food security is non-negotiable. Governments of all developing nations have a legitimate obligation and moral commitment towards food and livelihood security of hundreds of millions of their hungry and poor” (Sharma, p. 01, 2013).

2015	Nairobi	Information Technology	Cooperation
		Agriculture and subsidies	Cooperation
		Cotton trading	Cooperation
		Competition policies for exports	Cooperation
		Inclusion of new themes	Discord

Source: Author.

In 1996, during the MC1, 29 Members closed the ITA. Since then, the number of its Members has grown to 82, which represents 97% of world trade in IT products. Within the Agreement, Members are committed to eliminating tariffs on numerous IT products. In Nairobi, they agreed to expand it to cover more 201 products valued at over \$1.3 trillion (WTO, 2018k). The positive results were acclaimed in plenary by several countries, worth highlighting the speeches of the United States<sup>157</sup>, and the United Kingdom.

Cooperation also prevailed in negotiations on agriculture. Under the Nairobi Package, developed countries were required to eliminate remaining agricultural export subsidies as soon as possible. Dairy and pork products were exceptions since they were allowed to receive subsidies until 2020. Moreover, other exceptions were created to LDCs and developing countries. While LDCs were authorized to keep their subsidies until 2030, developing countries succeeded in adding to the Ministerial Declaration the establishment of a special safeguard mechanism (ICTSD, 2015). The mechanism was the outcome of a long negotiation between China, India, and Indonesia under the G33. Briefly, it allowed developing countries to increase tariffs in the case of import surges or external shocks (WTO, 2015a).

Negotiations on cotton trading also ended in cooperation. The decision adopted by members aimed at (i) prohibiting export subsidies; (ii) promote a further reduction in domestic support; and (iii) improve market access conditions of products exported by LDCs. Moreover, developed countries were required to eliminate subsidies immediately,

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<sup>157</sup> “And finally, just yesterday, we reached an agreement that expands the Information Technology Agreement, eliminating tariffs on an estimated \$1 trillion of exports, 10 percent of all trade” (Froman, p. 02, 2015).

while developing economies would do the same no later than 1 January 2017 (WTO, 2015b).

A positive result was also observed in discussions on competition policies and state trading enterprises. On these matters, conflict prevailed in almost all attempts at cooperation. The US, Canada, and New Zealand opposed India and Turkey in relation to their credit to domestic exporters through trading enterprises. According to the US, such credit was not notified to the WTO and, thus, would have to be notified. At the end of the conference, provisions to avoid non-transparency were added to the Ministerial Declaration (ICTSD, 2015). Briefly, they minimized their possible distorting impact with several rules, including:

“maximum repayment terms for export financing programmes for agriculture exporters supported by the government, provisions on state trading enterprises engaging in agriculture trade, and disciplines to ensure that food aid does not displace trade and does not cause adverse effects on domestic production” (WTO, p. 01, 2018).

Discord only prevailed in discussions on the negotiation of new themes. Conflicts between developing countries, the US and EU prevented an agreement. Furthermore, developing countries kept their position on the impossibility of negotiating new agendas. For them, negotiating new issues was to create new obligations beyond those not yet fulfilled from the Marrakesh Agreement. Thus, negotiations on new themes were not even started (ICTSD, 2015).

In Nairobi, WTO Members made progress since cooperation prevailed in 80% of the main agendas negotiated. This positive scenario, however, was not repeated at the following MC held in Buenos Aires, which is explained in the next section.

#### *Eleventh Ministerial Conference – Buenos Aires (2017)*

##### *Context*

The Eleventh Ministerial Conference took place in Buenos Aires from 10 to 13 December 2017 (WTO, 2018k). Despite GATT’s 70th anniversary, there was a high sense

that the global trading system could experience a profound shake-up. The MC11 was first after the election of Donald Trump and numerous regional integration initiatives were progressing at that time, such as the development of new trade routes through China's Belt and Road Initiative; the negotiation in the Asia-Pacific Regional Comprehensive Economic Partnership (RCEP); the Continental Free Trade Area (CFTA) in Africa; the negotiation of Trans-Pacific Partnership (TPP) without the US; the planned extension of the Pacific Alliance to new associate Members; and the EU-Canada Comprehensive Economic and Trade Agreement (ICTSD, 2017). Buenos Aires' outcome was a slowdown in the pace of cooperation seen at previous meetings. Several delegations, such as the European Union<sup>158</sup>, expressed frustration in relation to the failure in achieving almost all the expected objectives. Notwithstanding, the Conference held fruitful discussions on the Paris Agreement and the United Nations 2030 Agenda for Sustainable Development.

*The meeting and its agenda*

The main themes discussed at the Conference were:

**Table 17 - Main issues negotiated in Buenos Aires**

Year	Ministerial Conference	Agenda	Outcomes
2017	Buenos Aires	Agriculture and subsidies	Discord
		Cotton Trading	Discord
		Special and differential treatment	Discord
		Harmful fisheries subsidies	Discord
		Investments facilitation	Cooperation

Source: author.

On agriculture, discord prevailed. Trade-distorting domestic support continued to be a problem and Ministers failed to agree on a consensus language on the future work on agriculture. Besides, objections from the part of the US, EU, Norway, Switzerland, and Japan were the main stumbling-block for cooperation in this area. Furthermore, numerous

<sup>158</sup> “All WTO Members have to face a simple fact: we failed to achieve all our objectives, and did not achieve any multilateral outcome. The sad reality is that we did not even agree to stop subsidizing illegal fishing. Now, I hope that several WTO Members, whose actions here in Buenos Aires prevented an outcome, will use the time following this Ministerial meeting for valuable self-reflection” (Malmström, p. 01, 2017).



developing countries opposed them, such as China, India, and the ACP group, which were all in favor of the elimination of trade-distorting domestic support from developed countries. They defended the maintenance of flexibilities for the smallest economies, which would be used only in exceptional situations. Conversely, the US and EU argued that such flexibilities would continue to distort markets and providing unfair trade advantages. Likewise, Norway, Switzerland, and Japan stressed that developing countries' stance was unacceptable (ICTSD, 2017).

Members also discussed other agricultural agendas, such as public stockholding, cotton, and export restrictions, but their progress was timid. The reason for such paralysis lies in the behavior of the US. According to many developing countries, the US made tactical linkages to issues they knew were unlikely to be resolved in order to avoid making concessions in sensitive areas, such as subsidies (ICTSD, 2017). In addition, the US opposed clauses referring to special and differential treatment for developing countries; argued against negotiations on public food stockholding and special safeguard mechanisms; and explicitly opposed any kind of concession to the so-called C4 group, which demanded market access improvement for cotton produced in West Africa. In view of the foregoing facts, discord clearly prevailed in all discussions on agriculture.

Discord also prevailed in negotiations on harmful fisheries subsidies. An agreement to discipline fisheries subsidies had long been considered one of the potential big deliverables from Buenos Aires. Considering Sustainable Development Goal (SDG) target 14.6, which disciplines actions to preserve life under water, an agreement would be even more important. Many speeches in favor of an agreement were recurrent in plenary sessions, worth highlighting the speeches gave by Barbados<sup>159</sup>, on behalf of the ACP Group,

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<sup>159</sup> “Our proposal on fisheries subsidies rules and our negotiators have led the efforts to fulfil the objectives of Sustainable Development Goals target 14.6. At this Ministerial, we must have a mandate to continue the negotiations after MC11 in hopes of a fuller outcome at the next Ministerial and before the 2020 deadline. It would also send an important signal if we were to agree, not to provide subsidies that contribute to illegal, unregulated and unreported fishing activities. The message would have more resonance if we could agree to meaningful flexibilities and capacity building for tackling unregulated and unreported fishing activities” (Clean, p. 01, 2017).

Belize<sup>160</sup>, Mauritius<sup>161</sup>, Malaysia<sup>162</sup>, Indonesia<sup>163</sup>, Argentina<sup>164</sup>, and many other delegations. The main objective of discussions was to eliminate subsidies to illegal, unreported, and unregulated (IUU) fishing by 2020, without failing to provide with flexibilities for LDCs and developing countries (ICTSD, 2017). The interests of large and small economies were not balanced and no agreement was possible.

On investments facilitation, cooperation prevailed for the first time. As one of the four Singapore Issues, negotiations on investments have always been a taboo within the WTO. In Buenos Aires, this changed, since sixty developed and developing countries announced a Ministerial Declaration on investment facilitation. The document described how action plans in this area could support the development of countries. Supporters recognized the dynamic links between investment, trade, and development in today's global economy, stating how important is to promote international cooperation to "create a more transparent, efficient, and predictable environment for facilitating cross-border investment" (WTO, p. 01, 2017b).

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<sup>160</sup> "The proposed disciplines on fisheries subsidies are important for addressing overfishing, and Illegal, Unreported and Unregulated (IUU) fishing but we must take account of the Caribbean's high level of dependence on fisheries resources and the need for SDT to ensure the survival of our small scale fishers and the development of our Fishing Industry" (Sutherland, p. 02, 2017).

<sup>161</sup> "The fisheries subsidies disciplines should not impede the ability of Ocean states and SIDS, like Mauritius, to develop and diversify their fisheries sector" (Dhalladoo, p. 01, 2017).

<sup>162</sup> "With regard to fisheries subsidies negotiations, Malaysia is willing to support the initiative to strengthen multilateral disciplines on measures to address subsidies that contribute to overcapacity, overfishing and Illegal, unreported and unregulated fishing (IUU) in line with the Sustainable Development Goal 14.6" (Jayasiri, p. 02, 2017).

<sup>163</sup> "Indonesia believes that trade has been and will continue to be the main engine of inclusive growth, development and poverty reduction. And in this respect, the Government of Indonesia remains firm to put agriculture and fisheries subsidies as priorities in the WTO's works, considering their strategic roles in economic development, as the main sources of livelihood for most Indonesian people, and their critical roles in responding to the challenges of food security, poverty alleviation and rural development" (Lukita, p. 01, 2017).

<sup>164</sup> "Likewise, progress towards the establishment of disciplines to prohibit fisheries subsidies will represent a major WTO contribution to development, food security, and environmental conservation" (Faurie, p. 01, 2017).

Many fruitful discussions were held in MC11. Notwithstanding, discord prevailed in 80% of the main agendas negotiated. A different scenario is expected at the Twelfth Ministerial Conference (MC12) to be held in 2020 in Astana, Kazakhstan.

### *Concluding remarks*

The objective of chapter 2 was to classify MCs with three concepts: cooperation, harmony, and discord (Keohane, 1984). Discord prevailed in most negotiations held from 1996 to 2017. In detail, it prevailed in 59% of the negotiations analyzed, mainly in those on agriculture, subsidies, and Singapore issues. Conversely, discord trends became weaker as from 2001, when more situations of cooperation came to be seen at Ministerial Conferences.

Bearing these conclusions in mind, we turn to chapter 3, which addresses a comprehensive data overview on NTMs and RTAs. Besides, it holds an explanation of the effects of MCs' outcomes on the number of NTMs notified to the WTO. Furthermore, it aims at presenting macro-trends on RTAs, which are necessary to contextualize the test of the hypothesis proposed.

At the end of chapter 3, it is going to be possible to know how NTMs behave in relation to the outcome of each MC analyzed; to confirm or deny the existence of a correlation between RTAs and NTMs; and, lastly, to compare the effectiveness of Ministerial Conferences and RTAs to reduce the number of NTMs notified to the WTO.

