
Brazil and WTO Dispute Settlement: an analysis on the Brazilian decision-making process

Brasil e Contenciosos na OMC: uma análise sobre o processo de tomada de decisão brasileiro

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DOI: 10.22478/ufpb.2525-5584.2020v5n2.51808

Date of Recieval: 13/04/2020
Date of Approval: 16/06/2020

Abstract: In the beginning of the 21st century, Brazil always sought to engage in multilateralism, assuming a leading role in WTO since 1999, leading the (agricultural) G-20 and opening many disputes against developed countries, being victorious in most of them. The disputes that mark these internal and external Brazilian shifts and victories are the cotton and orange juice disputes (against the United States) and the sugar dispute (against the European Union). However, why did Brazil decide to enter a dispute at WTO? Which factors are relevant for Brazil to contest other countries' protectionism? To answer these questions, this work will analyze the Brazilian choice of line of action to open WTO disputes between 1995 and 2018, and the decision-making process of the orange juice dispute. Thus, how the external scenario, the Brazilian diplomacy positioning in this scenario and the decision-making process influenced the opening of WTO panels was verified by showing the causal relations of the cited phenomena in the studied case.

Keywords: Decision-Making Process; Brazil; WTO.

Resumo: No início do século XXI, o Brasil que sempre procurou se engajar no multilateralismo assumiu um papel de protagonismo na Organização Mundial do Comércio (OMC) a partir de 1999, liderando o G-20 (agrícola) e abrindo diversas disputas contra países desenvolvidos, conquistando a vitória na maioria delas. Os contenciosos que marcam esse momento de mudanças externas e internas e de vitórias brasileiras são: o do algodão e o do suco de laranja (contra os Estados Unidos) e o do açúcar (contra a União Europeia). Contudo, apesar das vitórias na OMC para os respectivos setores agrícolas brasileiros, o fato de um setor demandar do governo a contestação em

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organização multilateral contra outro Estado que protege seu mercado de produtos importados pode ser entendido como um último recurso e derrota do setor exportador que não conseguiu negociar bilateralmente com o país importador. Nesse sentido, pretende-se neste trabalho responder as seguintes perguntas: por que os Estados decidem entrar em disputas na OMC? Quais os fatores relevantes para o Brasil contestar o protecionismo de outros países? Dois caminhos apresentam-se como possíveis para pensar a questão: 1) o processo de tomada de decisão em política externa e a escolha da linha de atuação do país nesse campo; e 2) a influência do setor demandante sobre a formulação e implementação de políticas públicas. Para responder as questões, esse trabalho analisará o primeiro caminho, refletindo sobre a escolha da linha de atuação brasileira para abrir contenciosos na OMC entre 1995 e 2018 e sobre como ocorreu o processo de tomada de decisão no contencioso do suco de laranja. Com isso, verificar-se-á de que forma o cenário externo, a posição da diplomacia brasileira nesse cenário e o processo de tomada de decisão influenciam a abertura de painéis na OMC.

Palavras-chave: Processo de Tomada de Decisão; Brasil; OMC.

1. Introduction

Between the nineteenth and twentieth centuries, Brazil consolidated itself as a big and competitive worldwide exporter of commodities, even after a boost in its exportation of industrialized goods since the 1970s. With the Chinese *boom* in 2002, commodities were once again promoted and “the [Brazilian commodities] exports jumped from US\$ 72 billion in 2003 to US\$ 201.9 billion in 2010” (Souza, 2011), what represents 69.4% of the country’s export schedule. However, only the commodities boom would not be enough cause to explain the “revival of livestock as a relevant activity in the Brazilian economy [and] the role of great importance that the sector has played in the national economic life” (Iglésias, 2007, p.75). Hence, macro-transformations at the international (globalization and its crescent markets’ integration) and domestic contexts (re-democratization process and more actors in the decision-making process) are pointed as the necessary conditions to this explanation (Cason & Power, 2009; Iglésias, 2007; Mendonça & Ramanzini Jr., 2016; Oliveira, 2007; Schneider, 2010).

Then, a new regulatory matrix emerges, based on the interaction between governments and businesspeople, aiming the “amplification of participation in the country’s world trade of farming goods” (Iglésias, 2007, p.76). This interaction would occur strongly through the Ministry of Agriculture, Livestock and Provision (In Portuguese: Ministério da Agricultura, Pecuária e Abastecimento – MAPA), through

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Segment Chambers², in which the representation of interest associations would have prominent role. However, despite the existence of “competencies concerning foreign policies distributed throughout the federal Executive power and not only at the [Ministry of Foreign Affairs (in Portuguese: Ministério das Relações Exteriores – MRE)]” (Silva, Spécie & Vitale, 2010, p. 27), many of these Segment Chambers did not manage to elaborate uniform demands, both for domestic policies and international strategies for the country’s widening of markets.

An important organization for formulating the Brazilian trade policy is the Foreign Trade Chamber (in Portuguese: Câmara de Comércio Exterior – CAMEX), created in 1995 under the auspices of the Government Council of the Presidency of the Republic, and transferred in 1999 to the recently created Ministry of Industry, Foreign Trade and Services (in Portuguese: Ministério da Indústria, Comércio Exterior e Serviços – MDIC) (Fernandes, 2013). Nevertheless, once CAMEX became part of MDIC, it also turned into a conflict *locus* between the ministries³ until it lost “its competence in the formulation of the policies to which it was created” (Fernandes, 2013, p.144).

At the same time, “a pattern more or less defined of the international insertion of Brazil” (Mendonça & Ramanzini Jr., 2016, p.223) seemed to exist, which pointed to the opposite direction of the wishes of the agribusiness groups⁴. This can be explained because “[...] since the beginning of the 1990s, the Brazilian foreign policy can be characterized as a ‘*policy regime*’” (Mendonça & Ramanzini Jr., 2016, p.223). Such pattern was (and still is) guided by the respect of International Law rules and the peaceful settlement of conflicts, that is, Brazil would act in a *rule-oriented* way (Carvalho, 2012). Hence, with the increase of many protectionist tariff and non-tariff barriers to Brazilian products, due to the financial crisis from 2008-2009 (Cesar, 2013), MRE reacted in the propitious field: the Dispute Settlement Body (DSB) at WTO, becoming the most active developing country in this system (Ramanzini Jr. & Viana, 2012).

