Theme

Trade: Integrity of the rules-based trade regime and BRICS' role: central role of the WTO, possible creation of a BRICS-wide market, cooperation within the WTO, G20 and regional economic structures

Title

Trade policy, the WTO and productive transformation strategies in a context of regional and bilateral trade agreements: perspectives from South Africa

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ABSTRACT

The BRICS countries need to be innovative in linking trade, industrial and technology policies for catch-up and development, particularly with the broadening of WTO rule-making to areas like services, investment, intellectual property protection and government procurement. This paper explores South Africa's current policy approach on some of these issues and the lessons that can be learnt for moves to promote deeper economic cooperation within the BRICS grouping. The paper argues that the BRICS countries should give pressing attention to the implications for development policy space of the proliferation of regional and bilateral agreements arising from the WTO Doha impasse and the potential impact of the ongoing 'mega-regional' FTA negotiations. In this environment, the expansion of trade and investment relations among the BRICS countries must take careful account of the development policy goals and imperatives of the partner states.

1. INTRODUCTION

The drafting of a new Trade Policy and Strategy Framework for South Africa in 2009-2010 coincided with a series of major events in the world economy, including the international financial crisis and significant shifts in the balance of economic power globally. The emergence of China, India and Brazil as major players in the global economy, and the resulting impact on the balance of power in groupings such as the WTO and the G20, has fostered renewed interest in emerging market developing countries and South-South economic cooperation. In this context

the BRICS grouping has consolidated its presence through the formalisation of a number of institutional arrangements in the last two years, including the New Development Bank, the Contingent Reserve Arrangement, the BRICS Business Council and the Think Tanks Council. The BRICS countries are developing an agenda to promote deeper economic cooperation within the grouping and have released joint position statements on a number of key areas related to the global economic and financial architecture. Prominent among these are the 2012-2014 Summit statements which express frustration at the slow pace of reform of the IMF and World Bank, and strongly criticise the impact on emerging market economies of the monetary policy response of developed countries to the global crisis.[1] At the Sixth Summit in Fortaleza, a BRICS perspective on international investment agreements emerged, and there is ongoing work on the development of a BRICS agenda for reform of the WTO and a revision of key WTO Agreements.[2]

Notwithstanding their growing influence, it is evident that in the current global environment the BRICS and other developing countries need to be innovative in linking trade, industrial and technology policies for catch-up and development, particularly with the broadening of WTO rule-making to areas like services, investment, intellectual property protection and government procurement. Signs of a re-balancing of economic power globally have been accompanied by the emergence of a number of trends and challenges, including the proliferation of regional and bilateral agreements arising from the WTO Doha impasse, an inclination towards plurilateral agreements and the potential impact of the 'mega-regional' FTA negotiations. This paper explores South Africa's current trade and industrial policy position and its underlying rationale in this environment, including the country's policy approach on some of the new generation trade-related issues and the trends and challenges noted above. It then considers the lessons that may be learnt from these perspectives for moves to promote deeper economic cooperation within the BRICS grouping as well as emerging BRICS positions and contradictions in some of these areas.

2. SOUTH AFRICA'S TRADE POLICY AND STRATEGY FRAMEWORK

Trade and industrial policy in South Africa has, since the late 2000s, been informed by the Department of Trade and Industry's 2007 National Industrial Policy Framework (NIPF) (Zalk, 2014). The goals of the NIPF include the diversification of the country's productive structure towards non-traditional tradeable goods and services that are competitive in export markets as well as against imports, the development of a more labour-absorbing industrialisation trajectory

[1] See, for example, the Fourth Summit: Delhi Declaration and Action Plan, 29 March 2012. [Online] Available at http://brics6.itamaraty.gov.br/category-english/21-documents/68-fourth-summit.

[2] The statement on international investment agreements is available at http://brics6.itamaraty.gov.br/category-english/21-documents/227-brics-perspective-on-international-investment-agreements. On BRICS and the WTO, see, for example, Thorstensen and Oliveira (2014) and FGV, IPEA and SAIIA (2014).

that facilitates the inclusion of previously disadvantaged people and poorer regions, and support for the development of Africa's industrial capabilities (the dti, 2007a: 7). The NIPF document recognises the need for the alignment and coordination of a range of policy areas in order for industrial policy to be effectively implemented. These include appropriate macroeconomic and regulatory policies, relevant skills and educational policies, infrastructure development and a supportive technology policy, as well as coordination with other areas of social policy (the dti, 2007a: 8-9).

In the NIPF, trade policy is viewed as an instrument of industrial policy. Tariff policy, in particular, is aligned with sector targeting priorities set out in the annual rolling Industrial Policy Action Plans (IPAPs). The approach involves the review and reduction of tariffs on critical inputs into downstream manufacturing and, where appropriate, their retention or use in strategic value adding or employment-creating IPAP sectors, within the limits set by South Africa's WTO, regional and bilateral obligations. In such a framework, generalised across-the-board unilateral or bilateral tariff liberalisation would not be favoured. Other aspects of the tariff regime under review include addressing some of the historical complexities of South Africa's tariff structure and a critical assessment of the costs and benefits of further simplification and rationalisation of the tariff book.[3] Furthermore, tariff determinations in the revised trade policy are less *ad hoc*, and are based on more detailed sector investigations that consider a range of factors affecting the entire supply chain. The NIPF further indicates that export promotion and diversification strategies, as well as foreign direct investment promotion, should be in line with industrial policy goals (the dti, 2007a: 29).[4] Alongside the strategic use of tariffs, therefore, the potential use of export taxes is envisaged to encourage local beneficiation.

The Department of Trade and Industry's 2010 Trade Policy and Strategy Framework (TPSF) document (the dti, 2010a) has two key aspects. Firstly, it proposes a developmental trade policy in support of the country's industrial policy framework. The document reinforces the 'strategic tariff policy' outlined in the NIPF whereby tariff policy is informed by industrial policy and pursuant to the government's national development objectives. The major development goals are identified in the trade policy document as, *inter alia*, employment creation, economic growth, poverty reduction, industrial development and restructuring, and the promotion of high value added exports (the dti, 2010a). The second key aspect of the 2010 TPSF is the simultaneous pursuit of a policy of 'strategic integration into the global economy'. The objective is to participate in the world economy while preserving sufficient policy space to pursue domestic development goals. There are bilateral, regional and multilateral dimensions to this position, a number of which have been elaborated in a subsequent TPSF update (the dti, 2012).

At the multilateral level, South Africa is committed to the conclusion of the Doha Round on the basis of the development mandate, with the principles of special and differential treatment (SDT) and less-than-full-reciprocity (LTFR) underlying commitments made by developing countries

[3] The latter is considered further in Section 2.2 below.
[4] Investment policy is discussed in Section 2.3.1.