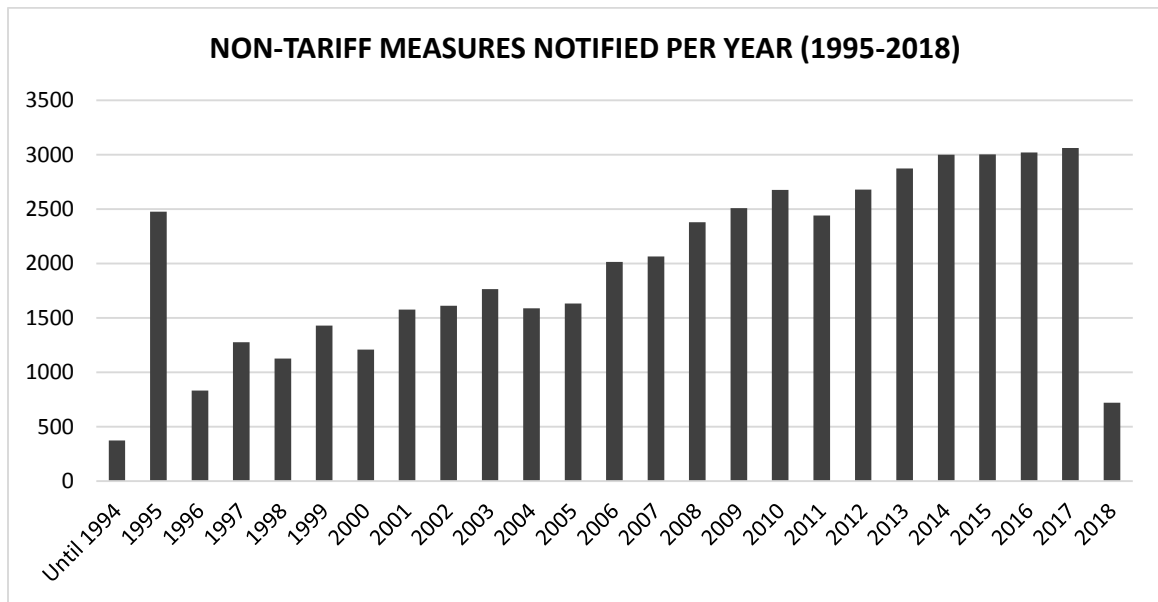
### Chapter 03 – The big picture on NTMs and RTAs

Before proceeding with the test of the hypothesis proposed, this chapter will present the patterns found on NTMs and RTAs.

#### *Patterns found on NTMs and their relationship with Ministerial Conferences*

The following pages contain an analysis of non-tariff measures introduced from 1995 to 2018. The objective of this analysis is to identify patterns and to compare them with the outcomes of MCs and RTAs that entered into force in the same period. The first important step to do so is to identify the volume of NTMs notified to WTO year-on-year since 1995. The results are the following:

**Chart 9 - Non-tariff measures notified per year (1995-2018)**



Source: author.

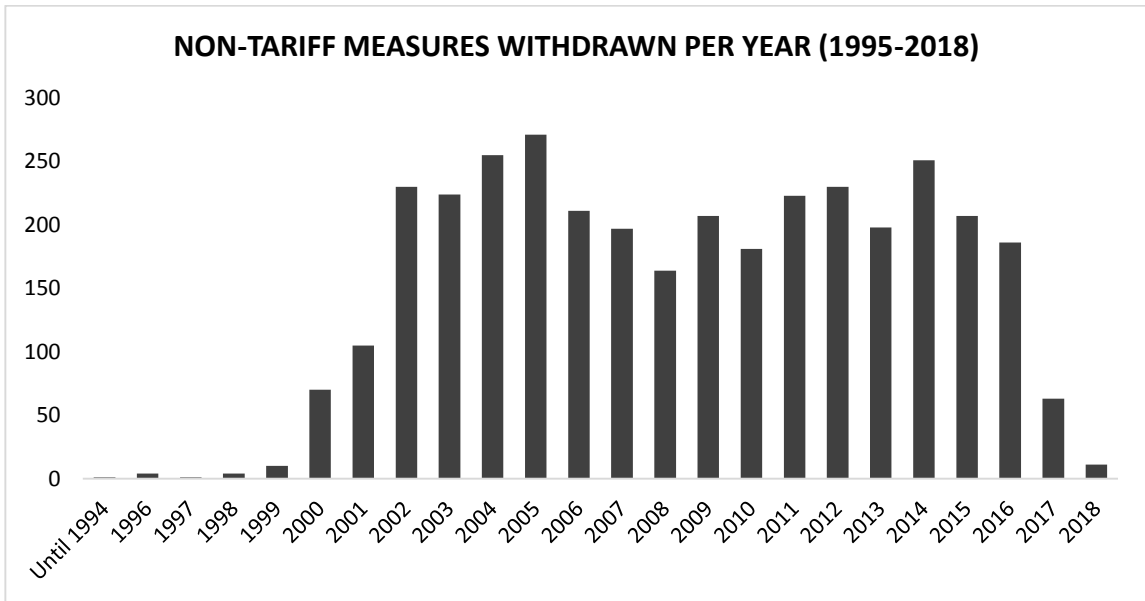
Chart 9 allows us to affirm there is a growing trend towards the use of non-tariff measures. Notwithstanding, care must be taken to affirm the existence of such trend because NTMs have always been heavily used, but only in the last few years they have been notified, due to greater enforcement of numerous agreements. Based on this, it is

possible to affirm there is a movement of greater notification of NTMs, which may mean Members have been using them more or not.

Regardless, it is worth noting the annual average of measures notified was 1973. In 1994, the use or notification of NTMs was almost insignificant and less than 500 measures were multilaterally known. In 1995, with the creation of the WTO, the system witnessed the notification of 2475 measures. Such a peak was only reached again in 2009 when 2509 measures were reported. Besides, 2017 was the year with the highest number of notifications when Members notified 3061 NTMs to the WTO. Until June 2018, at the time of the last data collection, WTO received only 720 notifications.

Once notified, Members may withdraw NTMs due to their own will after negotiations. The chart below displays information on NTMs withdrawn from 1995 to 2018:

**Chart 10 - Non-tariff measures withdrawn per year (1995-2018)**

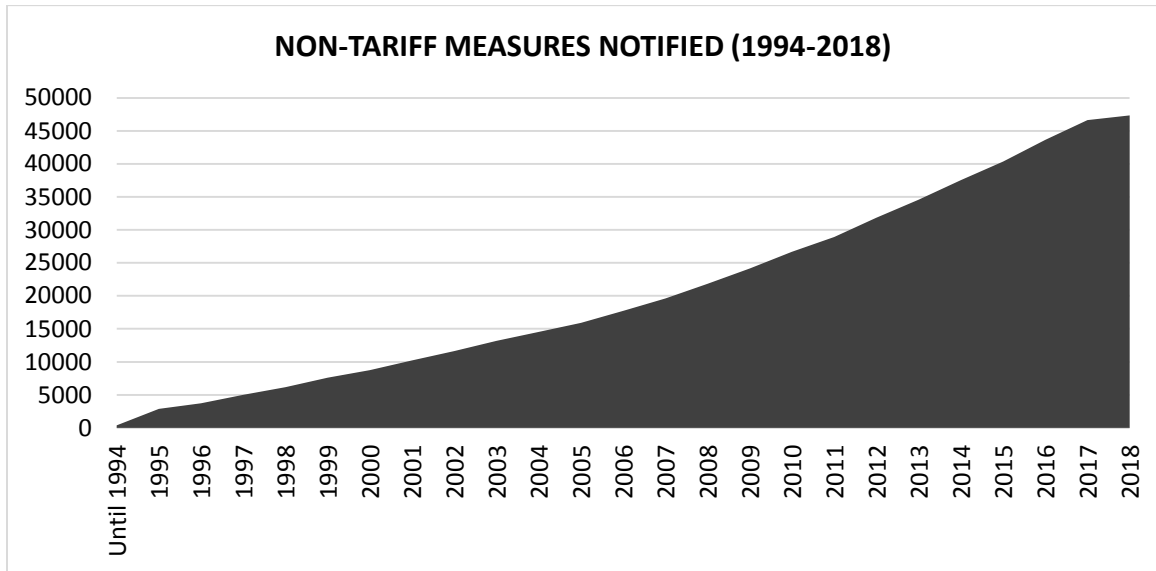


Source: author.

During this period, the annual average of measures withdrawn was 135, a number significantly below the average of measures notified. Such an imbalance between measures

notified and withdrawn considerably increases the number of NTMs. Consequently, in the last decades, the number of NTMs grew more significantly, as shown below:

**Chart 11 – Non-tariff measures notified (1994-2018)**



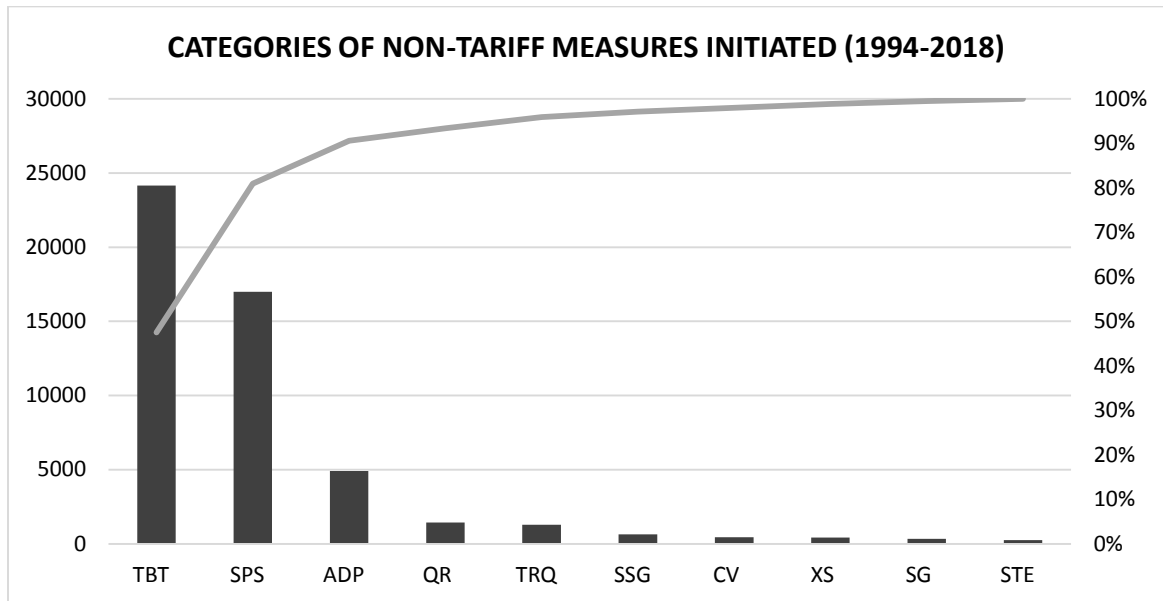
Source: author.

Currently<sup>165</sup>, there are 47.339 NTMs notified to the WTO, a figure much higher than the 379 measures notified until 1994. Such measures, as shown in Chart 12, belong to several categories:

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<sup>165</sup> Until June 2018.

**Chart 12 - Categories of non-tariff measures initiated (1994-2018)**



Source: author.

The dataset analyzed contains ten categories of NTMs, including technical barriers to trade (TBT)<sup>166</sup>, sanitary and phytosanitary measures (SPS)<sup>167</sup>, antidumping measures

<sup>166</sup> Defined as “measures referring to technical regulations, and procedures for assessment of conformity with technical regulations and standards, excluding measures covered by the SPS Agreement. A technical regulation is a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method” (UNCTAD, p. 12, 2012).

<sup>167</sup> Defined as “measures that are applied to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; to protect human life from plant- or animal-carried diseases; to protect animal or plant life from pests, diseases, or disease-causing organisms; to prevent or limit other damage to a country from the entry, establishment or spread of pests; and to protect biodiversity. These include measures taken to protect the health of fish and wild fauna, as well as of forests and wild for a” (UNCTAD, p. 07, 2012).

(ADP)<sup>168</sup>, quantitative restrictions (QR)<sup>169</sup>, special safeguards (SSG)<sup>170</sup>, countervailing measures (CV)<sup>171</sup>, export subsidies (EX)<sup>172</sup>, safeguards (SG)<sup>173</sup>, and state trading enterprises (STE)<sup>174</sup>. According the Pareto chart above, TBT and SPS measures account for 81% of all NTMs initiated under WTO from 1994 to 2018. This figure demonstrates the enormous need for more agreements to promote regulatory harmonization between WTO Members.