² On the subject, see Arbix, 1996; Geraldello, 2019; Guanziroli, Basco & Ortega, 2007; Moura & Brisola, 2010; Rissardi Jr., Shikida & Lages, 2017; Staduto et al, 2007; Takagi, 2000.

³ Until 2018, the Ministers of Industry, Foreign Trade and Services; of Foreign Affairs; of Finance; of Agriculture, Livestock and Provision; of Development Planning and Management; of Agrarian Development; of Transports, Ports and Civil Aviation; and the Minister-chief of the Civil House of the Presidency were part of the Ministers’ Council of CAMEX.

⁴ For Lohbauer (2010, p.76), it was “the intense acting, increasingly professional, of the representative entities allied to an extremely favorable juncture to world consumption of commodities that avoided a mediocre growth in exportations”, and not the state policies.

Even if the success of these disputes at WTO depends more on external (international rules, demanded country, bargain power of those involved) than on internal aspects (demanding country's capacity), the "domestic decision-making process is important to understand why a country has a particular position in the international negotiations" (Mendonça & Ramanzini Jr., 2016, p.216). In this perspective, the "external position of the countries cannot be explained without an analysis of the interactions between policies and domestic and international decision-making structures" (Mendonça & Ramanzini Jr., 2016, p.217), once the decision-making unity that decides on a particular foreign policy is as important as what is decided, and how it was decided (Farias, 2009).

Thus, this study aims to answer the following questions: why does Brazil decides to open disputes at WTO? Which factors are relevant for Brazil to contest other countries' protectionism? Two hypotheses are presented as possible: 1) the decision-making processes in foreign affairs and the choice of line of action in this field by the country; and 2) the influence of the demanding sector on the formulation and implementation of policies. Even though the paths are inter-related, analyzing the influence⁵ of the demanding sector on foreign affairs' decisions becomes a difficult task when actors' preferences are the same. That is, when the demanding sector and the government have the same preferences, how is it possible to affirm that a policy decision was made due to the sector's influence? Moreover, considering WTO disputes, MRE only accepts a sectorial demand if there is the concrete possibility of gain and proved juridical violation of WTO's rules, in addition to a positive political evaluation of the dispute for Brazil, as it will be shown.

Therefore, this study will ponder on the choice of the Brazilian line of action to open disputes at WTO between 1995 and 2018, leaving the hypothesis on the sectorial influence on MRE to future studies. To follow the chosen path, a case study was conducted to assess how the decision-making process in MRE occurred, according to the Brazilian foreign policy line of action. This case is the orange juice dispute, because MRE opened two consultations in DSB about the product, in different international moments and which reflected in Brazil's international insertion. Therefore, it is possible to verify

⁵ Influence here is understood as a phenomenon that occurs when there is an orientation of the "attention of policy-makers to some issues, excluding others" (Thomas, 2004, p.121) by interest groups and the consequent convergence between the demand of the interested group and the political outcome (Macuso & Gozetto, 2018).

how the external scenario, the Brazilian diplomacy's position in this scenario and the decision-making-process influenced the opening of panels at WTO.

2. Decision-Making Process in Brazil's Foreign Policy

Many dissertations, theses and articles have been written in the last decades analyzing the decision-making process of the Brazilian foreign policy. This literature has considered many aspects of this interaction ⁶, from “how the relation between state and society is established, the degree of openness to state instances, the correlation of forces between domestic state and non-state actors”, to “the possibilities of implementing the foreign trade policy in view of the domestic and systemic constraints” (Mendonça & Ramanzini Jr., 2016, p.214). These studies, to a greater or lesser extent, understand that national interest is not cohesive, as there is a range of interests inside the state, frequently competing with each other to be elevated as a state policy. Therefore, they use as reference Allison (1969), Moravisk (1993), Milner (1997) and Putnam (2010), among others.

In relation to Allison (1969), some considerations are necessary, as his main worry is “questioning the political role played by the bureaucracies” (Figueira, 2009, p.40). The author developed 3 models of analyzing the state action: 1st) the rational politics model, in which the state acting would derive from a rationality of the national government leader, aiming to maximize gains; 2nd) the organizational bureaucratic model, in which “the events of the international politics are [...] outputs of organizational processes” (Allison, 1969, p.699) of many state agencies and institutions, little depending on the will of the ruler; and 3rd) the bureaucratic politics model, in which politics is seen as a political result, that is,

The decisions and actions of governments are essentially intra-national political outcomes: outcomes in the sense that what happens is not chosen as a solution to a problem but rather results from compromise, coalition, competition, and confusion among government officials who see different faces of an issue; political in the sense that the activity from which the outcomes emerge is best characterized as bargaining (Allison, 1969, p.708).

⁶ Among the studies, we highlight Amorim Neto & Malamud, 2015, 2019; Carvalho, 2003; Cintra, 2007; Deitos, 2010; Farias, 2007; Figueira, 2009; Jakobsen, 2016; Lima, 2000; Lima; Santos, 2001; Mendonça & Ramanzini Jr., 2016; Ramanzini Jr., 2009.

Once the decision-making process in foreign policies is not concentrated in the ruler's hands in Brazil, being divided among an increasing number of state agencies, the two last models are the ones that may help to understand this process. However, the third model has received more attention, as it embodies bureaucrats as actors, and not only as managers, hence considering the aspects of the other two models (Figueira, 2009; Jakobsen, 2016; Ramanzini Jr., 2009).

This is due to Brazil being an example of “state dominated” domestic structure (Cintra, 2005). According to Rissen-Kappen (1994, p.209), domestic structures are “the organizational apparatus of political and social institutions, [...] as well as the values and rules that prescribe an appropriate behavior embedded in the political culture”. These structures have three dimensions: 1st) the state political institutions and their degree of centralization or fragmentation; 2nd) the structure of society concerning its (strong or weak) ability to articulate demands; and 3rd) the political networks that link state and society (Carvalho, 2003; Cintra, 2005).