(the dti, 2012; Ismail, 2012b). The TPSF documents note that lack of progress on the question of agriculture and increasing pressure on emerging economies for greater market access commitments in industrial tariffs and services contributed to the impasse in negotiations from 2008. South Africa's negotiating objectives in the Doha Round are specified as the improvement of market access for developing country exports, the elimination of agricultural subsidies by developed countries, the re-negotiation of agreements that foster imbalances in the rules-based trading system and the appropriate application of SDT to allow developing countries policy space to address their development concerns (the dti, 2010a: 33).

The Doha impasse has resulted in a number of trends and challenges that are highlighted in South Africa's TPSF update. These include the pursuit of plurilateral agreements that South Africa and most other WTO members oppose on the basis that they erode multilateralism, and lack transparency and inclusiveness. Another aspect relates to policy prescriptions associated with the emergence of global value chains, particularly services liberalisation and trade facilitation. It is argued that participation in GVCs should not be divorced from industrial policy and broader development goals.[5]

At the regional level, South Africa (as a member of the Southern African Development Community) is engaged in negotiations towards a Tripartite FTA (T-FTA) between the three regional blocs of SADC, the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). The T-FTA, which is due to be launched in June 2015, will begin as a trade-in-goods agreement based on three pillars: market integration, infrastructure development and industrial development. This is in line with South Africa's 'developmental integration' approach to regional economic integration on the continent (the dti, 2012, Davies, 2011: 9-10).[6] The T-FTA is set to form one of the blocs of a continental free trade area envisaged in the African Union's integration agenda (Cattaneo, 2011c).

Also on the regional front, South Africa is working with its Southern African Customs Union (SACU) partners on a five-point work programme that seeks to address some of the outstanding issues regarding the implementation of the 2002 SACU Agreement. The five areas of work are specified in the TPSF update as regional industrial policy, the revenue-sharing formula, trade facilitation, SACU institutional development and trade negotiations with third parties (the dti, 2012: 23-24). As far as SADC is concerned, the TPSF favours the consolidation of the SADC FTA and a focus on sectoral cooperation, infrastructure and industrial development, easing non-tariff barriers, trade facilitation and simplifying rules of origin (the dti, 2012: 24). It is evident that South Africa is cautious about moves to deepen SADC into a customs union as initially laid out in SADC's integration agenda, the Regional Indicative Strategic Development Programme (RISDP). In terms of the RISDP, a SADC customs union was due to be launched in 2010, a common market by 2016 and a common currency and monetary union by 2018.[7] The South

[5] This debate is considered further in Section 3.2.
[6] The rationale for this approach is explored in Section 2.4.
[7] Note that all SACU countries are SADC members, but have a deeper level of integration among themselves (a customs union within an FTA). There is therefore no inherent conflict between SACU and SADC as such, although

African Minister of Trade and Industry has referred to the further development of customs unions as premature and as constraining countries' capacity to "use tariffs as instruments for industrial development" (Davies, 2011: 9-10).[8]

Similar concerns govern the TPSF approach to inter-regional and bilateral trade agreements with partners outside the continent. The strategic approach at this level is to negotiate preferential trade agreements (PTAs)[9] that may initially be fairly limited, but then provide an institutional basis from which to develop and consolidate further relations. Examples include the 2009 SACU-MERCOSUR PTA and the proposed SACU-India PTA. This approach explicitly recognises the need to structure trade and investment relations with developing countries in ways that are sensitive to industrial development and employment goals. The emphasis is on reducing non-tariff barriers, investment and export promotion, technology cooperation and SME development (the dti, 2012: 25). Of major concern for South Africa is the replication of traditional North-South trading patterns in the country's trade with emerging economies. Exports are dominated by commodities and low value added products, while imports comprise higher value added manufactured goods (Bezuidenhout and Claassen, 2013). With the growing significance of China and India as individual trading partners, South Africa has signalled its concern about the implications of these trade patterns for its industrial development goals.

This concern is reflected in the Comprehensive Strategic Partnership Agreement signed in August 2010 between South Africa and China. In the economic sphere, the Agreement resolves to improve the *structure* of trade between South Africa and China in order to achieve a more balanced trading relationship that promotes trade in higher value-added manufactures. To facilitate this process, China will encourage investment in the South African manufacturing sector to develop value-added production within the country. According to the Agreement, key focus areas for cooperation include green economy sectors, agro-processing, skills development and industrial financing (Beijing Declaration, 2010). In addition, cooperation in infrastructure projects including roads, railways, ports, airports and power generation will be promoted.

From South Africa's perspective, therefore, strategic integration into the global economy should support industrial policy at each level by harnessing trade and investment relations to improve market access for South African products and firms. In this regard, other African countries have long been a key destination for the country's manufactured exports and the emphasis on this market continues in South Africa's post-2009 trade policy documents.[10] There is also a debate

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the implications of the EU-Economic Partnership Agreement negotiating configurations cross-cutting existing regional blocs require careful study.

[8] In a customs union, countries adopt a common external tariff against external trading partners, losing significant autonomy over national trade policy. In an FTA or PTA, each country retains its own trade restrictions against other countries.

[9] In a PTA, tariff concessions are exchanged but there is not yet free trade. Contemporary PTAs often now include annexes or chapters on issues such as trade facilitation and other areas of economic cooperation.

[10] Edwards and Lawrence (2012) argue that the TPSF does not give enough emphasis to relations with Africa and emerging economies, but this appears to be based on a reading of the 2010 TPSF, not the 2012 update.

about the nature of trade with traditional (EU) relative to emerging economy partners. Bezuidenhout and Claassens (2013) find that trade with the EU is more intra-industry in nature, while trade with emerging economies is more inter-industry. However the trade data used is too aggregated for a suitable analysis of inter- versus intra-industry specialisation,[11] and a more refined analysis is needed. For example, Mutambara (2013) examines intra-IBSA trade at a more appropriate level of disaggregation, and finds that while most trade is inter-industry, intra-industry trade opportunities do exist, with some potential for the type of trade expansion that could benefit industrial development and innovation.[12]

This discussion underscores the important point that trade expansion in and of itself does not equate to development (Reinert, 2008). This has implications for NAMA negotiations on industrial tariffs at the multilateral level, for developing country approaches to regional integration and bilateral trade agreements, and also for the prospects for moving towards a BRICS-wide market. South Africa's 2012 TPSF update highlights the importance the country attaches to its BRICS membership and outlines the main focal points of its economic engagement with its BRICS partners. These include reform of the global economic and financial architecture, including enhanced collaboration in the Doha Round, building trade and investment relations within the grouping that take account of industrial policy goals, and supporting BRICS engagement with the rest of Africa in ways that further the continent's development agenda (the dti, 2012: 25).