Through the analysis of the profile of members who impose such measures, we identify that developing countries have imposed more than a half of NTMs notified, as shown in Chart 13:

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<sup>168</sup> Defined as “a border measure applied to imports of a product from an exporter. These imports are dumped and are causing injury to the domestic industry producing a like product, or to third countries’ exporters of that product. Dumping takes place when a product is introduced into the commerce of an importing country at less than its normal value, generally where the export price of the product is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. Antidumping measures may take the form of antidumping duties, or of price undertakings by the exporting forms” (UNCTAD, p. 21, 2012).

<sup>169</sup> Defined as “(...) all prohibitions or restrictions other than tariffs or other taxes applied or maintained by a WTO Member on the importation or exportation of goods, which can be made effective through quotas, import or export licensing procedures, or other measures” (WTO, p. 01, 2018).

<sup>170</sup> It is a measure applied to agriculture and that “allows the imposition of an additional tariff in response to a surge in imports or a fall in import prices. The specific trigger levels for volume or price of imports are defined at the country level. In the case of the volume trigger, the additional duties only apply until the end of the year in question. In the case of price triggers, the additional duty is imposed on a shipment by shipment basis” (UNCTAD, p. 25, 2012).

<sup>171</sup> Defined as “A border measure applied to imports of a product to offset any direct or indirect subsidy granted by authorities in an exporting country where subsidized imports of that product from that country are causing injury to the domestic industry producing the like product in the importing country. Countervailing measures may take the form of countervailing duties, or of undertakings by the exporting forms or by authorities of the subsidizing country” (UNCTAD, p. 22, 2012).

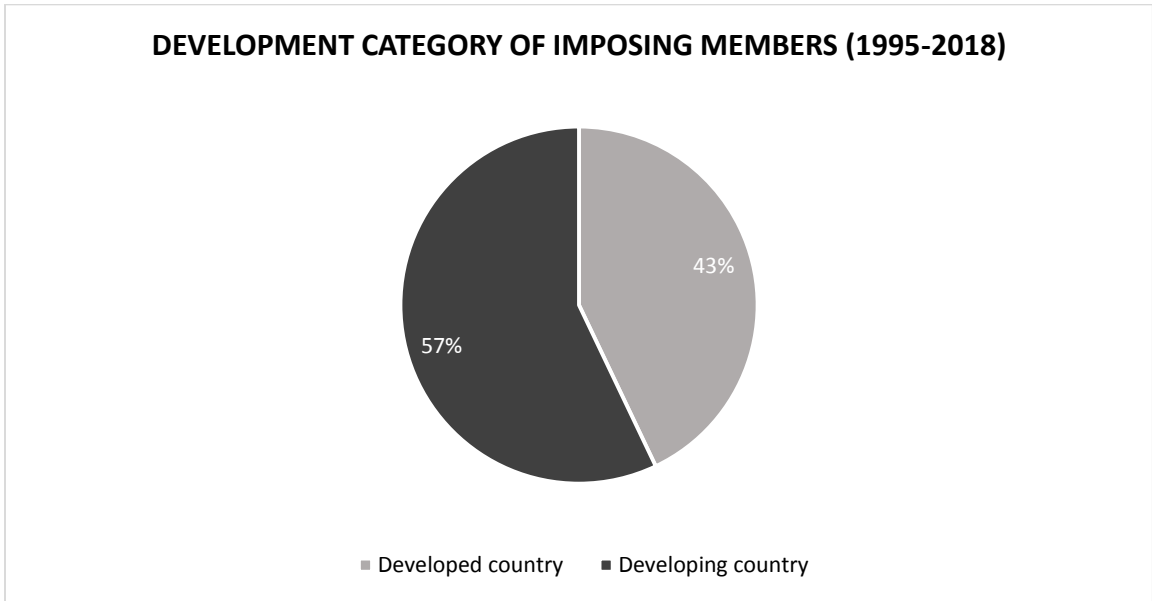
<sup>172</sup> Defined as a “financial contribution by a government or public body, or via government entrustment or direction of a private body (direct or potential direct transfer of funds: e.g. grant, loan, equity infusion, guarantee; government revenue foregone; provision of goods or services or purchase of goods; payments to a funding mechanism), or income or price support, which confers a benefit and is contingent in law or in fact upon export performance (whether solely or as one of several conditions), including measures illustrated in annex I of the Agreement on Subsidies and Countervailing Measures and measures described in the Agreement on Agriculture” (UNCTAD, p. 46, 2012).

<sup>173</sup> Defined as “a temporary border measure imposed on imports of a product to prevent or remedy serious injury caused by increased imports of that product and to facilitate adjustment” (UNCTAD, p. 23, 2012).

<sup>174</sup> Defined as “enterprises (whether or not State-owned or -controlled) with special rights and privileges not available to other entities, which influence through their purchases and sales the level or direction of imports of particular products” (UNCTAD, p. 40, 2012).



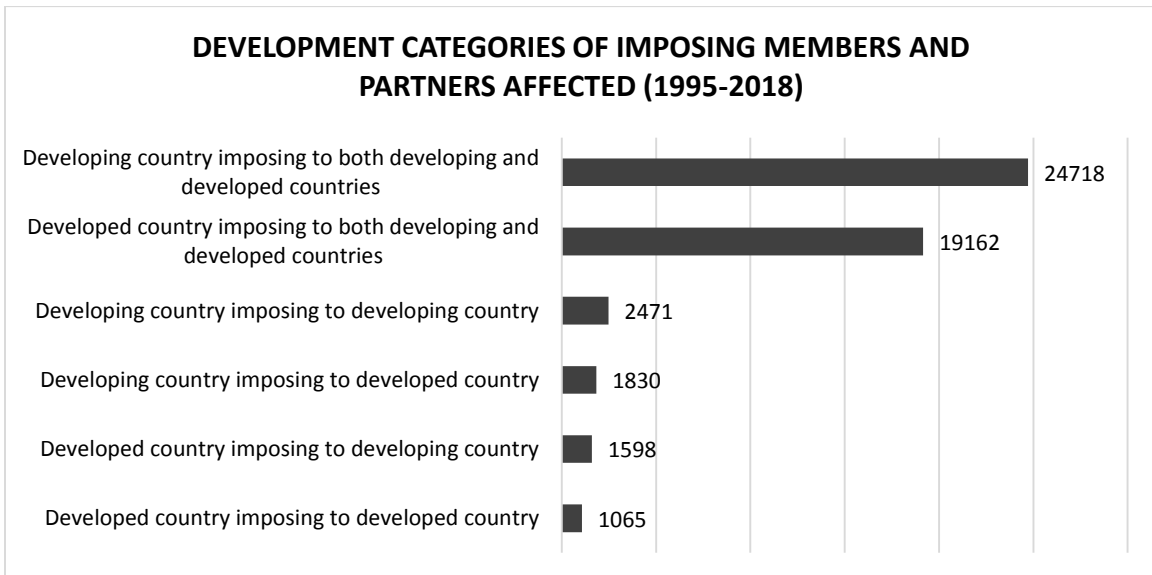
**Chart 13 - Development category of imposing Members**



Source: author.

Chart 14 deeps this analysis by showing other important details on who the targets of such measures are:

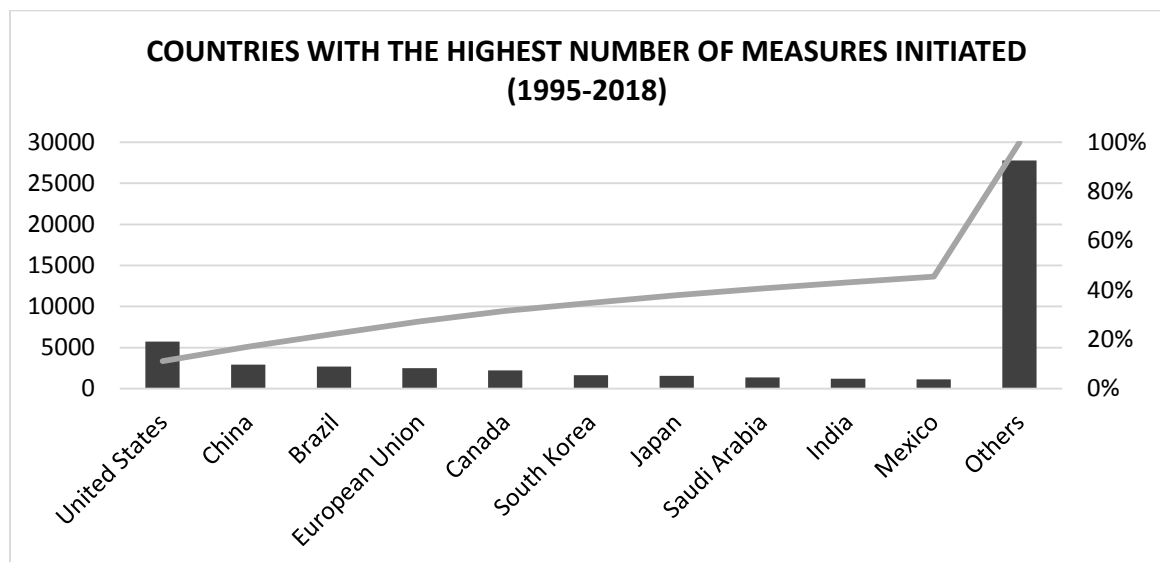
**Chart 14 - Development categories of imposing Members and partners affected**



Source: author.

According to the chart above, developing countries account for 49% (24.718) of NTMs that target developed and other developing economies simultaneously. Similarly, developed countries are responsible for 38% (19.162) of measures that also target both developing and other developed countries. Thus, 87% of all measures initiated from 1995 to 2018 affected Members of all levels of development. In addition to identifying the trend lines of such measures, their most recurrent types, and the level of development of their imposing Members, it is worth analyzing who are the imposing Members with the highest number of NTMs. Chart 15 displays this information:

**Chart 15 - Countries with the highest number of measures initiated**



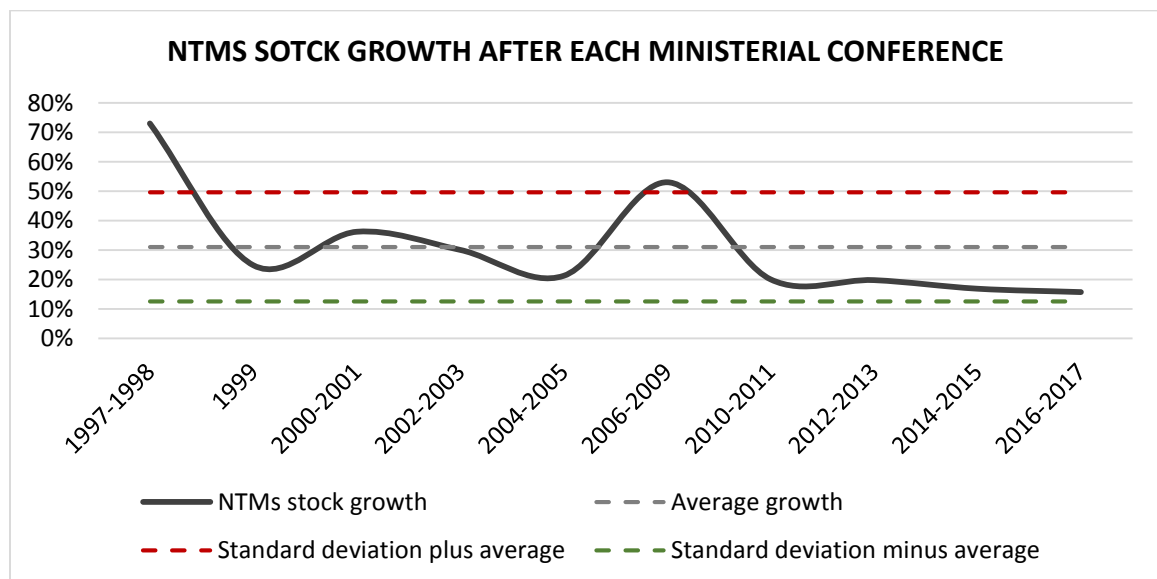
Source: author.