In the case analyzed by Carvalho (2003, p.390), despite the decrease of “Itamaraty's autonomy [and the] amplification of the decision-making process to the participation of other bureaucratic actors, the influence of the National Congress was null”, and the process concentrated at the Executive. In the same direction are the findings of Cintra (2005, p.19), who believes “there is a strong system of organizations representing interests that channels social demands”, but power is “too concentrated by the Executive”.

Such concentration in the Executive is reinforced by Farias (2007), who showed through the Brazilian participation in GATT that the centrality of MRE in the decision-making process was not natural before the re-democratization process, as many researches supposed⁷. According to Farias (2007), MRE lived a paradox as, on one hand, it had the capacity and acknowledgement to act in international negotiations and, on the other hand, it did not have the technical and domestic implementation competencies of

⁷ Since the Brazilian redemocratization process, a new movement began towards diminishing the bureaucratic isolation of the Ministry of Foreign Affairs in the formulation of foreign and trade policies, opposite to the direction followed before. There were many forms (and no consensus) on naming this decentralization of foreign affairs under the ministry, among which unwrapping, decentralization, democratization, horizontalization, power shift, interest diversification (Farias & Ramanzini Jr., 2015). Among the authors that deal with this subject in this perspective are Anastasia, Mendonça & Almeida, 2012; Cason & Power, 2009; Oliveira & Milani, 2012; Farias & Ramanzini Jr., 2015.

the internationally negotiated arrangements. In this perspective, MRE “could not, alone, make decisions in the multilateral plan” (Farias, 2007, p.15).

These “tasks divisions” between MRE and other ministries can be seen in many domains, be it by the staff exchange between ministries, due to the formation of International Relations sectors in different ministries, or by the establishment of working groups (Figueira, 2009; Silva, Spécie & Vitale, 2010). However, the authors highlight that, between 1988 and 2007, the number of diplomats in other ministries was ten times the number of staff employees of other ministries allocated at MRE. For Silva, Spécie and Vitale (2010, p.20), this can be an attempt of MRE centralizing the “foreign policy issues in the hands of professional diplomats”, even in other ministries.

However,

[In] the first decade of the 2000s, it is observed that Itamaraty has a greater weight in defining the Brazilian position and strategies in WTO (Carvalho, 2000). [...] The fact that the Ministry of Foreign Affairs has an important role in the domestic decision-making process for determining the country’s trade policy, through CAMEX, in addition to having privileged access to information of the international actors, are some of the factors that contribute to this dynamic. The issue of the acceleration of the so-called “globalization” processes decreases significantly the possibility of domestic bodies formulating policies that are incompatible to Brazil’s international commitments is a factor that also tends to increase Itamaraty’s weight. (Mendonça & Ramanzini Jr., 2016, p.223)

Thus, CAMEX was created to accommodate the Brazilian economic and social groups that began to pressure for more participation in the formulation of Brazil’s international trade policies to avoid distributive losses and/or costs from the adopted policies. The Chamber acts as a space of discussion between government and the private sector about the domestic policies to be adopted that have an impact on international commitments. CAMEX has also sought to protect MRE from sectorial lobbies. “According to an interview conducted with the Agriculture and Primary Products Division of MRE, [...] the government institutions exposed to lobbies from the private sector are, and should be, the sectorial ministries” (Machado, 2009, p.94-95).

However, according to Lohbauer (2010), the trade policy of Lula’s government

would be subjected to the principles determined by the foreign policy. The differences between the then-minister of Agriculture Roberto Rodrigues and the minister Fernando Furlan, concerning the paths that

should be followed in the ALCA negotiations, were confronted by the positions of the minister Celso Amorim, from MRE. President Lula was clear and explicit. The last word in trade policy would be given by the MRE. From that moment on, [...] CAMEX [...] suffered a harsh blow in the efficiency of its operability. (Lohbauer, 2010, p.76)⁸

Thus, despite MRE not being the only relevant actor in the decision-making process in foreign trade policy, since CAMEX is responsible to formulate, implement and coordinate this policy, when the issue involves WTO, Itamaraty seems to be the protagonist, even though institutionally it is the ministry responsible for the externalization of actions, the decision would be inter-ministerial. This would be due to the synergism between MRE, the Civil House and MDIC, since, when there are convergences of these agendas (MRE strategies, the strategies of the Presidency of the Republic and the domestic policies demanded by the interest groups), MRE “tends to strengthen itself as an institution and increase its weights in the decision-making process to define the international positions of the country” (Mendonça & Ramanzini Jr., 2016, p.226).

3. Brazil and teh Disputes at WHO between 1995 and 2018

Since the creation of WTO in 1995, the Brazilian foreign trade policy went through some changes in this subject. “During Fernando Henrique Cardoso’s government, there was an attempt to negotiate in three arenas [...]. There was the negotiation with WTO, with the [European Union] and with the United States, with the proposal of an agreement between the Americas. [...] In Lula’s government, the option became only WTO” (Thorstensen, 2014, p.8). On the other hand, Oliveira (2012, p.34) believes that, in the last decades, “Brazil’s foreign trade policy used the negotiation strategy in three paths, with priority to multilateral combined with regionalism in two stages”. For the author, the three paths would be the multilateral negotiations at WTO; the preferential agreements in South America (mainly Mercosul); and other regional agreements with countries outside South America, such as “India, Mexico, Israel, Egypt, Cuba, Palestine [...] and South Africa (through SACU)” (Oliveira, 2012, p.34). Regionalism in two stages, cited by the author, concerns the shifts in the negotiation strategies of agreements with countries outside South America: the first stage was

⁸ Veiga (2007) also pointed out that the political view is that it would define the Brazilian negotiation strategy in international trade as opposed to the economic-pragmatic view.

represented by the attempted agreements with developed countries (the Mercosul-European Union agreement, and the agreement with the United States) in the 1990s and beginning of the 2000s, while the second stage refers to the signature of agreements with developing countries since the 2000s.

Despite the differences of the authors cited above concerning the intensity of the shifts in each government and the reasons for such changes, both point to multilateralism as the central axis of the actions undertaken. In this sense, WTO was the main scenario for the Brazilian foreign trade policy, especially since the Doha Round⁹, when the discussion about liberalizing the agricultural market became the cornerstone of the Brazilian position in the organization. However, as “the USA and [the European Union] had already conducted their agricultural reforms through the recent Farm Bill and Common Agricultural Policy, [respectively], [...] they left no space for negotiation at WTO” (Thorstensen, 2014, p.9), what has hindered the advancement of the Doha negotiations.