Notwithstanding the emphasis on Africa and the BRICS in the TPSF update, the continuing importance of trade relations with the EU and other developed country partners is highlighted. Current engagement with the US is concerned with securing an extension to the African Growth and Opportunity Act (AGOA), with South Africa working on the development of joint positions with other sub-Saharan African countries. A limited agreement between SACU and the US, the TIDCA (Trade, Investment, Development and Cooperation Agreement), focuses on trade and investment facilitation issues.[13]

The 2012 TPSF update notes that outstanding controversies were hampering the conclusion of the SADC[14] Economic Partnership Agreement with the EU. Some of the main controversies in

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[11] See, for example, Cattaneo and Fryer (2002).

[12] See also Onyekwena *et al*. (2014).

[13] SACU negotiations towards an FTA with the US commenced in 2003. However the talks stalled over disagreement on the scope of the agreement, particularly with respect to trade in services, intellectual property rights and government procurement (Cattaneo, 2011c). A bilateral engagement between the US and South Africa, the Trade and Investment Framework Agreement (TIFA, 1999, amended in 2012), provides another framework for interaction on trade and investment promotion and facilitation issues.

[14] The divisive EPA negotiations in southern and Eastern Africa have taken place in three configurations that controversially cut across existing regional groupings. The SADC-EPA group includes the SACU countries plus Angola and Mozambique. The EAC-EPA grouping comprises Kenya, Tanzania, Uganda, Rwanda and Burundi. Most other SADC members fall into the ESA-EPA group. South Africa's own trade relations with the EU post-apartheid have been governed by the 1999 Trade, Development and Cooperation Agreement (TDCA). The TDCA was concluded prior to the revised SACU Agreement of 2002 under which SACU members undertook to negotiate future trade agreements as a bloc (Cattaneo, 2011c). South Africa's participation in the SADC-EPA negotiations

the EPA negotiations included the following: an MFN clause whereby if a trading partner accounts for more than 1% of world trade then the agreement with that partner must be extended to the EU; the legal definition of a party since the SADC-EPA configuration does not conform either to SACU or to SADC as a legal entity; the use of export taxes; and better access for South African agricultural products in the face of continuing EU subsidies. In addition, EU pressure for full and comprehensive EPAs covering investment, intellectual property rights, services, competition policy and even public procurement has also been extremely divisive.

The SADC-EPA negotiations were finally concluded in July 2014. The controversial MFN clause will evidently apply to new agreements concluded between the SADC-EPA group and Brazil, China, India and the US (Erasmus, 2014). This has implications for future trade agreements between South Africa and most of its BRICS partners. On the other hand, by the end of the TDCA implementation period in 2012, 86% of South Africa's trade with the EU was to be duty-free. From South Africa's perspective, the problem with the MFN clause would then presumably only apply if South Africa wished to grant preferences to affected third countries in the 14% of products that are not covered by the TDCA or the EPA that replaces it. Limited use of export taxes by the SADC-EPA countries has been negotiated. However, discussions will evidently continue on a more comprehensive EPA that includes issues such as services, investment and competition policy.

South Africa's 2012 TPSF update also notes a number of challenges in relations with developed country partners. These include weak growth and demand conditions with their associated impact on South Africa's growth performance, new protectionist measures including standards and the destabilising impact of quantitative easing (the dti, 2012: 27).

This section has considered South Africa's Trade Policy and Strategy Framework outlined in the 2010 TPSF document and its 2012 update. The discussion indicates that the country's trade and industrial policy-makers favour the pursuit of a two-pronged strategy comprising a strategic trade policy in support of industrial policy and strategic integration into the global economy in a way that preserves sufficient policy space to pursue domestic and regional development agendas. The 2010 TPSF document recognises that strategic global integration requires South Africa to develop a trade strategy on the so-called new generation trade issues. The 2012 TPSF update highlights the need for positions on recent trends and challenges in the global trading system, particularly moves towards plurilateral agreements at the WTO and the potential impact of the mega-regional FTA negotiations. Many of these issues affect the important nexus between trade, industrial and technology policies.

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will be important in attempts to harmonise the outcome of the SADC-EPA negotiations with the SACU common external tariff and the TDCA (Erasmus, 2014).

The Doha impasse and the contestation that has surrounded the negotiation of North-South trade and investment agreements including the EPAs with the EU and international investment treaties has also prompted a re-examination of economic integration agendas in Africa and elsewhere, and South-South cooperation more broadly. The next section considers the rationale underlying South Africa's strategic trade and industrial policy position with a focus on the changing landscape of regional and bilateral trade and investment agreements, as well as the multilateral setting. This discussion will facilitate an analysis of emerging BRICS positions in some of these areas and the lessons that can be learnt from the South African perspective for the possible creation of a BRICS-wide market and moves to deepen economic cooperation among the BRICS countries.

3. STRATEGIC TRADE AND INDUSTRIAL POLICY

3.1. Industrial policy and the strategic use of tariffs

South Africa's current trade and industrial policy position is based on a fundamental critique of orthodox trade theory and its policy prescriptions.[15] The orthodox approach to trade policy makes the case for trade liberalisation to improve static allocative efficiency and for dynamic gains from trade. However, static resource reallocation effects are of little interest in the development context (the magnitudes of the estimates are small, and the empirical methodologies are questionable and based on restrictive assumptions). In terms of dynamic effects, theoretical models linking trade liberalisation and growth provide ambiguous conclusions and the empirical literature has been subject to extensive critique.[16] A significant body of work indicates that there can be no presumption that liberalisation per se will necessarily accelerate growth. Balance of payments and employment effects may be severe, export responses may not be forthcoming and distributional impacts adverse (Zalk, 2014; Cattaneo, 2011a; Thirlwall and Pacheco-López, 2008). Further, it cannot be taken for granted that growth by itself will lead to significant employment creation or meaningful development.[17]

These critiques signify that orthodox trade theory provides an insufficient framework for considering questions of growth and development through industrialisation in developing countries. Consideration of the dynamic effects of trade must lead to a recognition of the notion of dynamic comparative advantage. This suggests that comparative advantage needs to be

[15] Zalk (2014) analyses the historical trajectory of South Africa's trade and industrial policy. He contrasts the current approach by trade and industrial policy-makers in the country with the extensive trade liberalisation and ad hoc supply side industrial policy measures that were a feature of the post-apartheid period up to 2007.
[16] See, for example, Taylor and von Arnim (2006); Ackerman and Gallagher (2008); Wade (2004a); Rodriguez and Rodrik (2000).

[17] See, for example, the review in Cattaneo (2011a).

created, which in turn has important implications for trade and industrial policy.[18] The re-organisation of production and trade in global value chains also calls into question traditional analyses of trade and investment and their associated policy prescriptions.

