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International economic law and the environment

Promoting sustainable development
on local, regional, national
and global contexts

Andreia Costa Vieira
(Coordination)

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“It is necessary to know and learn from these peoples and their relationship with nature. Thus, it will be possible to find a sustainability model that may be an alternative to the unbridled greed for profit which leaves natural resources drained and harms the dignity of the poor”.

Pope Francisco

(In the launch of the Brazilian Fraternity Campaign Fraternity “Brazilian Biomes and the Defense of Life”, 2017)

PREFACE

As Director of the Faculty of Law at the Catholic University of Santos, I am honored to present to the world academic community this publication of the DEIMA Group.

The DEIMA Group is a research group founded at the Catholic University of Santos, by Professor Andreia Costa Vieira, in 2015. Ever since, the DEIMA has been an incentive to undergraduate and post-graduate students to develop and publish a good quality research as well as an opportunity to link the Catholic University of Santos' research with other institutions from different parts of the world.

The research presented herein shows the multidisciplinary and international efforts of all the researchers involved and intend to deal with a very important issue for the world community: Sustainable Development.

Each one of the chapters presented in this study shows concerns related to different instruments that have been used to achieve the Sustainable Development Goals.

Therefore, I strongly recommend the reading and studying of the research herein published for present and future generations. May it be a first step towards a local, regional, national and global sustainable development.

Santos, 11th August 2017.

Profa. Dra. Renata Bonavides
Director of the Faculty of Law
Catholic University of Santos

INTRODUCTION

The Sustainable Development Goals (SDGs) presented to the world community in 2015 raised clamors worldwide for different tools and instruments that could be used to reach their aim. The research enshrined in this publication is a presentation of our distinct concerns on such instruments and tools.

The DEIMA Group, composed of post-graduate and undergraduate students from the Catholic University of Santos, together with external collaborators from other Universities in Brazil and abroad, has developed a compromised research that pinpoints local, regional, national and global concerns.

Some trade instruments have been analyzed as they have been pointed out as tools for achieving some SDGs. Some chapters of this joint-study highlight the tool of 'Sustainability Standards', placing them under scrutiny in order to demonstrate to what extent they can really be used to promote sustainability. Besides, a call for a treaty on Environmental Goods, under the World Trade Organization (WTO) context, is also brought to light in this research, since it has been discussed in the WTO Committee on Trade and Environment as a tool for achieving some of the SDGs.

Under a neoliberal approach, trade of water services has also been pointed out as a mechanism to assure access of fresh water and basic sanitation to all. Research is herein presented in order to question whether or not privatization of water services is really a good tool to achieve SDG 6.

Access to information in MERCOSUR for sustainable development is one of the regional concerns presented by one of the DEIMA researchers. Information is, by far, one of the main tools for achieving all SDGs.

Under a comparative study, research is also presented on China's commitment to climate change mitigation, thus demonstrating the concerns of the DEIMA research with one of the main Brazil's trade partners and its environmental policies.

SDG 11 commands public actors to make cities and human settlements inclusive, safe, resilient and sustainable. The briefing of a very comprehensive research is presented in this publication, bringing about a study on the City of Santos, in Brazil, taking into consideration the national ranking and

reputation that it has gained as one of the best Brazilian cities to live in.

Another regional focus of the joint-research that is presented is on mitigation of damages in international trade in the State of Espírito Santo (Brazil) towards a sustainable development. This chapter shows the concerns for local and national rules that have had impacts on local and national communities alike.

Last, but not the least, the present joint-research introduces the challenges faced by the WTO Trade Facilitation Agreement in order to achieve sustainability for port activities in Brazil.

Introduction

Sustainable development has become a mandate in the 21st century. In order to achieve its goals, trade has been pointed out as an instrument. The studies herein enshrined, which have been developed in the last years, show a careful look at trade as a tool for achieving some of the 17 Sustainable Development Goals. The main facets of trade herein exposed comprise the work that has been developed in the World Trade Organization related to Environmental Goods, the concerns towards trade of water services together with the right of access to water, and the work of the United Nations and other correlated O.Is on voluntary sustainability standards.

1. A world command for sustainable development

The United Nations' mandate for achieving the sustainable development goals (SDGs) and the 2030 Agenda have pointed out to International Trade as an instrument to promote sustainable development. This research has focused on some of these SDGs and the way trade can be seen as an instrument to achieve global environmental and social inclusion.

From a starting point, the SDGs are:

- Goal 1. End poverty in all its forms everywhere;
- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture;
- Goal 3. Ensure healthy lives and promote well-being for all at all ages;
- Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all;
- Goal 5. Achieve gender equality and empower all women and girls
- Goal 6. Ensure availability and sustainable management of water and sanitation for all;
- Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all;
- Goal 8. Promote sustained, inclusive and sustainable economic growth, full

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and productive employment and decent work for all;

Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation;

Goal 10. Reduce inequality within and among countries;

Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable;

Goal 12. Ensure sustainable consumption and production patterns;

Goal 13. Take urgent action to combat climate change and its impacts;

Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development;

Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss;

Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels;

Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development².