Thus, for Thorstensen (2014), if new rules are not established to liberalize agriculture in developed countries, Brazil’s solution to reduce agricultural protectionism in these countries are the WTO’s panels. However, since this is not an issue only for Brazil, WTO’s DSB becomes overburdened to decide on subjects that have not been negotiated yet, enlarging the existing concepts. For Azevedo and Ribeiro (2009), “[t]riggering the mechanism for the dispute settlement is not only an exercise to gain – or lose – economic advantages. It is also a mechanism of political pressure and rights legitimation” (Azevedo & Ribeiro, 2009, p.8). That is, apart from being a strategy at WTO, participating in the DSB panels is also related to a broader strategy of foreign policy, related to the bilateral relation between those demanding and those that are demanded and the country’s status in the international system.

Hence, it is necessary that the demanding country have “a group of litigators to defend [its] interest inside WTO” (Thorstensen, 2014, p.9). To the author, Brazil should have strengthened MRE’s Disputes General Coordination (in Portuguese: Coordenação-Geral de Contenciosos – CGC)¹⁰ to prepare itself better for the DSB panels. But, even with the reduced number of Brazilian litigators capable of supporting DSB discussions,

⁹ It began in 2001, and has not ended until today.

¹⁰ Created “in 2001, and led by the ambassador Roberto Azevêdo, [...] WTO general-director [between September 2013 and August 2020] and the main trade diplomat in the country since the creation of the Organization” (Bonomo, 2014, p.4), and transformed in the Division of Trade Disputes (DTD) in 2019.

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“Brazil (1.73) is the second more offensive [G-20 economy] in the dispute settlement system at WTO, behind only Canada (1.94)” (Bonomo, 2014, p.4). That is because Brazil has developed an extended litigation process (ELP): “an informal system [...] of detailed evaluation of each potential case before it is formally initiated, [...] combined with a well-defined legal-diplomatic action, both in the phase previous to the juridical case and the stage after its conclusion” (Bonomo, 2014, p.5). This ELP has helped MRE to “filter”, in legal, economic and politic terms, the private sector demands and ensure a high rate of victory and compliance to WTO decisions in the disputes started by Brazil” (Bonomo, 2014, p.5).

In the attempt to start only disputes whose victory rate may be potentially high, Brazil has reduced the number of disputes it opens, with a reduction of 30% between 2002 and 2013 (Bonomo, 2014). The predominant sector has also been altered: if between 1995 and 2013 the industrial sector was responsible for 46% of the panels, between 2014 and 2018 it was responsible for only 33%, as shown at Table 1. This is because agriculture and the agroindustry strongly enhanced their participation: from 1995 to 2018: of the 32 disputes opened by Brazil, 16 (50%) are from the agricultural sector and 13 (40.6%) of the industrial sector (World Trade Organization, 2019).

Table 1 shows that the highest Brazilian activity at WTO occurred between 1997 and 2002, a period in which, with the exception of 1998 and 1999, the requests for opening panels varied from 4 to 7 per year. After a 5-year period without demanding disputes, Brazil starts to open little less of one dispute per year, what may be seen as a result of ELP and the collaboration between MRE, MDIC, MAPA and the private sector, as suggested by Bonomo (2014), Carvalho (2003) and Mendonça and Ramazini Jr. (2016).

This is because the Brazilian strategy is formulated after the complaints of the sectors affected by other countries’ measures. When this sector points its opportunity costs to the sectorial ministry and CAMEX, it faces many obstacles, among which sometimes MRE (at CAMEX). Oliveira (2007) reminds the speech of Pedro de Camargo Neto, member of the Brazilian Rural Society (SRB), about the cotton dispute:

Some [MRE] staff members did not wish to face a world superpower in the terrain of agricultural issues. I handed a study on the contestation of subsidies, and they said, ‘Bring me another’. After, I handed more two studies, and they asked for other four. Some people did everything to hinder me. (Oliveira, 2007, p. 23)

Table 1. Disputes Opened by Brazil in DSB

| Year | Case | Demanded Country | Product |
|-------------|-------------|------------------------------------|---|
| 1995 | DS4 | United States | Gasoline |
| 1997 | DS69 | European Union | Poultry |
| | DS70 | Canada | Civilian Aircrafts |
| | DS71 | | |
| | DS112 | Peru | Buses |
| 1998 | DS154 | European Union | Coffee |
| 2000 | DS190 | Argentina | Textiles (cotton products) |
| | DS208 | Turkey | Steel and Iron pipe fittings |
| | DS209 | European Union | Soluble Coffee |
| | DS216 | Mexico | Electric transformers |
| | DS217 | United States | Act 2000 - Byrd Amendment (subsidies and dumping) |
| | DS218 | | Carbon steel products |
| | DS219 | European Union | Iron tube or Pipe fittings |
| 2001 | DS222 | Canada | Aircrafts (regional aviation subsidies) |
| | DS224 | United States | US Patents code |
| | DS239 | | Silicon metal |
| | DS241 | Argentina | Poultry |
| 2002 | DS250 | United States | Orange juice (EET imposed by Florida) |
| | DS259 | | Steel products |
| | DS266 | European Union | Sugar |
| | DS267 | United States | Cotton |
| | DS269 | European Union | Frozen Boneless Chicken Cuts |
| 2007 | DS365 | United States | Agricultural subsidies |
| 2008 | DS382 | United States | Orange juice (anti-dumping measures) |
| 2010 | DS409 | European Union and the Netherlands | Generic drugs in transit |
| 2012 | DS439 | South Africa | Frozen Meat of Fowls |
| 2014 | DS484 | Indonesia | Chicken meat and chicken products |
| 2016 | DS506 | Indonesia | Bovine meat |
| | DS507 | Thailand | Sugar |
| 2016 | DS514 | United States | Steel flat products |
| 2017 | DS522 | Canada | Commercial Aircrafts |
| 2018 | DS568 | China | Sugar |
| 2019 | DS579 | India | Sugar and sugarcane |

Source: Own elaboration based on data from the World Trade Organization, 2019.