South Africa's trade and industrial policymakers have, since 2007, favoured a heterodox approach that recognises the longstanding argument that the *type* of products a country produces is of major importance for development (Chang, 2005; Reinert, 2008). Output and growth consequences differ significantly for increasing as opposed to decreasing return activities. Dynamic economies of scale and learning by doing provide a rationale for the strategic use of trade and industrial policy instruments in this setting. South Africa's Industrial Policy Action Plan explains the rationale underlying the policy's focus on a labour-absorbing industrialisation trajectory with an emphasis on value addition in manufacturing but a recognition of important forward, backward and side linkages to mining, agriculture and manufacturing-related services (the dti, 2014). This includes high growth and employment multipliers in manufacturing sub-sectors, the importance of manufacturing for the economy's export and balance of payments performance, innovation and productivity growth, as well as economy-wide linkages.

The current approach recognises that the transfer of production technology and other knowledge is not costless or immediate. Technologies are not "blueprints" that can be costlessly applied elsewhere. Time is needed for learning by doing, investment in developing technological capabilities and absorbing / adapting technologies (Khan, 2009). Chang (2005) argues that not all aspects of a strategic trade and industrial policy can be expected to succeed but that this is not an argument for avoidance. A significant literature emphasises the ways in which failure can be reduced through the strategic use of reciprocal control mechanisms and performance requirements to harness rents as well as FDI for development.[19] Amsden (2005: 230) argues that

"[g]etting the control mechanism right, in conjunction with promoting science and technology, are twin pillars of a new industrial development strategy that may serve to energize still later industrializers".

Fine (2014, 2011) calls for an inductive approach to industrial policy, arguing that the nature of industrial policy differs by context, sector and country. Industrial policy should be inductively defined, rather than subject to a general definition that is then applied as a one-size-fits-all policy prescription. In this view, industrial policy is derived empirically from case studies of specific sectors of the economy. Policies have both horizontal and vertical dimensions, with horizontal policies prevailing across the economy and vertical policies pertaining to a particular sector and its linkages. This approach informs aspects of South Africa's Industrial Policy Action Plan.

[18] See the debate between Justin Lin and Ha-Joon Chang (Lin and Chang, 2009).
[19] See, for example, Chang, 2005; Amsden, 2005; Wade, 2004b; Di Maio (2009); Khan and Blankenberg (2009).

However, the implementation of a strategic trade and industrial policy can be significantly constrained by a lack of coherence between different aspects of economic policy-making, particularly with respect to the macroeconomic policy environment, as well as the political settlement in the country (the dti, 2014; Khan, 2009). This is a particular feature of the South African political economy (Zalk, 2014; Segatti and Pons-Vignon, 2013; Ashman *et al*., 2010). Different approaches across different departments, and the dominance of Treasury and the financial sector of the economy more generally, affect the ability to coordinate an effective industrial policy.[20]

In addition, trade and industrial policy instruments are constrained to a variety of degrees by WTO rules, regional trade agreements and international investment treaties. Furthermore, the re-organisation of production globally has significant implications for the conduct of strategic trade and industrial policy. In this regard, Section 2.2 briefly considers policy space in the WTO, while international investment agreements and the globalisation of production are discussed in Sections 2.3.1 and 3.2 respectively.

3.2. Industrial policy instruments and policy space

Chang (2005: 14-24) and others have emphasised the continued relative importance of tariffs for many developing countries. WTO rules restricting the use of subsidies, fiscal constraints to the use of 'permitted' subsidies and the continued importance of tariffs as revenue instruments for some countries support this position. However, in the NAMA (non-agricultural market access) negotiations in the Doha Round, developed countries have advocated a multilateral regime for industrial tariffs with a number of constraining features for trade and industrial policy (Akyuz, 2009; Chang 2005; Ismail, 2011). Extensive tariff bindings limit the scope for using trade policy for industrialisation. Bindings are not re-negotiable, and while trade remedies may be used to some extent, they are contingent and therefore unsuitable for designing an effective strategic tariff policy. Narrowing tariff dispersion across countries and across industrial products has implications for a country's scope to differentiate between sectors in designing industrial policy.

An alternative approach to the traditional one of straightforward tariff rationalisation is explored by Akyüz (2009: 156-161). The pattern of tariffs for industrial development will differ according to stage of industrialisation and the type of industry requiring infant industry protection during each phase. For example, at an intermediate stage of industrialisation, a country may have comparatively low tariffs on low-technology and high-technology products, with higher tariffs on medium-technology-intensive products. This means that tariff dispersion may necessarily be high across tariff lines at times and may be increasing or decreasing depending on stage of development. This has implications for the conventional approach of binding tariffs on a line-by-line basis. Akyüz (2009: 160-161) argues that inadequate policy

[20] Critics of the National Development Plan (NPC, 2012), for example, have questioned whether the references in the Plan to the 'developmental state' are more than just cosmetic.

space for industrialisation and future technological upgrading are likely consequences of the traditional approach. A balance is instead needed between multilateral discipline and policy flexibility. The use of an average bound tariff rate could facilitate this flexibility while encouraging the appropriate use of the tariff at the various stages of industrialisation.

Apart from tariffs, a wide array of trade and industrial policy instruments have been affected by WTO rules since the conclusion of the Uruguay Round: quantitative restrictions on both the import and export side; subsidies; local content schemes, export requirements and other trade balancing policies if they favour domestic over foreign firms (under the TRIMS Agreement); technology, industrial and health policies (under the TRIPS Agreement). Debate on the degree to which these are constraints typically relate to stage of development. Tariff policy may be used to the extent that there is leeway between applied and bound tariff rates, import restrictions can be implemented for balance of payments reasons or in response to an import surge, export taxes can be used on an MFN basis, while R&D, regional development and environmental subsidies may be permitted (Amsden, 2005; Di Caprio and Gallagher, 2006).

It is arguable that the implications for strategic trade and industrial policy of agreements such as TRIPS, TRIMS and GATS were not clear at the start of the Uruguay Round implementation period. However by the launch of the Doha Round it was evident that developing countries had ceded significant policy space in the Uruguay Round. Furthermore, according to Di Caprio and Gallagher (2006), R&D subsidies have become actionable since 1999, while performance requirements tied to the provision of subsidies are prohibited. There is less space for the strategic protection of designated sectors and increasing diversion of resources due to higher costs of compliance.

Di Maio (2009: 126-128) elaborates on a number of the constraints imposed by more stringent global rules than those faced before the conclusion of the UR, but cautions that more serious impediments arise as a consequence of North-South bilateral agreements in which developing countries are induced to undertake deeper obligations than those required at the multilateral level, particularly in areas such as services, intellectual property protection and investment policy. According to Shadlen (2005):

> [i]n analysing contemporary development strategies, the most useful contrast is not between the alternatives that countries have under the WTO and the alternatives that countries had in the past under the WTO's predecessors, but between a constraining multilateral environment and even more constraining regional and bilateral environments that condition increased market access on the sacrifice of the very tools that countries have historically used to capture the developmental benefits of integration into the international economy.