Sustainable development has become a new area of law and its concept has an inherent hybridism that encompasses economic and social development, besides environmental protection. More than 25 years have passed since the 1997 Brundtland Report, which brought to life its concept, and sustainable development has been incorporated in more than 50 treaties of different subjects and it has become the core concern of most international organizations no matter what is their main subject of concentration – the United Nations and all its agencies (UNCTAD, UNEP, UNHCR and others), the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the Organization on Economic Cooperation and Development (OECD), the World Economic Forum (WEF), the International Trade Center (ITC), the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the International Labor Organization (ILO), the European Union, the Mercosur and so many others. A closer look at the latest international documents produced and in force by all these organizations lead to an understanding of sustainable development as a principle of international law³.

The Report *The Future We Want* (2012), from the Rio + 20, sets sustainable development as a consolidated rule of law, a human right, even though not in an explicit way. The 2012 Report, just after mentioning the term sustainable development, enshrines the term ‘a human right to development’, which, in itself, frames the nature of

² United Nations Sustainable Development Goals, Available on http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E (Access on 5 June 2017).

³ See Vieira, A. C., *Sustainable Development and Environmental Goods under the WTO*, In: Vieira, A. C., *Estudos sobre Direito Econômico Internacional e Meio Ambiente*, São Paulo: Torto & Direito, 2016.

sustainable development.

This study presents three facets of international trade that have been pointed out as tools for achieving these SDGs. The table bellow shows how they are interconnected.

SDGs identified in the researched subjects

Environmental Goods	SDGs 2, 3, 6, 7, 9, 12, 13, 14, 15 and 17
Access to Water and Trade of Water Services	SDGs 6 and 11
Sustainability Standards	SDGs 2, 7, 8, 9, 12, 13, 14, 15 and 17

Source: the author (2017)

Next subchapters will present such connection between SDGs and each one of the researched subjects.

2. Sustainable development and environmental goods⁴

SDGs n. 2, 3, 6, 7, 9, 12, 13, 14, 15 and 17 might be directly or indirectly promoted by a tool so termed ‘environmental goods’.

Under the WTO, one of the main efforts for promoting SDGs has been undertaken in the Committee for Trade and Environment. In the wording of Article 31 of the 2002 Doha Declaration, States are called to make reductions or to eliminate barriers to environmental goods. But what are, in fact, ‘environmental goods’? One of the focus of this research has been on the definition of environmental goods and the proposal of a treaty under the WTO structure⁵.

One of the main difficulties in negotiations of reduction and elimination of barriers to environmental goods are asymmetries between the WTO Members⁶. As there is not, under the WTO, a common definition of environmental goods, the definition prepared by the OECD has been the most used one. OECD defines environmental goods as ‘activities which produce goods and services to measure, prevent, limit, or minimize or correct environmental damage to water, air and soil, as well as problems

⁴ See a broader study published on this issue: Vieira, A. C., Sustainable Development and Environmental Goods under the WTO, In: Vieira, A. C., Estudos sobre Direito Econômico Internacional e Meio Ambiente, São Paulo: Torto & Direito, 2016.

⁵ See Vieira, A. C., Sustainable Development and Environmental Goods under the WTO, In: Vieira, A. C., Estudos sobre Direito Econômico Internacional e Meio Ambiente, São Paulo: Torto & Direito, 2016.

⁶ CLARO, E. et al. Trade in Environmental Goods and Services and Sustainable Development: Domestic Considerations and Strategies for WTO Negotiations. Geneva: ICTSD, 2007.

related to waste, noise and ecosystems⁷.

In the Committee on Trade and Environment, Brazil and Qatar made proposals on fuels. Qatar intends to have natural gas, Gas to Liquids (GTL), CCS, gas flaring and fuel cell products as environmental goods. These energy sources are relatively cleaner than crude oil and, as such, would benefit from lower tariffs and non-tariff barriers⁸. Brazil, for instance, claimed the inclusion of biofuels, mentioning the climatic benefits of biofuels in relation to traditional fossil fuels⁹. Brazil and Qatar's proposals raise the question as to whether natural resources could be considered environmental goods. In fact, the negotiations have reflected, so far, regional and domestic priorities, which might be difficult to be raised on a multilateral or plurilateral level.

After the 2012 United Nations Conference on Sustainable Development and the 2030 Agenda promoting the SDGs, the WTO increased arrangements for a treaty on environmental goods, whose main negotiations were launched in 2014. As I witnessed the discussions of the Committee on Trade and Environment in 2017¹⁰, at the WTO headquarters, in Geneva, I must say that an agreement on this issue is still desirable but it seems that further negotiations will have to come in the following years in order to achieve an agreement that is desired by all or, at least, by most of the interested countries.