The cotton dispute is one of the panels opened by Brazil in 2002, “the first year of complete operation of CGC” (Bonomo, 2014, p.5), to protect agriculture and cattle raising, and marking the beginning of this sector’s predominance in the disputes at WTO. In 2002, four disputes, relevant to the farming sector, were opened: in March, DS 250 on a tax applied in Florida for the Brazilian orange juice, in September, DS 266 on the

European subsidies for their sugar producer, and DS 267 on American subsidies for their cotton producers¹¹; and, in October, DS 269 on the European Union's customs classification of boned cuts of chicken.

Together, the panels mark Brazil's new position in the international scenario, reflecting both Fernando Henrique Cardoso's autonomy by participation, and its premise of adhering to international regimes, and Lula's autonomy by diversification, and its premise of contesting developed countries¹². Thus, the denunciation of the ways developed countries evaded the multilateral trade regime through non-tariff barriers marked Brazil's new position of institutional reforms in the foreign trade policy.

However, one of these disputes reappeared years later: the barriers applied to orange juice exports in the United States continued to harm this product's trade. Moreover, the request emerged in an appropriate time, as developed countries, despite preaching free market as a way to overcome the 2008 financial crisis, were adopting more protectionist measures than the average observed in the previous years (Cesar, 2013). In this perspective, we describe, in the following section, how and why this case had one more episode.

4. The Orange Juice Dispute

"Canned" orange juice was developed during the Second World War, aiming to supply vitamin C to the American troops abroad. Since then, the juice processing industry in the United States has invested in technology and marketing both to enhance the product's flavor and conservation, and to foster consumption. This resulted in high consumption of the product in the country, turning it into the biggest national market and the leading producer of concentrated orange juice in the 1960s, when these industries

¹¹ Opened in the same day, the cotton and sugar disputes represent the Brazilian response to subsidies programs for these products in the United States and the European Union, respectively the *Farm Bill* and the Common Agricultural Policy (CAP), and the Brazilian contestation to countries with smaller competitive advantages in the international commodities market.

¹² According to Vigevani e Cepaluni (2007, p.283), "'autonomy by participation' [represents] the adhesion to international regimes, including those of liberal mark, without the loss of the capacity of managing foreign affairs; in this case, the aim is to influence its own formulation of principles and rules that rule the international system; [and] [...] 'autonomy by diversification' [represents] the adhesion of a country to the principles and international rules through South-South alliances, including regional ones, and agreements between non-traditional partners (Chine, Pacific Asia, Africa, Eastern Europe, Middle-East, etc.), as it is believed that they reduce the asymmetry in foreign relations with more powerful countries and enhance the country's capacity to negotiate".

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started to help and invest in the formation of new industries in Brazil (Geraldello, 2015; Hamilton, 2009).

However, after a series of frosts (1977, 1981, 1982, 1983, 1985 and 1989) in the main orange juice producing area in the United States, the state of Florida, Brazil ascended to the position of world leader in the sector during the 1981/1982 harvest, becoming the biggest orange and orange juice producer in the world (Fava Neves et al, 2010; Geraldello, 2015). With the drop in production in Florida, the industry started to import the Brazilian product, and today the “100% USA” juice is, in fact, a blend between the American and the Brazilian products (Hamilton, 2009). Thus, since the 1980s, the United States has used of three protectionist mechanisms against the Brazilian product:

high tariff peak; commercial defense processes; and commercial preference to third countries, such as Mexico (Brasil, 2007, p.17). The American protectionism created many commercial impasses, forcing the Brazilian authorities to take the issue to WTO in 2002 and 2008/2009. (Geraldello, 2015, p.14-5)

As pointed previously, 2002 marked Brazil’s confrontation of developed countries at WTO, as well as the defense of the farming sector. Despite being the first dispute of this year, the orange juice panel was not opened. Brazil questioned about the legality of a

tax applied to Brazilian imports of concentrated orange juice by the state of Florida, the Equalizing Excise Tax (EET). This tax was a measure to compensate the Florida Box Tax, charged from Florida’s producers over the box of harvested oranges. Brazil judged this unfounded, both due to the fact that the equivalent tax for nationals was charged on non-processed products and the fact that producers from other states of the USA were not subjected to it [...] (Geraldello, 2015, p.52)

In addition to EET taxing only imported products, it was invested in the marketing of orange juice produced in Florida. While Brazil and the United States did not reach to a consensus on who would be the panelists, they maintained bilateral negotiations, and a judge in the United States decided on the matter in accordance to Brazil’s interests: EET should be applied to all the national producers (Geraldello, 2015; Monteiro, 2010). “Finally, Brazil and the USA announced, in 2004, that they had reached an agreement, and Florida made voluntary the payment of the part of the tax that was destined to the marketing of the Florida product” (Geraldello, 2015, p.53).

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Despite Florida obliging the payment of “a ‘special equalization tax’ for the processed orange, in quantities determined by Florida Citrus Department” since 1970 (Monteiro, 2010, p.98), other barriers that were adverse to the Brazilian product were also imposed. From 1982 to the 1st of January 2000, Brazilian orange juice had to pay compensatory rights to enter in the United States; “from 1987 to 2010, antidumping rights, through a definitely imposed measure”; and in 2012 even phytosanitary measures were applied (Geraldello, 2015, p.51).

MRE decided to start consulting DSB in November 2008 on the American market protection that was in effect then: the measures of the antidumping right imposed in August 2005. Thus, Brazil questioned at WTO the investigations of the United States Department of Commerce (USDOC) from October 2003 to September 2004, and its revisions (which considered the periods from August 2005 to February 2007, and from March 2007 to February 2008) that led to the application of the Antidumping Law (Lohbauer, 2011). However, these investigations were conducted using zeroing, which is a form of calculating antidumping rights in a way that transactions in which dumping did not occur have a “zero value”, that is, are not considered. Consequently, there will always be dumping when the calculation concerns more than one transaction¹³. This methodology has been condemned by DSB, such as the European Union stopped using it in 2000, leaving the United States as the only user of the method (Geraldello, 2015).