Both the Doha impasse and the push by the EU and the US for WTO-plus provisions in North-South regional/bilateral trade and investment agreements are related to pressure from powerful lobbies in the North for greater market access into the larger emerging market developing economies in particular. In the face of saturated services markets at home and the re-organisation of production and exchange globally, this pressure from developed countries also

extends to the procurement markets of developing countries. In a context of both trade and financial liberalisation, the so-called new generation issues such as trade in services, investment, intellectual property protection, public procurement and competition policy have all been subject to the discourse of liberalisation and 'regulatory reform'. From a developing country perspective, however, each of these issues plays a critical role in industrial policy and its articulation with other key policy areas.

Developing countries have resisted pressure to negotiate on investment, government procurement and competition policy in the Doha Round and the three issues were removed from the Doha Development Agenda in 2004 (Sandrey, 2006).[21] There has also been growing criticism and calls for the revision of GATS, TRIMS and TRIPS by developing countries. It is therefore in the context of plurilaterals, regional trade agreements and international investment treaties that most of these issues are now being taken forward by the developed countries.

'Trade facilitation' was the only one of the four 'Singapore Issues' that remained on the Doha Development Agenda after July 2004. However, despite the eventual conclusion of an Agreement on Trade Facilitation at Bali, questions have arisen about the extent to which the trade facilitation agenda coheres with a 'development' agenda in the spirit of the Doha mandate or whether it forms part of a new trade narrative for further liberalisation by developing countries, especially in the field of services (see Section 3.2).

3.3. Trade policy and the new generation 'trade-related' issues

3.3.1. Investment policy

With the Doha impasse there has been a proliferation of international investment treaties and investment chapters in regional trade agreements. International investment agreements (IIAs) have become increasingly controversial because of the degree to which regulatory autonomy is eroded and the nature of investor-state dispute mechanisms that allow foreign firms to institute claims against host governments. IIAs can affect the coherence between FDI, industrial and technology policy, as well as important social policy objectives. For example, mineral beneficiation and industrialisation efforts may be affected via challenges to tax regimes, and policies to promote the developmental benefits of foreign investment, such as requirements to undertake joint ventures, procure inputs locally, transfer technology or support domestic R&D may be constrained (CCR, 2014: 2-3). Provisions that allow foreign firms to avoid compliance with domestic laws that local investors are subject to and that allow foreign firms access to a dispute mechanism that is not available to domestic firms indicate that IIAs permit more favourable treatment of foreign over local investors (CCR, 2014: 3; Stiglitz, 2013).

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[21] At the 1996 WTO Ministerial Conference in Singapore, working groups on investment, government procurement and competition policy were set up and the Council for Trade in Goods was directed to examine ways to promote the simplification of trade procedures, which became known as 'trade facilitation'. The four issues together became known as the 'Singapore Issues' (Sandrey, 2006: 4).

Gallagher (2010) explores the policy space available in IIAs to deploy capital controls in financial crises. He finds that trade and investment agreements can significantly affect a country's ability to use capital controls in times of crisis, particularly in the case of US agreements, but also where countries have made specific financial services commitments in the WTO General Agreement on Trade in Services (Gallagher, 2010: 1-2). In the case of the WTO, however, IMF-sanctioned safeguard provisions may exist and dispute resolution is state-to-state with a sanction mechanism that involves retaliation. In addition, countries that do not have financial services commitments under the GATS are free to use capital controls on both inflows and outflows. In the case of US trade and investment agreements, capital controls on both inflows and outflows are prohibited, there are no safeguard provisions, and there is an investor-state dispute resolution system under which host governments are liable to pay compensation to investors. By contrast, the provisions of the trade and investment agreements of capital exporters like the EU, Canada, Japan and China tend to allow safeguard measures in times of crisis and balance of payments difficulty or permit a country to implement its own domestic legislative provisions at such times, although investor-state dispute settlement still applies (Gallagher, 2010: 15-17).

Gallagher and Shrestha (2011) investigate the investor-state dispute mechanism prevalent in IIAs and its impact on developing countries. They note that empirical data on disputes does not reflect the many cases where treaty provisions are used to 'discourage' developing countries from implementing developmental domestic policies or to 'encourage' policy changes. Gallagher and Shrestha (2011: 8-9) find that developing countries are on the receiving end of most claims, far more than their share of world investment, and that US investor claims against developing countries have, on average, been three times higher than those against high income countries. Claims have been targeted against public policies in developing countries and the costs have been high.[22]

The provisions of trade and investment agreements are out of line with much current thinking and evidence on capital flows and the impact of capital account liberalisation, particularly since the global financial crisis. With respect to orthodox arguments for capital account liberalisation, Gallagher (2010: 3) notes that "the binding constraint for some developing country growth trajectories is not the need for external investment, but the lack of investment demand. This constraint can be accentuated through foreign capital flows because such flows appreciate the real exchange rate, thus reducing the competitiveness of goods and reducing private sector willingness to invest".[23] Zalk (2014: 336-339) explains that in the case of South Africa this has

[22] CCR (2014: 4) describes how the investor-state dispute resolution framework has become a "multi-billion dollar industry dominated by a small group of 20 law firms from Western countries". The system is evidently institutionally fragmented with ad hoc processes, reports of secrecy, and the "same small group of lawyers rotat[ing] between representing claimants and respondents, and sitting on arbitration panels, raising serious concerns over conflicts of interest".
[23] See Rodrik and Subramanian (2009) and Biziwick *et al.* (2015) for more discussion.

led to a type of 'Dutch disease' with an overvalued currency that has been coupled with resources being drawn away from domestic investment in manufacturing into a bloated financial sector.

A number of developed and developing countries have reconsidered their international investment treaties in recent years. According to CCR (2014: 1), reviews have occurred in Australia, Canada, Brazil, India, Norway, South Africa, the US and the EU during the past decade. While some countries have terminated or opted not to renew IIAs because they interfere with the attainment of domestic public policy objectives and because of disagreement with the investor-state dispute mechanism, others have argued that the IIA system could be reformed by reviewing the texts of agreements and the arbitration system. However, a number of countries, including South Africa, have found insufficient evidence that IIAs promote inward investment in excess of what would have occurred in their absence (CCR, 2014; Stiglitz, 2013).

South Africa adopted a new investment policy framework in July 2010. The purpose of the new framework is "to modernise and strengthen South Africa's investment regime by implementing a series of policy measures that will ensure South Africa remains open to foreign investment, provides adequate security and protection to all investors, while preserving the sovereign right of the South African Government to pursue developmental public policy objectives" (the dti, 2010b). The Framework was a response to the country's review of IIAs following the challenges experienced with existing bilateral investment treaties (BITs) and, in particular, the claim instituted by Italy and Luxembourg regarding Black Economic Empowerment provisions in the Mineral and Petroleum Resources Development Act (Woolfrey, 2013). A number of existing BITs have not been renewed and the country has developed a domestic legislative framework that protects both local and foreign investment, taking into account South Africa's public policy goals. The system provides for a dispute settlement mechanism with domestic arbitration overseen by the South African judiciary (CCR, 2014; the dti, 2010b).