From chart 15, we conclude that few countries account for the largest number of NTMs notified. In detail, the ten countries with the highest number of measures account for 45% of all NTMs initiated from 1995 to 2018. The other 55% are distributed among more than 100 Members. The US, for instance, accounts for 11% of the total, while China for 6%, and Brazil for 5%.

As seen in chapter two, most of these countries were very active during negotiations held at Ministerial Conferences. Based on that, we must ask: how did the volume of these measures behave in the face of the outcome of each Ministerial Conference? As pointed

out in the introduction of this dissertation, each conference outcome has an expected effect on the number of non-tariff measures notified. After conferences in which discord prevailed, notifications are expected to grow above historical average rate or above this average plus its standard deviation; moreover, when cooperation prevailed, notifications are expected to grow below the historical average rate or below this average plus its standard deviation; finally, for conferences in which harmony prevailed, NTMs are expected to grow near the average rate. The chart below displays information on the growth of notifications after each conference:

**Chart 16 – Growth of NTMs in the periods following MCs**



Source: author

The growth of notifications *above* the average occurred in the periods following the meetings held in Singapore (1996), Seattle (1999), and Hong Kong (2005). Thus, the growth of notifications during these periods obeyed to a pattern of discord. Conversely, cooperation, or the growth *below* the average, occurred in the periods following the meetings held in Geneva (1998, 2009, 2011), Cancun (2003), Bali (2013), and Nairobi (2015). The only growth observed in accordance with a pattern of harmony occurred right after the meeting held in Doha (2001).

After reading chapter 02, we notice these results differ significantly from the classification of conferences based on the outcomes of negotiations. In cases where there is a divergence between these outcomes and the quantitative analysis of protectionism data, there are research puzzles. These puzzles are seen in Geneva (1998), Doha (2001), Cancun (2003), and Hong Kong (2005).

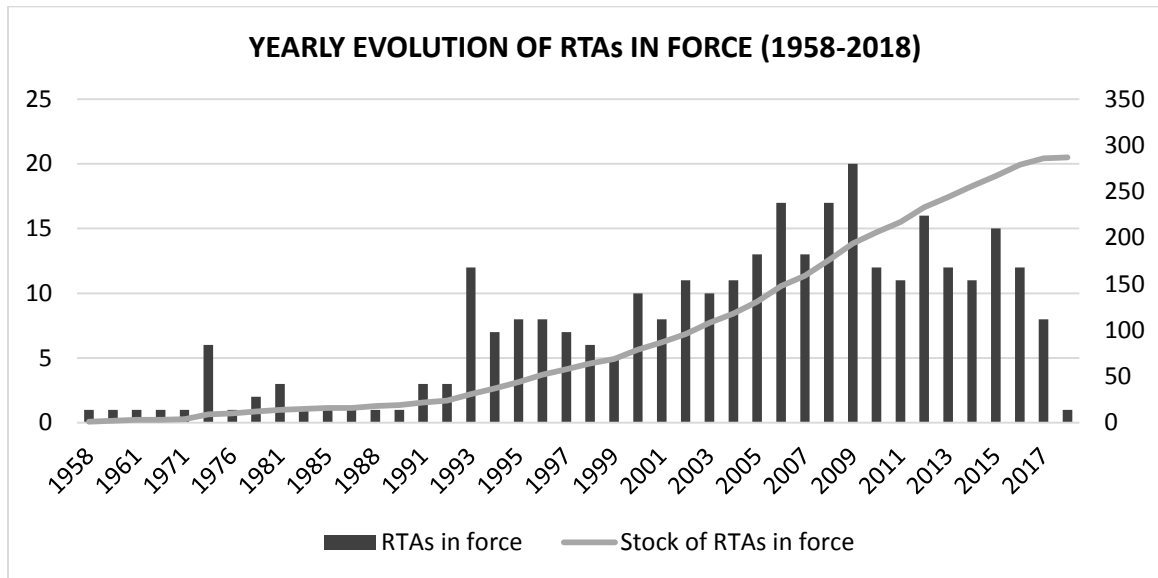
Such puzzles grounded the research question introduced in the first pages of this dissertation, which is: what factor could be responsible for promoting patterns of cooperation in NTMs growth if WTO failed in promoting cooperation at these conferences? The tentative answer to this question is that RTAs with WTO-plus or WTO-extra provisions that came into force had effects in those periods, slowing down the growth of NTMs initiated, given their potential to (i) reduce transaction costs, (ii) create trade, and (iii) promote cooperation where cooperation in trade is possible, as shown in Chapter 01. Based on this, the following hypothesis was proposed: the *higher* the number of WTO-plus and WTO-extra provisions in RTAs in force, the *lower* the growth of NTMs notified to the WTO, and the *higher* the number of NTMs withdrawn.

Before testing the hypothesis proposed, it is necessary to present a broad analysis of the RTAs that have entered into force since 1995. The analysis, presented in the next section, covers their taxonomy, contents, levels of enforcement and types of provisions.

#### *Patterns found on RTAs that entered into force from 1994 to 2018*

The first important analysis is the evolution of RTAs since 1958 when the European Community (EC) Treaty entered into force:

**Chart 17 - Yearly evolution of RTAs in force (1958-2018)**



Source: author with data retrieved from WTO (2018m).

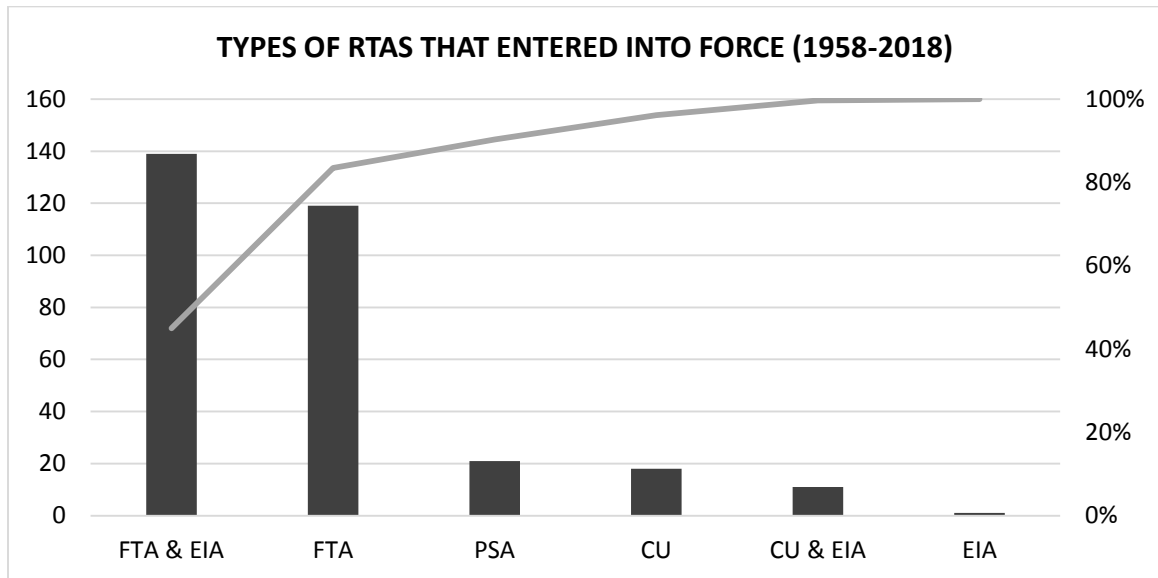
Since 1958, the number of RTAs in force has grown more than 280 times. Thus, we see a growing trend towards the use of such agreements as complementary alternatives to the WTO. This trend was accentuated from the second wave of regionalism onwards, which occurred in the 1980s (Mansfield and Milner, 1999; Vaz, 2002; Bhagwati, 2003; Prazeres, 2007; Vieira, 2016). According to the WTO:

“Since the early 1990s, there has been a sharp increase in the number of notifications and the upward trend has continued since then. A number of explanations have been advanced for this increase: the emergence of new trading patterns among Central and Eastern European states in the early 1990s; frustration among WTO Members about the lack of progress in multilateral negotiations; accession of new Members to the WTO (with resultant notification obligations); the growing importance of services trade and negotiations of RTAs with services commitments; and, since 2000, the shift particularly among Asian countries in favor of preferential trading regimes” (WTO, 2015c, p. 02).

The annual average of agreements that entered into force from 1958 to 2018 was 7. Chart 18 displays which types of RTAs were the most recurrent in this period<sup>175</sup>:

<sup>175</sup> Some these RTAs are not in force anymore.

**Chart 18 – Types of RTAs that entered into force (1958-2018)**

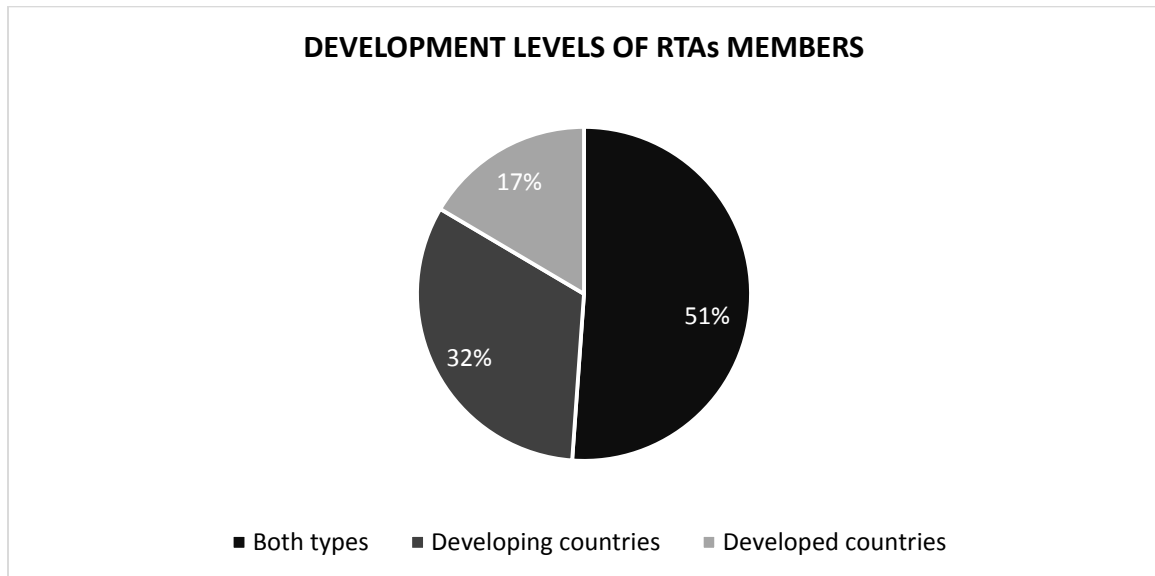


Source: author with data retrieved from WTO (2018m).

According to Chart 18, most of them are simultaneously free trade agreements (FTAs) and economic integration agreements (EIA), type that represents 45% of all RTAs analyzed. FTAs, in the second position, represent 39% of RTAs in force. Therefore, the first two types of RTAs represent more than 80% of all cases analyzed. The third most frequent category is the Partial Scope Agreements (PSAs), with 7%, followed by Customs Unions (CUs), with 6%, Custom Unions and EIA, with 4%, and EIA, with 0.3%.

In addition to identifying RTAs' typology, it is worth analyzing the profile of the countries that conclude such agreements. Chart 19 displays important information about these countries:

**Chart 19 - Development levels of RTAs Members**



Source: author with data retrieved from WTO (2018m).