The already mentioned international financial crisis, which enhanced protectionism in developed countries (Cesar, 2013); the productive crisis in Florida and the consumption crisis in the United States, which majored the stocks and the drop in the juice’s quotation in 50% (Monteiro, 2010); and the rapprochement between the big orange juice industries in Brazil¹⁴, which envisioned more problems in the export for the American market added to an increasing drop of the global demand. All these elements could enhance the Brazilian companies’ margins of dumping, once “if ‘zeroing’ was not applied, the dumping rates would simply not exist” (Lohbauer, 2011).

Thus, considering the many factors cited that corroborated the Brazilian contestation and the lack of progress in bilateral negotiations between the countries, in

¹³ On the subject, see Cordovil (2009), Geraldello (2015) and Monteiro (2010).

¹⁴ In 2002, there were five big industries (Cargill, Citrosuco, Citrovida, Cutrale and Louis Dreyfus Commodities), which were represented by the Brazilian Association of Citric Exporters (Abecitrus). However, after some disagreements between the industries and an accusation of cartel formation, Cutrale was left alone in the organization in 2005. The rapprochement would only happen in 2008, when consult requests were opened at WTO.

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August 2009 a panel was opened. Even though the United States advocated the use of zeroing, in April 2011 the DSB Special Group considered its use incompatible to WTO's rules. This decision was adopted in June 2011 by DSB, and was not contested by the United States, which in 2012 stopped using the method to calculate the dumping margins of the Brazilian orange juice.

It is highlighted that in 2011, additional to the panel with Brazil, the panel opened by South Korea condemning the use of zeroing by the United States (DS 402) also ended with a Korean victory. Thus, in 2012, the year in which the decisions of these panels should be complied, the United States achieved an agreement with Japan and the European Union in other panels on the subject¹⁵, and USDOC "revoked the practice of zeroing in investigations and AD revisions, except in the case of targeted dumping" (Brasil, 2018, p.24).

Therefore, it is "interesting to note that, despite the measures against the Brazilian product [started] in the 1980s, only in the 2000s Brazil [used] WTO's mechanisms" (Geraldello, 2015, p.51). We believe that the explanation for this has a variety of causes, and involves:

- the Brazilian diplomatic line at WTO (rule-oriented), which sought to indistinctly confront all the countries that violated the organization's rules, and that affected the interest of sectors close to the decision-making unities. In a first moment, these sectors were the industrial ones (between 1997 and 2002), followed by agriculture and cattle raising;
- the Brazilian diplomacy's learning of when to take domestic demands to WTO, as exemplified by the institution of ELP and CGC, and of which domestic demands should be taken to WTO – opting to question zeroing, a practice with a record of being condemned, which indicated to success (as pointed by Lohbauer, 2011);
- the international moment, which in 2002 was propitious to opening a dispute against the United States, but, with the victory in the cotton dispute¹⁶, another dispute in the agricultural sector became unnecessary. On the other hand, in 2008, the international moment was once again propitious and important for the Brazilian diplomacy to mark its position regarding protectionism in developed countries;

¹⁵ After stopping the use of zeroing, Japan (DS 294 and DS 322) and the European Union (DS350) were the countries that most pressured the United States to stop using the method. However, until 2013, questionings about the use of zeroing by the United States were still opened.

¹⁶ In March 2005, the DSB decided in favor of Brazil.

- the international and national situation of the citrus sector. Internationally, 2005 marks the arrival of greening¹⁷ in the United States, what leads to an acute drop in the American orange and juice production and an increase in global stocks. Nationally, 2008 marks the rapprochement of the big Brazilian orange juice industries, resulting in the constitution, in 2009, of a new association to represent their interests, the National Association of Citric Juices Exporters (CitrusBr).

These points were necessary and enough conditions to the opening of the orange juice dispute in 2008. Other studies also point to multiple aspects of the disputes at WTO¹⁸. In this perspective, despite the Brazilian decision-making process in DSB being guided by a combination of factors, once MRE is in charge of the representation, the ministry has the final decision to open disputes at WTO, guiding itself more often by foreign policy guidelines than by the strategies of the domestically designed (and desired) commercial policies.

5. Final Considerations

This study aimed to explain how the decision-making process in foreign policy and the choice of line of action of the country in this field guided the acting of Brazil inside WTO's DSB to open disputes. Following Allison's (1969) political-bureaucratic model, we attempted to demonstrate that the acting of Brazil as a demanding country in DSB should be explained by domestic interactions between MRE and the other ministries, as well as between MRE and the business community. To illustrate such points, we analyzed the orange juice dispute.

Brazil is a big world leader in production of this commodity, but it faces many barriers in the American market. Nevertheless, even though old, the barriers were only questioned in the 2000s: in 2002, when the Brazilian trade diplomacy strongly invested in opening disputes in DSB; and in 2008, when there was an increase of protectionism in developed countries. In both moments, the Brazilian rule-oriented position at WTO, guided by ELP and CGC, defended the sectors that were not only able to approach the

¹⁷ A disease that affects the orange trees, causing "trees' death, which occurs in 2 years and a half after the infection", and often causes fruit drop before ripening (the "fruit that ripens is less productive" and bitter) (Geraldello, 2015, p.85). Since there is still no efficient pesticide, the way of avoiding disease propagation is through the eradication of trees.

¹⁸ For example, Almeida, 2019; Arbix, 2008; Castelan & Santos, 2018; Cintra, 2007; Deitos, 2010; Iglésias, 2007; Oliveira, 2007.

ministries, but that could also gather evidence that legally indicated the violation of WTO's principles, guarantying the country's victory. Thus, for the Brazilian government to take the case forward and open a dispute at WTO, a conjunction of domestic (sectorial demand) and international (international juncture) factors and the country's view of foreign policy is necessary, (bilateral relationship with the defendant country and Brazil's position on the international system).

In this sense, MRE is emphasized in this process, as it is the developer of strategies for Brazil's international acting. However, as showed, the influence of the demanding sector on the formulation and implementation of public policies deserves more detailed attention, which could be a suggestion for future researches. This may be connected to the impacts of the Chinese boom, the increase in commodities exports and the opening of disputes by the Brazilian government to benefit the agroindustry.