3.3.2. Public procurement

While a growing literature is emerging on the implications for development policy of multilateral and regional-bilateral rules in areas such as services, investment, competition policy and trade facilitation, less work appears to have been done on the impact of international rules and disciplines in the field of government procurement and, more specifically, on the use of public procurement as a policy tool in developing countries. This area is of significant interest, however, since procurement markets comprise as much as 15-20 per cent of GDP in both developed and developing countries (Weiss and Thurbon, 2006). For many countries, discriminatory public procurement is one remaining policy tool in a rapidly shrinking development policy toolkit. Public procurement policy also has important linkages with investment, innovation, industrial and social policies. In this context, the implications for development policy of increasing pressures for multilateral and North-South regional-bilateral commitments in the field of public procurement are worth considering.

The WTO Government Procurement Agreement (GPA) is a plurilateral agreement that few developing countries have signed. Only about a quarter of (mostly OECD) WTO member countries were signatories to the 1994 GPA. Developing country participation is largely limited to EU transition economies, however there are a number of developing countries amongst the GPA observer nations[24], with China and Panama currently negotiating accession to the Agreement. There are no independent ACP or Latin American signatories at present, and Cameroon is the only African country with observer status. The most recent revision of the GPA entered into force in April 2014 and provides for expanded coverage of government entities and services, and a new provision on corruption. The new Agreement includes "improved transitional measures" to encourage developing countries to join.

As with the case of trade liberalisation more generally, there is often a presumption that open procurement markets are the appropriate benchmark for developing countries to strive towards (Cattaneo, 2011a: 24). From a development perspective, however, there is both a theoretical and empirical literature that considers public procurement as potentially "one of the most promising innovation and industrial policy tools of our time" (Kattel and Lember, 2010: 368-369). Weiss and Thurbon (2006: 703-705) explain how the US has actively used government purchasing both to promote domestic industry and as a tool of export promotion, emphasising the longstanding importance of public procurement in the US, Canada and Europe. Kattel and Lember (2010: 371) highlight the role of GP as a demand-side tool in East Asian development policies. Since 2010, South Africa's Industrial Policy Action Plan (IPAP) has emphasised the leveraging of public procurement in designated sectors to increase domestic production, local content and employment as a key aspect of its industrial policy and for social redress (the dti, 2014).

Kattel and Lember (2010) identify public procurement for innovation (PPfI) as a demand-side instrument through which government can create a market for goods and services that do not yet exist, thereby stimulating innovation and developing technological capabilities. This differs from a supply-side instrument like an R&D subsidy, and facilitates learning-by-doing in the production process. The idea of public procurement as both an innovation and industrial policy tool derives from an evolutionary economic perspective on the role of technology in development, in contrast to the traditional neoclassical view of technology as similar to 'any other good'. In addition, the PPfI literature provides linkages to the development of green economy sectors, which is also a focus of South Africa's current industrial policy. In developing countries, national and (South-South) regional frameworks are often underdeveloped in this area, and it is arguably important to formulate national and potential regional positions before engaging in negotiations on procurement policy in a wider context.

[24] Observer developing countries include, amongst others, Argentina, China, Colombia, India, Indonesia, Malaysia and Turkey. See http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties.

3.4. Development integration

In the light of the recent experiences of many developing countries in trade and investment agreements with developed country partners, the BRICS countries should carefully consider how to promote deeper economic cooperation among member states without reproducing some of the problems associated with the orthodox approach to economic integration. The development integration approach favoured by South Africa's trade and industrial policy-makers views economic integration as an instrument of industrial policy in particular and development policy more generally. By contrast, the orthodox linear model of market integration (effectively amounting simply to regional liberalisation) provides an inappropriate framework for integration in the development context, particularly among countries at unequal levels of development (Cattaneo, 2012; Davies, 2011). Instead of an instrument of development, the traditional view often sees integration simply as a way to facilitate broader and deeper liberalisation and insertion of developing countries into a global free trade system. There is little analysis of the developmental impact of services and investment provisions of regional agreements, for example, or the effects of financial liberalisation and broader macroeconomic aspects, or broader political economy considerations and analysis of national and regional political settlements.

The market integration approach, based on a linear progression from a free trade area to a customs union, common market and economic union (with each step involving deeper liberalisation), can be critiqued with respect to the potential for polarised development, greater inequality and concentration of investment in more developed partners. In a developing country context, integration is not about static welfare effects but rather potential dynamic benefits of a larger regional market and other prospects for cooperation to promote industrialisation and development. Adoption of a linear model of market integration in pursuit of trade benefits is a short-sighted approach. The traditional model is also inappropriate for more developed economies which nevertheless have to deal with national inequality and poverty alleviation on a large scale.

Alternatives approaches include functional integration (or integration through project cooperation) and development integration (Mutambara, 2009; Davies, 1996). Development integration, favoured by South Africa's trade and industrial policy-makers, incorporates a regional industrial development policy as well as cooperation in transport and infrastructure as keys pillars, together with the development of South-South networks of production and trade, mechanisms to ensure equitable distribution of benefits, regional development banks, special payments mechanisms, asymmetric tariff reductions, appropriate investment flows geared towards development and collaboration in international forums (Cattaneo, 2012).

4. RECENT TRENDS AND CHALLENGES

4.1. The Doha impasse and the trend towards plurilaterals in the WTO

Developing country trade negotiators have argued that there has been a steady erosion of the development mandate in the Doha Round since its launch in 2001. Lack of meaningful reform on agriculture has been coupled with increasing pressure on more advanced developing countries in particular to open markets in industry and services. South Africa itself faces the prospect of deep NAMA tariff cuts because of its historical 'developed country' status in the Uruguay Round. Ismail (2012a) outlines a number of important reasons for the 2008 deadlock. Firstly, shifts in the balance of negotiating power have meant that developing countries have been able to resist demands for additional market access beyond the 2008 texts, particularly through coalitions such as the NAMA11 and G20 agriculture grouping. In addition, US lobbies and other constituencies have argued that there is "not enough on the table" to encourage developed country negotiators to conclude the Round, coupled with a lack of consensus on trade policy direction in the US (Ismail, 2012a: 57-58).

Although a Trade Facilitation Agreement was concluded at the Ninth Ministerial Conference in Bali on December 2013, in addition to a limited package on LDC issues and food security, negotiators remain sceptical about whether the Bali meeting will lend new impetus to the Doha Round or see a deepening of the trend whereby developed country interests are prioritised relative to those of developing countries (Campbell, 2014). Ismail (2015) notes that there was division among developing country groupings on the Bali Agenda, with concern about whether an agreement on trade facilitation should be concluded on its own without significant progress on agriculture and other areas of interest. South Africa's position was that the Bali package should be "rebalanced" to take better account of developing country issues, that detailed negotiations on texts should not proceed at the Bali meeting until this had occurred, and that an outline of the work programme that would follow should be provided, together with a clear endorsement of the Doha development mandate (Ismail, 2015).