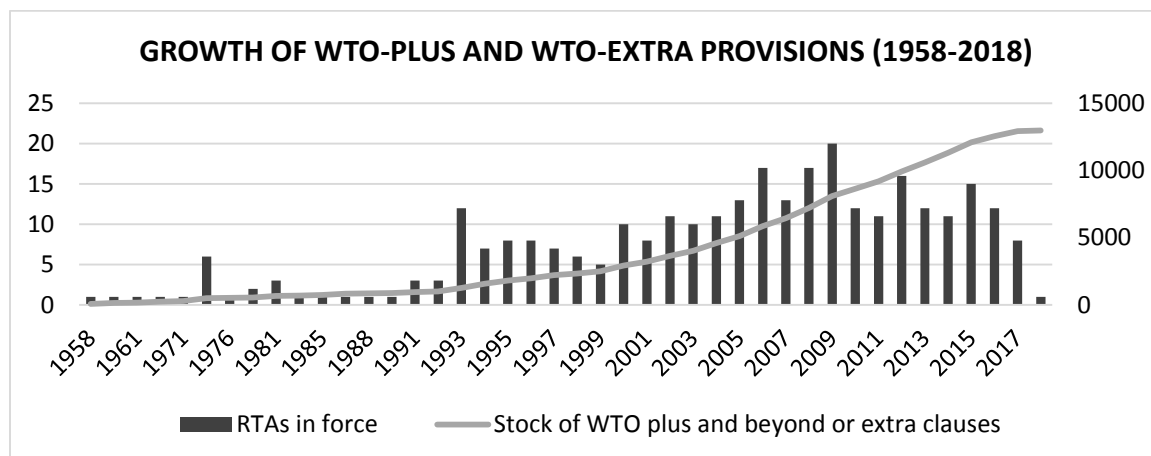
According to chart 19, both developed and developing countries account for 51% of all RTAs negotiated. It is worth reminding that at least 94% of all NTMs initiated from 1994 to 2018 are those in which both imposing Members and affected partners belong to different levels of development. Thus, if an RTA is closed to liberalize trade and mitigate the impact of NTMs, it is to be expected that most of them will have Members of different levels of development, as shown by this chart. Another important finding is that developing countries have negotiated more RTAs between them than developed countries did. In detail, developing countries account for 32% of all RTAs analyzed, while the developed ones only for 17%.

Even more interesting than analyzing RTA's typology and the profile of its members is to analyze the content of such agreements. According to WTO (2015c):

“The composition of RTAs notified to the WTO has changed over time. In particular, as tariff protection declines either due to unilateral decisions or multilateral negotiations, there is a growing trend for RTAs to not just liberalize goods trade, but also to liberalize services, investment and cover other issues such as intellectual property rights, government procurement, competition policy and in some cases environment and labor standards. Increasingly also RTAs include detailed dispute settlement mechanisms, although the extent to which they are used is not clear. These "behind the border" measures are becoming increasingly prominent in RTAs” (WTO, p. 02, 2015c).

In addition to what WTO says about RTAs, it is important to mention they generally have three types of provisions. First, there are WTO-equal provisions, which are provisions similar to the existing transparency commitments of the WTO. They generally reaffirm or incorporate WTO agreements. Secondly, there are WTO-*plus* provisions, which mirror a corresponding obligation in a WTO agreement, but introduce new requirements or specifications that are not mandated in the WTO. Finally, there are WTO-extra or beyond provisions, which create new obligations or transparency instruments that do not exist in the WTO (Dür, Baccini and Elsig, 2014). The second and third types of provisions have been increasingly used, as shown in Chart 20:

**Chart 20 – Growth of WTO-plus and WTO-extra provisions (1958-2018)**



Source: author with data retrieved from Dür, Baccini and Elsig (2014) and WTO (2018m).

The number of such provisions grew 158 times from 1958 to June 2018. If we consider only the interval between 1995 and 2018, we see a growth of more than 600%. These categories were created by Dür, Baccini, and Elsig (2014). In an article published in 2014, the authors mapped all RTAs that entered into force from 1958 to 2015. Besides, they analyzed their provisions and classified them according to these categories, which may change according to the themes dealt, as set out below:



**Table 18 - Classifications and themes of WTO-plus and WTO-extra provisions**

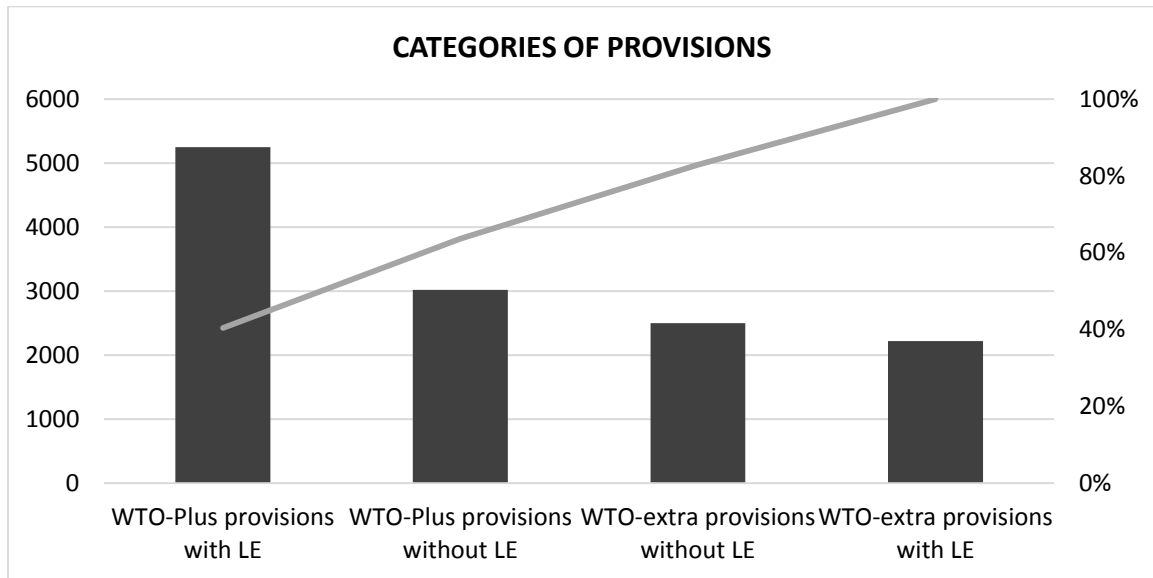
Classification	Themes
WTO-Plus	Tariffs industrial goods, Tariffs agricultural goods, Customs administration, Export taxes, SPS measures, State trading enterprises, TBT measures, Countervailing measures, Antidumping, State aid, Public procurement, TRIMS measures, GATS, TRIPS
WTO-Extra	Anti-corruption, Competition policy, Environmental laws, IPT, Investment measures, Labor market, Movement of capital, Consumer protection, Data protection, Agriculture, Approximation of legislation, Audiovisual, Civil protection, Innovation policies, Cultural cooperation, Economic policy, Education and training Energy, Financial assistance, Health, Human rights, illegal immigration, Illicit drugs, Industrial cooperation, Information society, Mining, Money laundering, Nuclear safety, Political dialogue, Public administration, Regional cooperation, Research and technology, SMEs, Social matters, Statistics, Taxation, Terrorism, Visa and asylum

Source: from Dür, Baccini and Elsig (2014) with adaptations.

After classifying provisions as WTO-plus or WTO-extra, the authors analyzed each of them according to their levels of legal enforcement for RTAs that entered into force until 2015. According to them, a provision with legal enforcement, generally, contains verbs and statements such as “shall” or “neither party may”. In the absence of such statements, RTA’s provisions are classified as having no legal enforcement.

The methodology the authors developed was employed to classify the provisions of the remaining 36 agreements that came into force from 2015 to 2018. In chart 21 it is possible to observe information on the categories of RTA’s provisions that came into force from 1995 to 2018.

**Chart 21 - Categories of provisions**

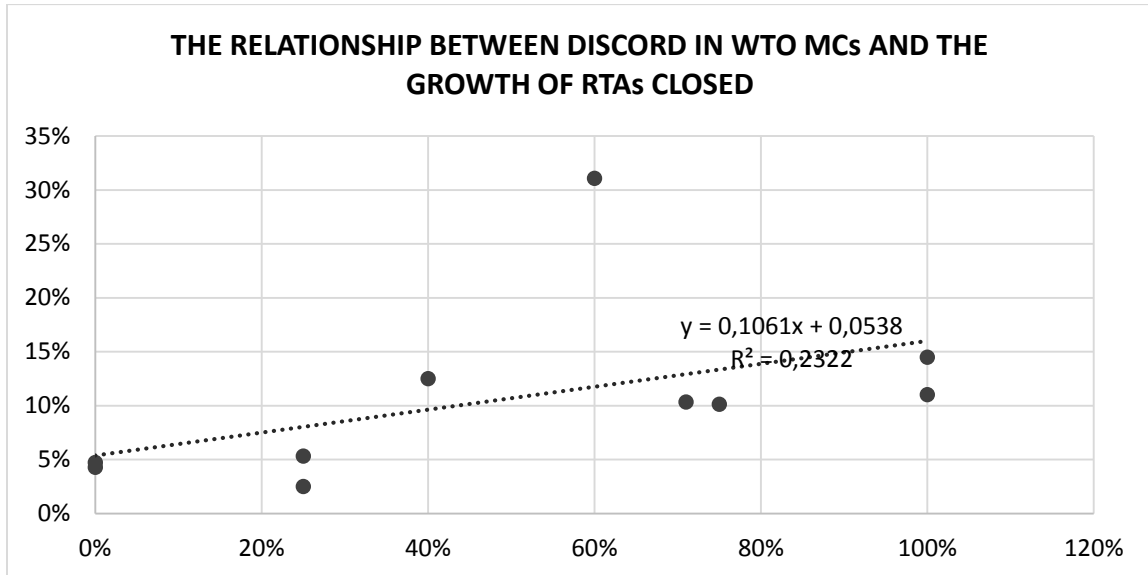


Source: author with data retrieved from Dür, Baccini and Elsig (2014) and WTO (2018m).

According to Chart 21, WTO-plus provisions with legal enforcement are the most recurrent in all the RTAs analyzed (40%). After them, there are WTO-Plus provisions without legal enforcement accounting for 23%. Thus, WTO-Plus provisions, regardless of their legal enforcement, account for 63% of all provisions analyzed. In relation to WTO-extra provisions, conversely, the scenario is different, since provisions without LE account for 19% of all cases, while provisions with LE account for only 17%.

Based on the data presented, we must ask: how did data the number of RTAs behave after Ministerial Conferences in which discord prevailed? Has there been a more significant increase in the number of RTAs in force? A simple linear regression analysis demonstrates that RTAs have not increased significantly due to discord in some conferences. Thus, discord in MCs and RTAs are not significantly statistically related, at least not for the dataset analyzed, which is small and has only 10 observations. The results follow below:

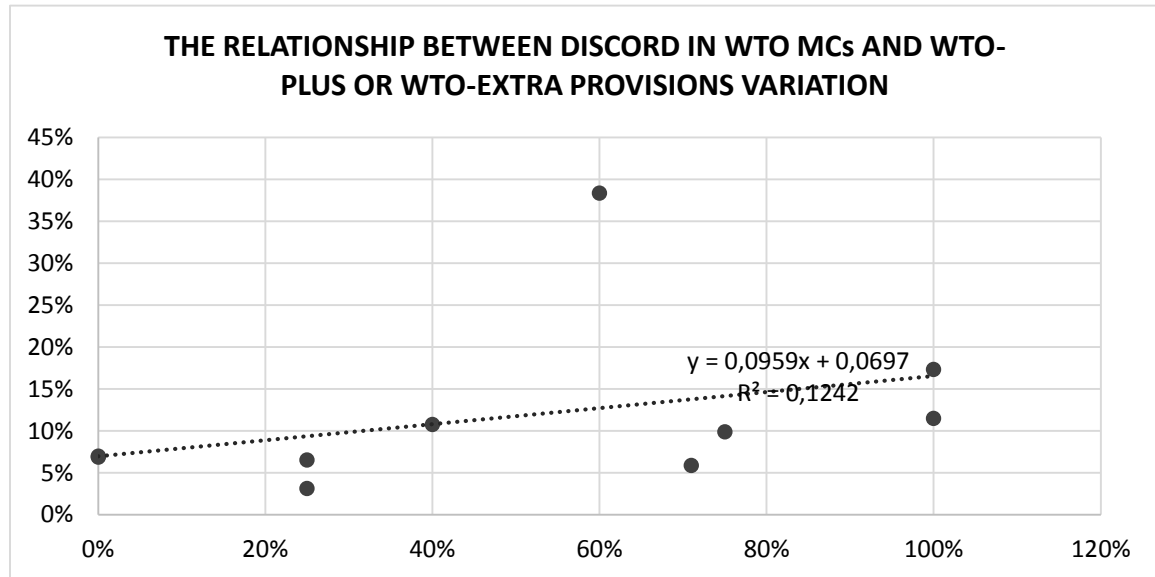
**Chart 22 - The relationship between discord in WTO MCs and the growth of RTAs closed**



Source: author.