3. Sustainable development, access to water and trade of water services¹¹

SDG n. 6 commands all States to ensure availability and sustainable management of water and sanitation for all and SDG 11 requires States to adopt policies that would make cities and human settlements inclusive, safe, resilient and sustainable. The study herein briefly presented scrutinized to what extent trade of water services can be a tool to achieve these SDGs.

In the 1980s and 1990s, the IMF and the World Bank promoted the privatization of public services, conditioning the granting of credits and investments to it.

The WTO General Agreement on Trade in Services is comprised of a set of clauses that promote trade liberalization in services, in a bottom up negotiation manner –

⁷ KENNET, M.; STEENBLIK, R. Environmental Goods and Services. A Synthesis of Country Studies. OECD. Joint Working Party on Trade and Environment, COM/ENV/TD(2004)10/FINAL, 2005.

⁸ International Centre for Trade and Sustainable Development (ICTSD), BIORES – Analysis and news on trade and environment, v. 4, n. 2, 2010, available on <http://www.ictsd.org/bridges-news/biores/news/wto-update-environmental-goods-talks-focus-on-climate> (access on 10th November 2016).

⁹ See WTO, JOB/TE/6, 1 July 2010; International Centre for Trade and Sustainable Development (ICTSD), BIORES – Analysis and news on trade and environment, v. 4, n. 2, 2010, available on <http://www.ictsd.org/bridges-news/biores/news/wto-update-environmental-goods-talks-focus-on-climate> (access on 10th November 2014).

¹⁰ WTO, Committee on Trade and Environment, 2017, available on https://www.wto.org/english/tra-top_e/envir_e/envir_e.htm (access on August 10 2017).

¹¹ See a broader study published on this issue: VIEIRA, Andreia Costa, O Direito Humano à Água, Belo Horizonte: Arraes, 2016.

that is, what is not included in the countries' specific list of negotiations will not be brought to negotiation¹². The definition of trade in services is set in Art. 1 (2) and comprehends cross-border supply, consumption abroad, commercial presence and presence of natural persons. GATS excludes only services supplied in the exercise of governmental authority, that is, 'any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers' (GATS, Art. 1 (3) (a) and (b)).

Pending the Uruguay round of negotiations on a multilateral trade level, environmental principles were also introduced in some of the agreements negotiated, such as the Marrakesh Agreement (preamble), the GATT 1994 (Art. XX) and the GATS. Articles XIV and XIV bis, which are so called 'the GATS General Exceptions', allowing countries to keep a good margin of policy space whenever their measures are necessary to protect human, animal or plant life or health or any other value enshrined in those two articles.

Under a neoliberal awakening, the IMF and the World Bank promoted free trade through the promotion of liberalization of public services. Public water services were privatized in many countries¹³. In 1987, water services were privatized in Great Britain based on arguments of efficiency and investments. Competition was the key for development in the water sector, according to the British government. The 1988 UK Water Act transferred the property of infrastructure and management of all water services in the country to the private sector. Since then, water services tariffs raised about 39%; water quality did not follow the same steps¹⁴. According to the UK Consumer Council for Water, efficiency and productivity are not expressions to be used to water services in Great Britain¹⁵.

In the 1990s, Argentina privatized its water services in most parts of the country, in obedience to the neoliberal claims of the IMF and the World Bank, which conditioned the granting of credits to the privatization of public services. Since then, tariffs have raised according to the dollar exchange rate and many consumers have not been able to pay their water bills. Investments were not made according to the initial contracts and the high water tariffs were not compatible with bad water quality in most places¹⁶.

In Bolivia, in 1999, the IMF and the World Bank's requirements also brought

¹² U. Celli, *Comércio de Serviços na OMC. Liberalização, Condições e Desafios* (Curitiba, Juruá 2009).

¹³ J. Budds and G. Mcgranham, 'Are the debates on water privatization missing the point? Experiences from África, Asia and Latin América' (2003) *Environment and Urbanization*. International Institute for Environment and Development, 91.

¹⁴ See D. Hall and E. Lobina, 'Water Privatization' (2008) PSIRU.

¹⁵ Consumer Council for Water – Complaint Handling in the Water Industry in England and Wales – April 2010-March 2011, available at: www.ccwater.org.uk/upload/pdf/Complaint_Handling_in_the_Water_Industry.pdf (accessed on 9 July 2016).