References

Allison, G. (1969). "Conceptual models and 'the Cuban missile crisis'". **The American Political Science Review**, vol. LXIII, n.3

Almeida, R. A. R. (2019). O Brasil e o multilateralismo comercial: a política externa brasileira em relação à OMC entre 2003 e 2008. Dissertação (mestrado) - Universidade Federal de Uberlândia, Programa de Pós-graduação em Relações Internacionais. Disponível em: <http://dx.doi.org/10.14393/ufu.di.2019.622>

Anastasia, F.; Mendonça, C.; Almeida, H. (2012). Poder Legislativo e Política Externa: jogando com as regras. **Contexto Internacional**. Rio de Janeiro, vol. 34, no 2, julho/dezembro, p. 617-657.

ARBIX, D. (2008). Contenciosos Brasileiros na Organização Mundial do Comércio (OMC): Pauta Comercial, Política e Instituições **Contexto Internacional**, vol. 30, n. 3, setembro/dezembro.

ARBIX, G. A. T. (1995). Uma aposta no futuro: os três primeiros anos da câmara setorial da indústria automobilística e a emergência do meso-corporatismo no Brasil. Tese (Doutorado). São Paulo: Universidade de São Paulo.

Azevedo, R. C.; Ribeiro, H. M. (2009). O Brasil e o mecanismo de solução de controvérsias da OMC. In: LIMA, Maria Lúcia L. M. P., ROSENBERG, B. (org.). **Solução de controvérsias – o Brasil e os contenciosos na OMC**: tomo I. São Paulo: Saraiva.

Bonomo, D. (2014). Sem deixar a peteca cair: o Brasil e os contenciosos na OMC. **Pontes**, vol. 10, nº 6, ago.

Brasil. (2018). Embaixada do Brasil em Washington. Desafios e oportunidades à exportação de produtos brasileiros aos Estados Unidos. Agosto de 2018. Disponível em <<https://sistemas.mre.gov.br/kitweb/datafiles/Washington/en-us/file/Desafios%20e%20Oportunidades%20%C3%A0%20Exporta%C3%A7%C3%A3o%20de%20Produtos%20Brasileiros%20aos%20EUA.pdf>>.

Carvalho, M. I. V. (2003). Estruturas Domésticas e Grupos de Interesse: a formação da posição brasileira para Seattle. **Contexto Internacional**, Rio de Janeiro, vol. 25, n. 2.

_____. (2012). O Órgão de Solução de Controvérsias da OMC e os países em desenvolvimento: quais são os membros que contam? **Boletim Meridiano 47**, vol. 13, n. 133, set.-out.

Cason, J.; Power, T. (2009). Presidentialization, pluralization, and the rollback of Itamaraty: explaining change in Brazilian Foreign Policy making from Cardoso to Lula. **International Political Science Review**, v. 30, n. 2, p. 117-140.

Castelan, D.; SANTOS, L. W. (2018). O Brasil no Órgão de Solução de Controvérsias da OMC: *soft balancing*? **Rev. Carta Inter.**, v. 13, n. 3.

Cesar, S. E. M. (2013). A Organização Mundial do Comércio e a contenção do protecionismo como reação à crise econômica e financeira global. **Boletim Meridiano 47**, vol. 14, n. 140, nov.-dez.

Cintra, R. (2007). Agendas, Atores e Lobbies na tomada de decisão em política externa comercial: o caso da siderurgia (Brasil e Estados Unidos). Tese (Doutorado) – Universidade de Brasília, Programa de pós-graduação em Relações Internacionais.

Cordovil, L. A. G. (2009). O interesse público no antidumping. Tese (Doutorado em Direito Econômico e Financeiro) – Universidade de São Paulo, São Paulo.

Deitos, M. A. (2010). O contencioso internacional do comércio de pneumáticos – politização da política externa e internacionalização da política doméstica. Dissertação (mestrado) – Universidade Federal do Rio Grande do Sul, Programa de pós-graduação em Relações Internacionais.

Farias, R. S. (2007). O Brasil e o GATT (1973-1993): unidades decisórias e política externa. Dissertação (mestrado) – Universidade de Brasília, Brasília, Programa de pós-graduação em Relações Internacionais.

_____.; Ramanzini JR, H. (2015). Reviewing horizontalization: the challenge of analysis in Brazilian foreign policy. **Rev. bras. polít. int.**, Brasília, v. 58, n. 2, p. 5-22, Dec.

Fava Neves, Marcos; Trombin, Vinicius G.; Milan, Patricia; Lopes, Frederico F.; Cressoni, F.; Kalaki, Rafael. (2010). **O retrato da citricultura brasileira**. São Paulo: CitrusBR.

Fernandes, I. F. A. L. (2013). A construção institucional da política comercial brasileira: a Câmara de Comércio Exterior (CAMEX) no governo Cardoso. **Revista de Sociologia e Política**, v. 21, n° 45, mar.

Figueira, A. R. (2009). Processo Decisório em Política Externa no Brasil. Tese (Doutorado) – Universidade de São Paulo, Programa de pós-graduação em Ciência Política.

Geraldello, C. S. (2015). Medidas *antidumping* e política doméstica: o caso da citricultura estadunidense. Dissertação (Mestrado) – Universidade Estadual Paulista “Júlio de Mesquita Filho”, Programa de Pós-Graduação em Relações Internacionais “San Tiago Dantas” – UNESP-UNICAMP-PUC/SP.

_____. (2019). A Câmara Setorial da Citricultura do MAPA e os grupos de interesse citrícola: campo de conciliação ou de conflitos? **IX Seminário Discente da Pós-Graduação em Ciência Política da USP**. São Paulo, 6 a 10 de maio de 2019.

Guanziroli, C. E.; Basco, C. A.; Ortega, M. (2007). Regulação ou cooptação? A ação do Ministério de Agricultura e Pecuária (MAPA) através das Câmaras Setoriais e Temáticas da agricultura entre 2002 e 2006. XLV Congresso da Sociedade Brasileira de Economia, Administração e Sociologia Rural. Londrina, 22 a 25 de julho de 2007.