The scatter chart above clearly shows a weak positive correlation between both variables, since the result of  $R^2$  is 0.2322. In other words, discord levels observed at Ministerial Conferences explain only 23% of variances in the number of RTAs closed. A very similar scenario is observed when analyzing variations on the number of WTO-plus and WTO-extra provisions, as shown below:

**Chart 23 - The relationship between discord in WTO MCs and WTO-plus or WTO-extra provisions variation**



Source: author.

The correlation between variables, in this case, is even lower. The scatter chart shows a weak positive correlation translated into an  $R^2$  of 0.1242, which means that discord levels seen at Ministerial Conferences explain only 12% of variations in the number of WTO-plus and WTO-extra provisions.

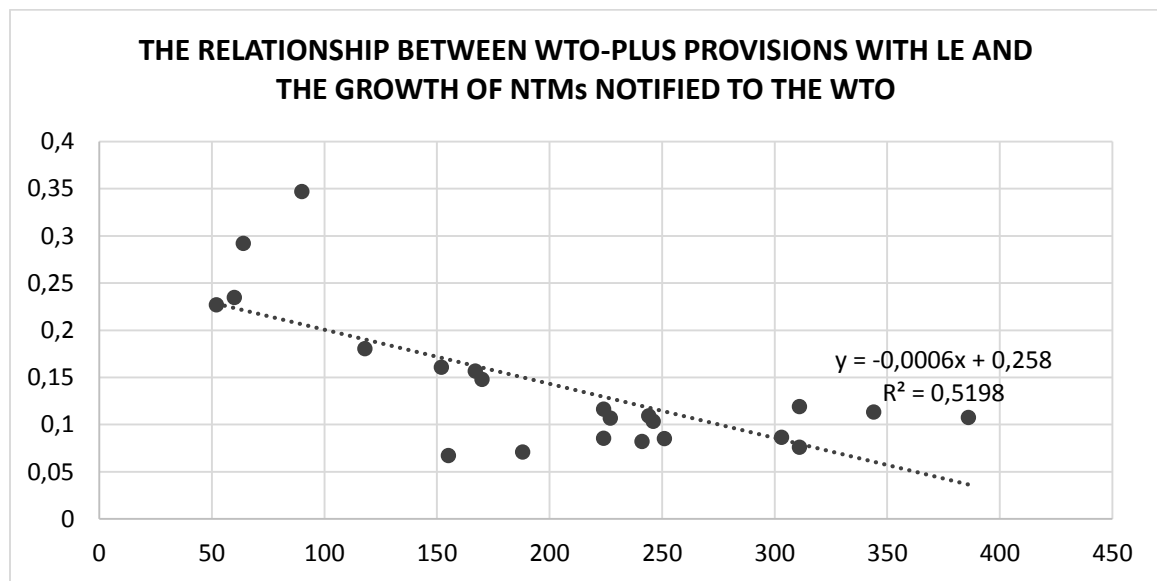
Given the fact that discord in MCs and RTAs are not statistically correlated, it is possible to conclude RTAs and their provisions cannot solve the research puzzles identified in MCs held in Geneva (1998), Doha (2001), and Cancun (2003). In this sense, some other variable not yet mapped was responsible for promoting NTMs growth below the historical average in the periods following these conferences. That said, we proceed with the test of the hypothesis proposed to confirm or deny the existence of a correlation between RTAs and NTMs. This test is carried out in the following section.

*Hypothesis test: is there a relationship between NTMs and RTAs?*

From the hypothesis proposed, numerous sub-hypothesis can be drawn and tested. In this sense, this section presents eight different tests<sup>176</sup> with the goal of detailing what kind of RTA provision (WTO-plus or WTO-extra with or without LE) is more correlated with the dependent variables (variations in the number of NTMs notified and NTMs withdrawn).

The first test verifies the correlation between WTO-plus provisions with legal enforcement and variations in the number of NTMs notified to the WTO. In the form of a hypothesis, we have: the *higher* the number of WTO-plus provisions with legal enforcement in RTAs in force, the *lower* the growth of NTMs notified to the WTO. The regression analysis between both variables indicates the existence of a moderate negative correlation, as shown below:

**Chart 24 - The relationship between WTO-Plus provisions with LE and the growth of NTMs notified to the WTO**



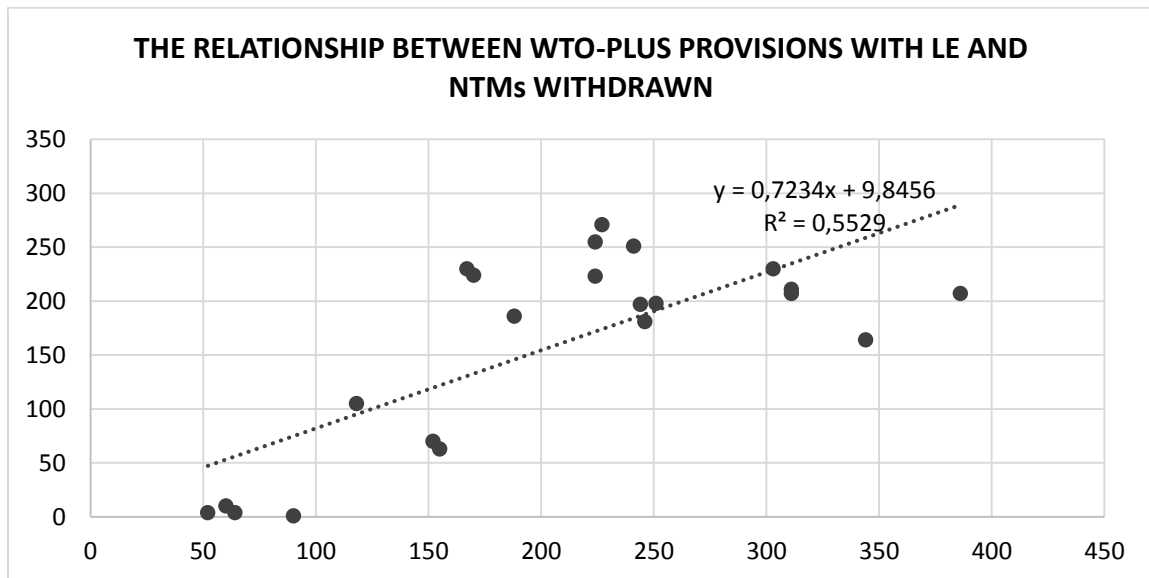
<sup>176</sup> Tests will be carried out with data from 1996 to 2017. Variations in the number of NTMs from 1994 to 1995 was excluded. In 1995 there was a peak of notifications to WTO. Such a peak did not mean an increase in protectionism, but only the fulfillment of transparency obligations, which were set out in the agreements negotiated during the Uruguay Round.

Source: author.

The hypothesis is confirmed for 51.98% ( $R^2$  0.5198)<sup>177</sup> of observations analyzed. This result means 52% of variations in the growth of the number of NTMs notified are negatively correlated with variations in the number of WTO-plus provisions with legal enforcement.

The second sub-hypothesis keeps the same independent variable of the previous one and compares it with the number of NTMs withdrawn year by year. In the form of a hypothesis, we have: the *higher* the number of WTO-plus provisions *with* legal enforcement in RTAs in force, the *higher* the number of NTMs withdrawn. The regression analysis indicates a moderate positive correlation between both variables:

**Chart 25 - The relationship between WTO-Plus provisions with LE and NTMs withdrawn**



Source: author.

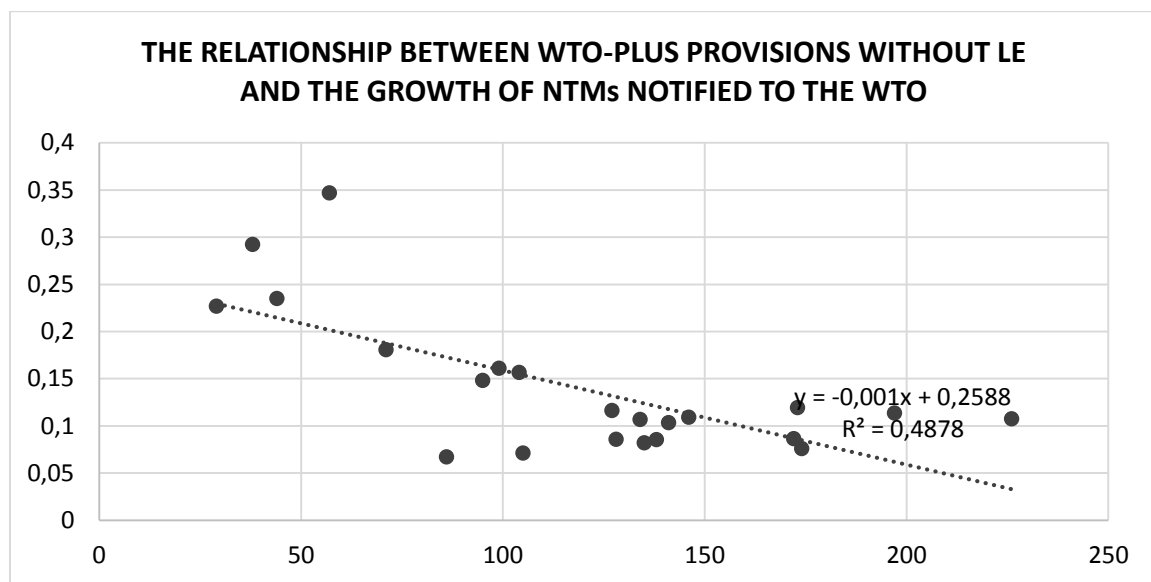
The hypothesis is confirmed for 55.29% ( $R^2$  0.5529)<sup>178</sup> of observations analyzed. This result means 55% of NTMs withdrawn may have been withdrawn due to increases in the number of WTO-plus provisions with legal enforcement.

<sup>177</sup> Observations: 22; Significance: 0.0153%; P-value: 0.0153%.

<sup>178</sup> Observations: 22; Significance: 0.0073%; P-value: 0.0073%.

The third sub-hypothesis correlates WTO-plus provisions *without* legal enforcement and the growth of NTMs notified. In the form of a hypothesis, we have: the *higher* the number of WTO-plus provisions *without* legal enforcement in RTAs in force, the *lower* the growth of NTMs notified to the WTO. The results are shown in the chart below:

**Chart 26 - The relationship between WTO-Plus provisions without LE and the growth of NTMs notified to the WTO**



Source: author.