Two emerging trends that have intensified as a consequence of the Doha impasse and the limited deal reached at Bali are the trend towards the negotiation of plurilateral trade deals at the WTO and the mega-regional FTA negotiations. After the 8th WTO Ministerial Conference in 2011, discussions began on a services plurilateral agreement at the behest of services sector groupings in the US and Australia in particular. Ismail (2012a) explains that the US and Australia favour non-MFN, single issue, plurilaterals like the GPA, whereas the UK and the EU prefer an MFN approach to plurilaterals where a sector agreement would be extended to all WTO members. Many developing countries argue that plurilaterals undermine the single undertaking by de-linking the negotiation process from agriculture and other DDA issues. Ismail (2012a) reports that in 2012 the Ministers of Brazil, India and South Africa issued a statement criticising the plurilateral agenda. China, on the other hand, has shown an interest in participating in the services trade negotiations under TISA (the Trade in Services Agreement) and joining the GPA.

4.2. Trade facilitation and global value chains

Important technical work on the measurement of trade in terms of value added and GVCs by the OECD and WTO has been accompanied by a narrative that the emergence of GVCs "provides a compelling reason for countries to have more open trade policies" (Gurria, OECD, 2012, cited in Ismail, 2013b). The argument appears to be that given the re-organisation of production and trade in global value chains, more liberalisation will necessarily be better and will benefit all countries, both developed and developing. The South African position is critical of this narrative which is seen as a way to enhance a wholesale liberalisation agenda, extended to services and related to the growing financialisation of the global economy (Ismail, 2013a,b).

Draper and Lawrence (2013) imply that South African policy-makers wish to "ignore" issues related to GVCs and development. They set out a number of "policy toolkits" to facilitate the attraction of GVC investment to sub-Saharan African countries. It is arguable, however, that the South African position in fact raises the GVC narrative as an important issue in the current global environment. In addition, a number of the recommended policies are already part of South Africa's policy toolkit. In this context, developing countries need to consider imaginative ways of forwarding their trade and industrial policy agendas in the presence of GVCs. There is an extensive underlying related literature on power relations and industrial policy in the GVC context (see, for example, Milberg *et al*., 2014; Kaplinsky and Morris, 2014).

Both the GVC narrative and the plurilateral agenda appear to be related to growing pressure on developing countries to open their services sectors further to developed countries. South Africa undertook extensive commitments under the GATS in the Uruguay Round. For most countries, services liberalisation is more complex and sensitive than goods liberalisation due to the social nature of services and the involvement of factor movements. In mainstream analysis, however, the tools employed to analyse services trade liberalisation are often the same as those used in the case of goods trade. However, careful sector research is needed to assess which services should be supplied within countries, internationalised within the region, or sourced internationally. A sector-by-sector approach and sequencing are important to avoid adverse consequences for the services sector itself, as well as the broader macroeconomy (Cattaneo, 2011b).

4.3. The mega-regional FTA negotiations

The so-called mega-regional trade negotiations include the TPPA (Trans-Pacific Partnership Agreement) and the TTIP (Trans-Atlantic Trade and Investment Partnership) as well as the RCEP (Regional Comprehensive Economic Partnership). The TPPA negotiations involve Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam. The TTIP negotiations are between the EU and the US, while the RCEP

comprises 10 ASEAN members as well as India, China, Japan, Korea, Australia and New Zealand. These mega-regionals are introducing an agenda for regulatory convergence with some characteristics that go beyond some of the WTO-plus provisions seen in, for example, the EPAs and international investment treaties.

The TPPA negotiations involve a range of developed and developing economies and cover regulatory convergence in areas such as trade in goods and services but also investment, intellectual property protection and even the operation of state-owned enterprises. In terms of investment, the US is pushing for investor-state dispute settlement in financial services (Rosales and Herreros, 2014). A critique by the Australian Productivity Commission (2010) has argued that this approach will inhibit host country willingness to regulate and leave economies vulnerable in the face of financial crises. This concern is heightened when the US position on capital controls is taken into account. As discussed in Section 2.3.1 this position has already been problematic in BITS and other trade and investment agreements. In the TPPA negotiations, the US appears to aim to restrict the ability to use capital controls significantly:

> US positions appear highly ideological, placing freedom of movement for international capital above prudential regulation…and fail[ing] to reflect the lessons learnt from the recent financial crisis (Rosales and Herreros, 2014: 13).

Pressure for increasing intellectual property protection in mega-FTAs is related to the strong US lobby in this area; provisions are highly controversial in terms of public health and industrial policy issues. With regard to the operation of state-owned enterprises, the US is proposing "competitive neutrality" between SOEs and private sector firms (Rosales and Herreros, 2014). This would affect (for example) loans on beneficial terms by DFIs and public procurement policies. Furthermore, agriculture is off the table in the mega-regionals, while US agriculture, banks and financial institutions benefit from massive subsidies and bailouts. These so-called "modern" agreements are selective, and focused on areas of interest to developed countries.

5. LESSONS FOR THE BRICS ECONOMIC COOPERATION AGENDA

This concluding section examines emerging BRICS positions in some of these areas and the lessons that can be learnt from the South African perspective for the prospects of creating a BRICS-wide market and moves to deepen economic cooperation among the BRICS countries. The analysis involves an examination of BRICS statements and communiqués to obtain an understanding of evolving BRICS views and to explore any apparently contradictory positions. These views are then discussed in relation to the South African positions outlined earlier in the paper and their underlying rationale. The documents examined include the main BRICS Summit statements, joint communiqués of the BRICS Trade Ministers from 2012 to 2014 (BRICS, 2012a, 2013a, 2014a), the BRICS Trade and Investment Cooperation Framework (BRICS, 2013b), the BRICS Trade and Investment Facilitation Plan (BRICS, 2014b), the BRICS

Statement on International Investment Agreements (BRICS, 2014c), the 2014 recommendations of the BRICS Think Tanks Council (BRICS, 2014d), as well as the Trade Ministers' Statements on the sidelines of the 8th WTO Ministerial Conference in 2011 and the first G20 Trade Ministers' Meeting in 2012 (BRICS, 2011b and 2012b). Statements made in 2013 by the BRICS Business and Trade Union Forums, as well as the BRICS Business Council, are also examined.

In its formative years critics referred to the BRICS grouping as simply "a political talk shop or club" trying to increase its global negotiating influence. Tisdall (2012) points to the lack of concrete outcomes between 2009 and the 2012 New Delhi Summit as the reason for this (largely western) perspective. While the group's promoters argue that it will seek to create a new global political, economic and financial architecture in a multi-polar world, critics see the group as "fundamentally incompatible" as its members are in "strategic competition" with one another. However, in terms of economic governance issues there is arguably much common ground, and practical developments during and since the 2013 Durban Summit have significantly altered the "political talk-shop" perception of the group. Notwithstanding the importance of BRICS cooperation on political and security issues and their overlap with economic issues, the focus of this section will be on prospects for coherent BRICS positions with respect to the global economic and financial architecture, as well as the nature of evolving BRICS cooperation in trade, investment and finance.