Hamilton, Alissa. (2009). **Squeezed: What You Don't Know About Orange Juice**. Yale: Yale University Press: New Haven and London: Yale Agrarian Studies Series: James C. Scott, Series Editor.

Iglecias, W. (2007). “O empresariado do agronegócio no Brasil: ação coletiva e formas de atuação política – as batalhas do açúcar e do algodão na OMC”. **Rev. Sociol. Polít.**, Curitiba, 28, p. 75-97, jun.

Jakobsen, K. (2016). A. Análise de Política Externa Brasileira: continuidade, mudanças e rupturas no Governo Lula. Tese (Doutorado) – Universidade de São Paulo, Programa de pós-graduação em Relações Internacionais.

Lima, M. R. S. (2000). Instituições Democráticas e Política Exterior. **Contexto Internacional**, V. 22, n. 2.

_____.; Santos, F. (2001). O Congresso e a Política de Comércio Exterior. **Lua Nova**, n. 51, p. 121-149.

Lohbauer, C. (2010). A inserção internacional do Brasil e o papel das associações de empresas exportadoras. **Revista Política Externa**. v. 19, n. 2, set/out/nov.

_____. (2011). O Contencioso do Suco de Laranja entre Brasil e Estados Unidos na OMC. **Revista Política Externa**. v. 20, n. 2, set/out/nov.

Machado, A. (2009). A formulação da política comercial externa agrícola: condicionantes internacionais e domésticos da transformação institucional do MAPA. Dissertação (Mestrado em Relações Internacionais) Universidade de Brasília, Brasília.

Mendonça, F. A. P.; Ramanzini JR, H. (2016). A política comercial externa do Brasil e dos Estados Unidos: formulação, instituições e especificidades. **Monções: Revista de Relações Internacionais da UFGD**, Dourados, v.5. n.9, jan./jun.

Milner, H. V. (1997). **Interests, institutions and information. Domestic politics and international relations**. New Jersey: Princeton University Press.

Monteiro, J. A. (2010). O Dumping contra as exportações de suco de laranja concentrado brasileiro e sua discussão na OMC. Dissertação (Mestrado) – Pontifícia Universidade Católica de São Paulo, Programa de Estudos Pós-Graduados em Direito.

Moravcsik, A. (1993). Introduction: Integrating International and Domestic Theories of International Bargaining. In: EVANS, P.; JACOBSON, H. K.; PUTNAM, R. **Double-Edged Diplomacy – International Bargaining and Domestic Politics**. Los Angeles: University of California Press.

Moura, D.; Brisola, M. V. (2010). O Agronegócio e a Câmara Setorial no Brasil – um modelo a ser seguido. In: **Sociedade Brasileira de Economia, Administração e Sociologia Rural**, 48, Campo Grande, 25 a 28 de julho de 2009. Anais. Campo Grande: SOBER.

Oliveira, M. F. (2007). Multilateralismo, Democracia e Política Externa no Brasil: contenciosos das patentes e do algodão na Organização Mundial do Comércio (OMC). **Contexto Internacional**. Rio de Janeiro, vol. 29, nº1.

Oliveira, I. T. M.; Milani, C. R. S. (2012). Atores não estatais e trade policy - making no Brasil: análise dos interesses e das estratégias da CEB e da REBRIP. **Dados - Revista de Ciências Sociais**, vol. 55, núm. 2, p. 367-401.

_____. (2012). As negociações comerciais do Brasil: uma estratégia em três trilhos. **Boletim Meridiano 47**, vol. 13, n. 134, nov.-dez.

Putnam, R. D. (2010). Diplomacia e política doméstica: a lógica dos jogos de dois níveis. **Rev. Sociol. Polit.**, Curitiba, v. 18, n. 36.

Ramanzini JR., H. (2009). Processo decisório em política externa e coalizões internacionais: as posições do Brasil na OMC. Dissertação (mestrado) - Universidade de São Paulo, Programa de pós-graduação em Ciência Política.

_____; Viana, M. T. (2012). Países em desenvolvimento em uma ordem internacional em transformação: coalizões e soluções de disputas na OMC. **Rev. bras. polít. int.**, Brasília, v. 55, n. 2, Dez.

Rissardi Júnior, D. J.; Shikida, P. F. A.; Lages, A. M. G. (2017). Análise Empírica do Neocorporativismo na Agricultura Canavieira Paranaense. **Revista Gesto**, v.5, n.1, Jan./Jun.

Geraldello. *Brazil and WTO Dispute Settlement*

Schneider, B. R. (2010). "Politics in Latin America: patterns of fragmentation and centralization". In: COEN, D.; GRANT, W.; WILSON, G. **The Oxford Handbook of Business and Government**. New York: Oxford University Press.

Silva, E. C. G.; Spécie, P.; Vitale, D. (2010). Atual arranjo institucional da política externa brasileira. Texto para discussão n 1489. IPEA: Brasília, maio.

Souza, L. S. (2011). A Importância Econômica das Exportações de Commodities para o Brasil. **Revista Eletrônica de Relações Internacionais Mundorama**. Disponível em: <<http://www.mundorama.net/?p=8181>>. Acesso em: 04 jul. 2018.

Staduto, J. A. R.; Rocha Júnior, W. F. Da; Gonçalves Júnior, C. A., Alves, Y. B. (2007). As câmaras setoriais do agronegócio brasileiro. In: **Congresso da Sociedade Brasileira de Economia e Sociologia Rural**, 45, Londrina, 2007. Anais. Londrina: SOBER.

Takagi, M. (2000). Câmaras setoriais agroindustriais, representação de interesses e políticas públicas. Dissertação (mestrado). Universidade Estadual de Campinas, Instituto de Economia, Campinas, SP.

Thorstensen, V. (2014). **Entrevista Vera Thorstensen**. [Entrevista concedida a] Ana Paula S. Lima. Revista Sapientia, São Paulo, ano 03, edição 18, p. 06-12, junho e julho.

Vigevani, T.; Cepaluni, G. (2007). A política externa de Lula da Silva: a estratégia da autonomia pela diversificação. **Contexto Internacional**, 29 (2).

World Trade Organization. **Dispute Settlement: The Disputes**. Find Disputes Cases. 2019. Disponível em <https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm>. Acesso em 17 jun. 2019.