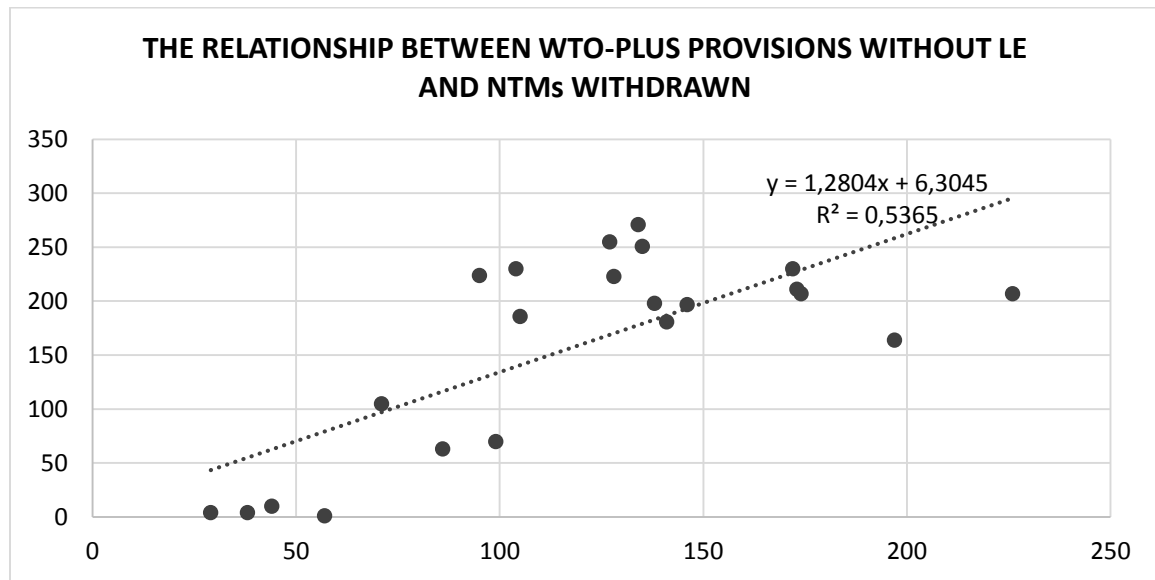
The scatter chart above shows a weak negative correlation between both variables. In this sense, 48,78% ( $R^2 0,4878$ )<sup>179</sup> of variations in the number of NTMs can be explained by the increases in the number of WTO-plus provisions without LE. Therefore, it is possible to conclude that WTO-plus provisions *with* LE are more effective in reducing the growth of NTMs notified, given their higher  $R^2$  value (0.5198).

Keeping the independent variable constant, the fourth sub-hypothesis is: the *higher* the number of WTO-plus provisions without legal enforcement in RTAs in force, the

<sup>179</sup> Observations: 22; Significance: 0.0300%; P-value: 0.0300%.

*higher* the number of NTMs withdrawn. The result of the regression analysis can be seen in the chart below:

**Chart 27 - The relationship between WTO-Plus provisions without LE and NTMs withdrawn**



Source: author.

The chart indicates the existence of a moderate positive correlation between variables. The sub-hypothesis is confirmed for 53,65% ( $R^2$  0,5365)<sup>180</sup> of observations analyzed. This result means 54% of NTMs withdrawn may have been withdrawn due to increases in the number of WTO-plus provisions without legal enforcement in RTAs that entered into force. In this sense, it is possible to conclude WTO-plus provisions *with* legal enforcement are more effective to increase the number of NTMs withdrawn, given their higher  $R^2$  value (0,5529).

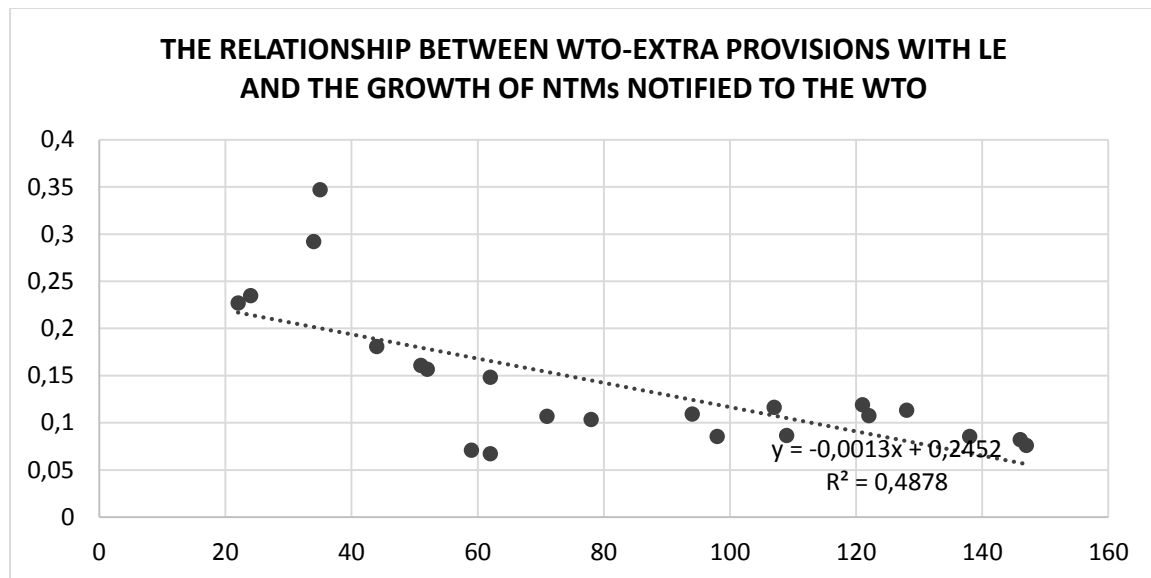
Once the four hypothesis tests with WTO-plus provisions have been concluded, we proceed with the analysis of the relationship between WTO-extra provisions and NTMs. The first test correlates WTO-extra provisions in RTAs in force with the growth of NTMs notified. In the form of a hypothesis, we have: the *higher* the number of WTO-extra

<sup>180</sup> Observations: 22; Significance: 0.0106%; P-value: 0.0106%.



provisions with legal enforcement in RTAs in force, the *lower* the growth of NTMs notified to the WTO. The results follow below:

**Chart 28 - The relationship between WTO-Extra provisions with LE and the growth of NTMs notified to the WTO**



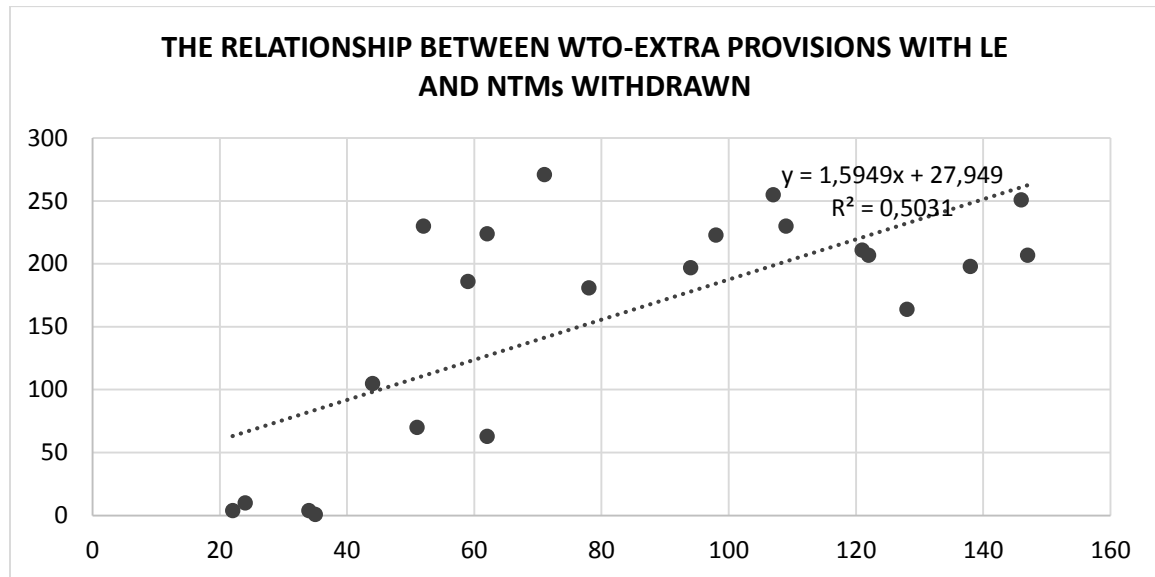
Source: author.

The scatter chart above shows the existence of a weak negative correlation between both variables. The  $R^2$  value indicates the sub-hypothesis is confirmed for 48.78%<sup>181</sup> of observations analyzed. Thus, variations in the number of WTO-extra provisions in RTAs that entered into force since 1996 somehow explain 49% of the variations in the number of NTMs notified to the WTO.

The second sub-hypothesis test keeps the independent variable of the previous test and replaces the dependent variable with the number of NTMs withdrawn year by year. In the form of a hypothesis, we have: the *higher* the number of WTO-extra provisions with legal enforcement in RTAs in force, the *higher* the number of NTMs withdrawn. The result follows below:

<sup>181</sup> Observations: 22; Significance: 0.0300%; P-value: 0.0300%.

**Chart 29 - The relationship between WTO-Extra provisions with LE and NTMs withdrawn**



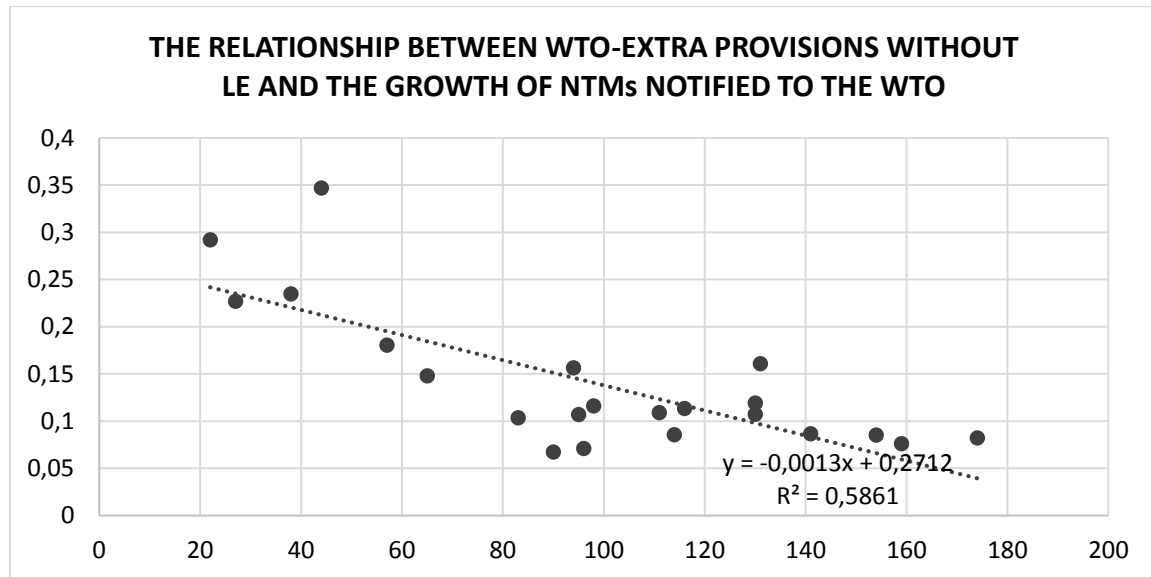
Source: author.

According to the chart above, there is a moderate positive correlation between both variables. The  $R^2$  value shows 50,31%<sup>182</sup> of NTMs withdrawn may have been withdrawn due to the increase in the number of WTO-extra provisions with LE in RTAs that entered in force from 1996 to 2017.

The third sub-hypothesis is: the *higher* the number of WTO-extra provisions without legal enforcement in RTAs in force, the *lower* the growth of NTMs notified to the WTO. The regression analysis indicates the existence of a moderate negative correlation. Chart 31 displays information about it:

<sup>182</sup> Observations: 22; Significance: 0.0219%; P-value: 0.0219%.