The joint statements of the BRICS Trade Ministers from 2012 to 2014 follow a common structure, with sections covering global economic developments, the state of play in the Doha Round, cooperation in other multilateral fora and intra-BRICS economic cooperation. The 2013 Durban joint statement includes a section on BRICS partnership to support Africa's development agenda, in line with one of South Africa's key focal points in its interaction with its BRICS partners, as outlined in its Trade Policy and Strategy Framework update document.

With respect to global economic developments, the statements all express concern about the difficult global economic environment, with particular reference to increasingly volatile capital flows and commodity prices. They also reiterate "the need to resist protectionist tendencies and to promote international trade as an engine of economic growth and development, while respecting the WTO consistent policy space available to developing countries to pursue their legitimate objectives of growth, development and stability" (BRICS, 2013a). The 2012 New Delhi statement goes further to pinpoint developed country agricultural subsidies as "undermin[ing] the food security and development prospects of developing countries particularly LDCs" (BRICS, 2012a). The corresponding section of the 2014 Fortaleza statement uses the phrase "refrain from" protectionist tendencies, rather than "resist" protectionist tendencies, with a somewhat different inference. Nonetheless, the BRICS statements indicate clear common positions on developed country policy responses to the global crisis; on reform of global economic and financial architecture especially IMF; on the central role of the WTO and a greater role for UNCTAD.

5.1. BRICS cooperation at the WTO

Cooperation among some of the BRICS countries, specifically India, Brazil and South Africa, at the level of the WTO pre-dates the introduction of the BRIC acronym and the subsequent moves by the BRIC countries towards a political dialogue forum in the 2006 to 2008 period (Thorstensen and Oliveira, 2014; Ismail, 2015, 2012b). From 2003 the cooperation of India, Brazil and South Africa within the WTO context intensified, with the three countries playing a key role in the G20-Agriculture grouping (with China) and in the NAMA-11. Thorstensen and Oliveira (2014) provide a detailed analysis of individual and emerging BRICS positions across a range of trade policy issues within the WTO. They conclude that a convergence of interests is most likely among the BRICS countries in relation to NAMA, technical barriers to trade and SPS measures, services, investment and new themes such as exchange rates and food security.

5.2. BRICS positions on international investment agreements, plurilaterals and the megaregional FTAs

Whether there are coherent BRICS positions on plurilaterals, mega-regionals and international investment agreements is much less clear. The 2012 BRICS Summit statement states that the BRICS countries "do not support plurilateral initiatives that go against the fundamental principles of transparency, inclusiveness and multilateralism. We believe that such initiatives not only distract members from striving for a collective outcome but also fail to address the development deficit inherited from previous negotiating rounds". However, direct criticism of plurilaterals is absent from the 2013 and 2014 Summit statements.

The BRICS statement on international investment agreements that was released following the 2014 Summit in Fortaleza highlights the contribution that FDI can make to development "when integrated into national development strategies" (BRICS, 2014a). Paragraph 2 states that:

> BRICS Member States note that International Investment Agreements may, depending on their formulation, promote investment liberalization and protect the rights of investors. Investment agreements should strike a balance between the protection of investors and the Government's sovereign right to regulate in the public interest. In this regard, a robust national legal framework is conducive to the effective protection to both domestic and foreign investments.

While the first sentence of the paragraph seems almost deliberately to fall short of a direct criticism of IIAs, the rest of the paragraph highlights the essential problem with these agreements. Furthermore, Paragraph 3 states that "BRICS Members States call for further improvements of International Investment Agreements, including in their dispute settlement mechanisms". This suggests that the BRICS countries agree that the investor-state dispute settlement system is flawed, although this is not stated explicitly. By contrast, South Africa's investment policy statement of 2010 was more explicit in its criticism (see Section 2.4.1), not

least because of the country's experience of a claim instituted by a group of European investors against its Black Economic Empowerment regulations in mining.[25]

Some discussions exploring the prospects for deeper economic cooperation among the BRICS countries have suggested that international investment agreements should be signed among the BRICS countries as a way of expanding investment relations within the group. Before considering such agreements, however, the BRICS countries should research the experiences of developing countries with such treaties, particularly those countries that have undertaken BITS reviews or had onerous claims laid against them.[26] It is important to ensure that the provisions of any such agreements do not infringe on public policy responsibilities of member states. Indeed, the final paragraph of the joint 2014 BRICS statement recommends that BRICS member states "build common approaches in various multilateral dialogues on international investment policy".

5.3. BRICS perspectives on deepening economic cooperation and the possible creation of a BRICS-wide market

The BRICS long-term strategy document makes reference to market integration among the BRICS countries in trade, investment and finance. It does not include any discussion of industrial policy. However, there has been much renewed discussion of industrial policy since the global financial crisis, both among policy-makers and across a range of international agencies, particularly UNCTAD, as well as the ILO. Given the importance that the BRICS communiqués attach to the role of UNCTAD, research and discussion on industrial policy in the BRICS context is important. Similarly, BRICS positions on strategic tariff policy are unclear (it appears to be most important to South Africa and India), and tensions are evident with respect to the use of trade remedies. There is an emphasis on the development of value added trade relations within BRICS, but no explicit discussion in the documents reviewed of how this is to be achieved.

Deepening BRICS economic cooperation and the possible creation of a BRICS-wide market will involve integration among countries at unequal levels of development. The discussion in Section 2.5 suggests that the traditional linear model of market integration provides an inappropriate framework for intensifying economic cooperation among the member countries. Functional and development integration provide alternatives to consider.

BRICS research is needed on the prospects for intra-industry trade specialisation within BRICS, examining trade and investment flows at an appropriate level of disaggregation, on the industrial policies of the member countries, and on the trade and industrial policy implications of GVCs and the trade facilitation agenda, as well as other 'new' trade issues like services, investment and

[25] See Woolfrey (2013).
[26] See, for example, the discussion in Gallagher and Shrestha (2011).

public procurement. A joint policy response is recommended on plurilaterals within the WTO, on mega-regional FTA negotiations and development policy space.

The question that arises is whether South-South developmental integration could be 'an instrument' of trade and industrial policy in the BRICS context. In this regard, it should be noted that regional policy and regional cooperation should not be equated with regional liberalisation. Appropriate national policies and regulatory frameworks are first required in some of the new trade areas under discussion in multilateral and regional-bilateral agreements. Development finance institutions become more critical in this environment, as does cooperation among individual BRICS development banks and the New Development Bank. The important question is how to extend the idea of a strategic trade and industrial policy effectively to the broader BRICS level to drive industrialisation and development.

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