Skipping the Rules, Out of the Game? The Case of Brazil in the New Regulatory Convergence Moment

Michelle Ratton Sanchez-Badin
FGV São Paulo School of Law

U. Melbourne, The Age of Megaregionals
May 19th, 2016
The paradoxes of an emerging economy

- Although an active player in the international system, Brazil is not part of FTAs nor of BITs!
- Although one of the largest economies, it is considered one of the most closed ones (followed by the US, 20% of the GDP from trade)!
- Although one of the largest FDI recipient (7th position), never signed a BIT!

HOWEVER...

Alternative trade and investment actions were taken, and specific rules adopted.
Two contrasting images:

1) Mega regional agreements (blue)

2) Trade and investment agreements involving Brazil (green and orange)
2002-2012 – revisiting the agenda

Freezed plurilateral actions: FTAA & EU-Mercosur

- Focused on market access.
- No negotiation, no implementation of WTO plus/extra rules.

Promoted alternative arrangements: South-South & BRICS

- Cooperation agreements: local rules, policy space – right to regulate, capacity building.
Benefiting from the results: Trade /Investment flows

**2000**

- **N-N**: 51%
- **S-N**: 19%
- **S-S**: 14%
- **N-S**: 16%

**2013**

- **N-N**: 34%
- **S-N**: 18%
- **S-S**: 28%
- **N-S**: 20%

Source: ECLAC.

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Source: UNCTAD.
Searching for new rules on trade and investment (from 2014 on)

• ACFI: a new model on investment agreement.

• ACE for regional value chains: tariffs and technical standards.

• ACFI+: investment and trade (RVC).
Comparing instruments & policy space

TPP/ Investment chapter

- **Principles**: MFN, NT
- Right to regulate: freezed on “Non-conformity” lists, or under scrutiny of exceptions.
- **Purpose**: protect investment
- **Expropriation**

  - **DSS**: ISDS+state/state
  - **CSR (parties)**

ACFI

- **Principles**: right to regulate, exchange of information

  - **Purpose**: promote mutual investment (agendas, capacity, technology – public agenda behind)
  - **Expropriation** (direct)/ compensation ac. Local law
  - **DSS**: ombudsman(preventing) +state/state
  - **CSR (investors responsibility)**
Why megaregionals are becoming an issue to Brazil?

RCEP  

TPP  

TTIP
Challenges of the Megaregional model

**Regime changer rules**
- Capital account regulation
- SOE restrictions
- IP plus protection - health
- Government Procurement
- Investment – expropriation, ISDS
- Data transfer

**Standardization rules**
- Reform of domestic agencies
- Review of domestic legislative capacities
- Review of procedures
The political crisis in 2016– risks on implementing the lost electoral agenda?

- Recover historical relations with traditional markets (EU and US)
- Signature of TPAs with new partners (including BIT rules?)
- Standardization/ GVC
- China and other Asian countries replacing the traditional partners. Adding Africa to the strategy.
- Alternative rules for trade and investment / No BIT rules
- Sectoral policies and arrangements/ Regional global value chains
The political crisis in 2016– risks on implementing the lost electoral agenda?

• EU-Mercosur – close negotiations, and later upgrades based on TTIP (as Chile and Mexico).

• Deep ATCE with the US, on TPP terms.

• ACFI++, review this format under TPP model rules.