**Chart 30 - The relationship between WTO-Extra provisions without LE and the growth of NTMs notified to the WTO**



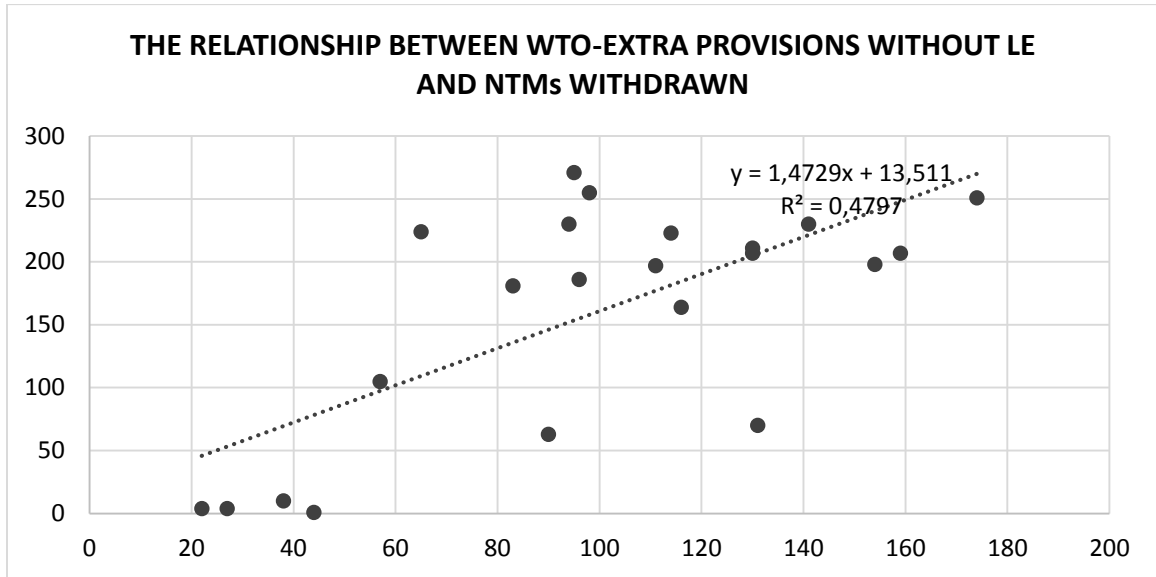
Source: author.

The  $R^2$  value shows the sub-hypothesis is confirmed for 58,61%<sup>183</sup> of the observations analyzed. Thus, the variations in the number of WTO-extra provisions without legal enforcement explain 59% of variations in the number of NTMs notified to the WTO. This figure allows us to make two findings. Firstly, legal enforcement does not make WTO-extra provisions more effective as in the case of WTO-plus provisions. Secondly, WTO-extra provisions without LE seem to be more effective than WTO-plus with or without LE to decrease the number of NTMs notified.

The fourth sub-hypothesis keeps the independent variable of the previous test and replaces the dependent one with the number of NTMs withdrawn year by year. In the form of a hypothesis, we have: the *higher* the number of WTO-extra provisions without legal enforcement in RTAs in force, the *higher* the number of non-tariff measures withdrawn. The regression analysis shows the existence of a weak positive correlation between both variables. Chart 31 displays information about it:

<sup>183</sup> Observations: 22; Significance: 0.0033%; P-value: 0.0033%.

**Chart 31 - The relationship between WTO-Extra provisions without LE and NTMs withdrawn**



Source: author.

According to chart 32, 47,97%<sup>184</sup> of NTMs withdrawn may have been withdrawn due to the increase in the number of WTO-extra provisions without LE in RTAs that entered in force since 1996. This result allows us to draw two conclusions. Firstly, WTO-extra provisions *with* LE are more effective than those without it for increasing the number of NTMs withdrawn, given their higher  $R^2$  value (0,5031). Secondly, WTO-plus provisions with LE are the best ones to increase the number of NTMs withdrawn, given the fact that they possess the highest  $R^2$  value found (0,5529).

<sup>184</sup> Observations: 22; Significance: 0.0354%; P-value: 0.0354%.

### *Concluding remarks*

This chapter addressed numerous analyses to identify patterns related to NTMs and RTAs. With respect to NTMs, four patterns stood out. The first is a growing trend towards the notification of NTMs. Secondly, there is an imbalance between the number of NTMs notified and withdrawn year after year, a fact that progressively increases the total number of measures. Thirdly, most part of the NTMs notified to WTO from 1994 to 2018 were TBT and SPS, and most of them were imposed by developing countries. Fourthly, there is a concentration on the introduction of such measures. In detail, the ten countries with the highest number of measures account for 45% of all NTMs initiated from 1995 to 2018.

After analyzing NTMs, we proceeded with the analysis of data on RTAs. There are five main conclusions about this analysis. Firstly, there has been a significant increase in the use of such agreements as complementary alternatives to the WTO for achieving trade cooperation. From 1990 on, the volume of WTO-plus and WTO-extra provisions increased significantly. Secondly, 45% of the agreements closed are simultaneously free trade agreements (FTAs) and economic integration agreements (EIA); thirdly, both developing and developed countries account for 51% of RTAs that entered into force from 1994 to 2018. Moreover, developing countries negotiated more RTAs between them than developed countries did. Fourthly, WTO-plus provisions are more numerous than WTO-extra ones. In other words, 63% of RTA's provisions deep and create new obligations that relate to WTO's agreements. Conversely, the remaining 37% provisions relate to issues not yet dealt multilaterally. Fifthly, discord in MCs cannot explain variations in the number of RTAs closed. This last finding was important to observe that RTAs and their provisions do not explain the research puzzles identified at Conferences held in Geneva (1998), Doha (2001) and Cancun (2003). Hence, this result indicates that other variables not yet mapped were responsible for promoting the growth of NTMs below the historical average in the periods following these conferences.

Aside from presenting patterns found on NTMs and RTAs, this chapter addressed the tests of the proposed hypothesis. A summary of all the eight tests follows below:

**Table 19 - Hypotheses tests summary**

<b>Independent variable</b>	<b>Dependent variable</b>	<b>R<sup>2</sup> value</b>	<b>Interpretation</b>
WTO-plus provisions with LE	Growth of NTMs notified	0.5198	Moderate negative correlation
WTO-plus provisions with LE	NTMs withdrawn	0.5529	Moderate positive correlation
WTO-plus provisions without LE	Growth of NTMs notified	0.4878	Weak negative correlation
WTO-plus provisions without LE	NTMs withdrawn	0.5365	Moderate positive correlation
WTO-extra provisions with LE	Growth of NTMs notified	0.4878	Weak negative correlation
WTO-extra provisions with LE	NTMs withdrawn	0.5031	Moderate positive correlation
WTO-extra provisions without LE	Growth of NTMs notified	0.5861	Moderate negative correlation
WTO-extra provisions without LE	NTMs withdrawn	0.4797	Weak positive correlation

Source: author.

All the data presented allow us to draw some conclusions about the relation between RTAs and NTMs. Firstly, WTO-plus and WTO-extra provisions are moderately correlated with NTMs. In general, the correlation between RTAs' provisions and the growth of NTMs notified is negative, and the correlation between these provisions and NTMs withdrawn is positive. Thus, it is possible to conclude RTAs are a useful complementary alternative to the WTO for mitigating non-tariff protectionism. In addition, we saw that legal enforcement is an important attribute to raise WTO-plus provisions' effectiveness, but this is not true for WTO-extra provisions. Therefore, countries, when negotiating RTAs, must prioritize the creation of WTO-plus provisions with LE and WTO-extra provisions without LE since such categories were those that most correlated with NTMs.

## **Final remarks**

This dissertation began with the presentation of the research puzzles found in the relationship between discord in Ministerial Conferences and protectionism rates. According to such puzzles, in the years after MCs that took place in Geneva (1998), Doha (2001), and Cancun (2003), the increase in the number of NTMs notified to WTO obeyed to a pattern of cooperation, which is a growth below the historical average. However, the description of these conferences, made by the ICTSD, as well as the speeches delivered in plenary by WTO Members indicated these negotiations resulted in discord. Consequently, we rose the following research question: if WTO failed at these conferences, what was the factor responsible for promoting a cooperation pattern in the growth of NTMs notified? In response, we proposed that RTAs may have been this factor. In the form of a hypothesis, we stated the *higher* the number of WTO-plus and WTO-extra provisions in RTAs in force, the *lower* the growth of non-tariff measures notified to the WTO, and the higher the number of NTMs withdrawn.

Based on the hypothesis proposed, we structured this thesis into three chapters. The first one addressed a description of the relationship between multilateralism, minilateralism, and non-tariff measures in a brief literature review. According to it, RTAs have promoted cooperation more effectively than large-scale negotiations, mainly due to their (i) fewer members, (ii) better-delimited scopes, and (iii) effective enforcement mechanisms. Together, these characteristics mitigate transaction costs, which often prevent countries from reaching agreements on a wide range of trade matters. In addition, we made an analysis of the debate on the effects of RTAs on trade liberalization. Although we have seen more studies published on the advantages of RTAs, there is an unsolved dilemma regarding the possibilities of trade creation or trade diversion in RTA's members. Besides, the analysis shows the lack of studies overcoming this dichotomous debate, which focus significantly on tariff preferences and, therefore, ignores the existence of non-tariff measures.

The chapter two presented a comprehensive description of the context of all Ministerial Conferences occurred from 1996 to 2018. Briefly, it addressed a classification of all Ministerial Conferences in accordance with the concepts of cooperation, harmony, and discord (Keohane, 1984). From 1996 to 2017, discord prevailed in most of the negotiations held. In detail, 59% of the discussions did not end with an agreement. Besides, discord was recurrent in negotiations on agriculture, subsidies, and Singapore issues. However, it became weaker over time. From 2001 on, WTO witnessed numerous situations of cooperation. Notwithstanding, cooperation prevailed in only 37% of all negotiations held between 1995 and 2018, while harmony in only 4%.

Chapter three, in turn, addressed patterns on NTMs, RTAs, and the tests of the hypothesis proposed. With respect to NTMs, there are four conclusions. Firstly, there is a growing trend towards the notification of non-tariff measures; secondly, there is an imbalance between the number of NTMs notified and withdrawn year after year, a fact that progressively increases the total number of measures. Thirdly, 80% of the NTMs notified from 1994 to 2018 were TBT and SPS. Furthermore, developing countries account for 57% of them. Fourthly, there is a concentration on the introduction of such measures. For instance, the ten countries with the highest number of measures account for 45% of all NTMs initiated from 1995 to 2018.

After analyzing NTMs, we proceeded with the analysis of data on RTAs. There are five main conclusions about this analysis. Firstly, there has been a significant increase in the use of such agreements as complementary alternatives to WTO for achieving trade cooperation. From 1990 on, the volume of WTO-plus and WTO-extra provisions increased significantly. Secondly, 45% of the agreements closed are simultaneously free trade agreements (FTAs) and economic integration agreements (EIA); thirdly, both developing and developed countries account for 51% of RTAs that entered into force from 1994 to 2018. Notwithstanding, developing countries negotiated more RTAs between them than developed countries did. Fourthly, WTO-plus provisions are more numerous than WTO-extra ones. In other words, 63% of provisions deep and create new obligations that relate



to WTO's agreements. Conversely, the remaining 37% provisions relate to issues not yet dealt multilaterally. Fifthly, the influence of discord in MCs is weak over the variations in the number of RTAs closed. This last finding was important to observe that RTAs and their provisions do not explain the research puzzles identified at Conferences held in Geneva (1998), Doha (2001) and Cancun (2003). Hence, it indicates that other variables not yet mapped were responsible for promoting NTMs growth below the historical average in the periods following these conferences.

All the foregoing discussions and data allowed us to confirm the hypothesis proposed. Notwithstanding, it was not possible to solve the puzzles identified in the conferences held in Geneva (1998), Doha (2001), and Cancun (2003). Such lack of solution clearly leaves room for further research on this issue. Thus, it indicates that others unmapped variables may have promoted patterns of cooperation and harmony in the growth of NTMs after these conferences.

Finally, it is worth making a closing reasoning on the role of the WTO in today's world. The WTO was born with the main objective of guaranteeing fair trade, taking into account the needs of its members. For some time, the organization fulfilled this role, leaving to the regionalism the title of second-best. Nevertheless, the speed with which the international system has changed in recent decades has placed the WTO in a delicate situation. Consequently, the multilateral trading system, as structured in 1994, is undergoing an unprecedented crisis. Currently, the WTO suffers from a deep regulatory paralysis and the regime seems inappropriate to manage the new realities of international trade. In addition, the dynamics of interaction between countries today are faster and more complex. Hence, it is necessary to ask the following questions: is the WTO the appropriate regime to deal with these relations? Will the organization regain its rhythm or will it be always legislating in the rearview mirror? From the perspective of this dissertation, the WTO alone will not be able to adapt itself. Therefore, RTAs, as building blocks for trade liberalization, will increasingly become a fundamental part of the multilateral system as a test tool for the newest types of interaction among different types of actors. The WTO and

RTAs, therefore, will be together as complementary regimes to the liberalization of international trade.

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