¹⁶ AZPIAZU, D. et al. *Água potable y saneamiento en Argentina. Privatizaciones, crisis, inequidades y incertidumbre futura*. Cuadernos del Cendes, v. 22, n. 59, Caracas, Mayo, p. 45-68, 2005.

about privatization of water services in the country. Water tariffs were raised to 200% in less than a year and the consumer could not have access to tapped water. In 2001, a civil protest in the region of Cochabamba resulted in strikes, prisons and deaths, but the legislation that authorized water services privatization in the country was abolished and water services returned to public hands¹⁷.

In Uruguay, also due to the IMF and the World Bank's requirements, water services were privatized in 1992. Bad water quality, high tariffs and inaccessibility to water services raised protests all over the country. In 2004, Uruguay Constitution was changed in order to prohibit private property and management of water services and to sustain a human right to water¹⁸.

Privatization of water services has also taken place in 14 countries in Africa, under the auspices of the IMF and the World Bank, and the same sorts of claims have been raised in these countries. In South Africa, whose Constitution guarantees a right to water, many have felt the impact of water restrictions¹⁹.

In the United States, most of the federate States and/or Municipalities have public ownership and management of water services, though, in some regions, there are Public-Private-Partnerships. In some cities, such as Atlanta City, Pekin – Illinois and Dayton - Ohio, water services were privatized but, due to public complaints, they returned to public hands²⁰.

Brazil has most of its water services in public hands. However, some concession agreements have raised concerns, such as the one signed up in the year 2000, privatizing water services in the city of Manaus, the capital of the Amazon State, where it is situated most of the Amazon forest and river. Water prices have gone higher since this privatization took place and many complaints of inaccessibility to water services have being brought by citizens of Manaus²¹.

Two countries that have always been mentioned as successful cases of privatization of water services are France and Chile. In France, water services have been in private hands since the 19th century. Most of the water companies that have won the private water markets in African and Latin American countries are based in France. Water is a private matter in France for historical reasons²². Nevertheless, recent public concerns have changed this scenario. In the year 2000, the city of Grenoble won a Court battle to cancel the contract with Lyonnaise des Eaux, taking the water services

¹⁷ CAUBET, C. G., A Água, A Lei, A Política... E o Meio Ambiente? Curitiba: Juruá, 2005.

¹⁸ HALL, D.; LOBINA, E.; MOTTE, R. Making Water Privatisation Illegal – new laws in Netherlands and Uruguay. Public Services International Research Unit (PSIRU), 2004, Disponível em: <http://gala.gre.ac.uk/3769/1/PSIRU_9343_-_2004-11-W-crim.pdf> Acesso em 10 Jul. 13

¹⁹ Buds and Mcgranham, supra, 106.

²⁰ See A. A. Craig, 'Water Privatization Trends in the U.S.' (2009) 33 (3) WMELPR.

²¹ A. Olivier, 'Water Tariff Increase in Manaus (Brazil): an evaluation of the impact of households', Document de Travail, DT/2006-10, 2006.

²² B. Barraqué, 'Politiques de l'eau en Europe' (1995) 45 (3) Revue Française de Science Politique, 420.

to public hands²³. In Paris, in 2010, due to very high tariffs charged by the private water companies and to a recent claim for water as a public good, water services became public and their management was taken over by the municipality²⁴.

In Chile, water services were privatized in the 1990s and, despite many claims from Human Rights groups²⁵, private water services in Chile have had public approval, due to previous regulations related to environmental and social concerns²⁶.

A recent study shows the different water management policies adopted in Japan, Australia, Spain and Portugal, compared to some Brazilian States²⁷. In this study, it has been portrayed that due to some difficulties faced, after a long drought period, Japan and Australia adopted different systems of water management, which resulted in different realities for both. The study also portrays the cases of Portugal and Spain, wherein social movements for improvement of water services quality were remarkable and wherein different implementation plans were adopted. Last, it presents a brief analysis of the water crises faced by two Brazilian States (São Paulo and Espírito Santo), which have undergone through periods of water deficits, with their specific peculiarities, having had environmental and governmental impacts.

4. Sustainable development and sustainability standards²⁸

The discussions on Sustainability Standards that have been on-going are directly related to SDGs n. 2, 7, 8, 9, 12, 13, 14, 15 and 17. Therefore, a better understanding of what sustainability standards really are and what kind of tool they can be in order to achieve these SDGs is a must for those concerned with inclusive trade.

Proliferation of sustainability standards has brought big challenges towards legitimacy on their creation and setting as well as accountability and State responsibility towards the behavior of the bodies that have issued them. Some of the World well known private standards are e.g. Tesco's Nature, Carrefour's Qualité, Pao de Açúcar's Taek and others.

Despite their SDGs goals and their voluntary nature, in fact, Sustainability Standards have had a mandatory requirement through global value chains and have become big barriers to trade, mainly for small producers and developing and least developed countries.

²³ BARLOW, M.; CLARKE, T. *Blue Gold. The Battle Against Corporate Theft of the World's Water*, London: Earthscan Publications, 2002, P. 189.

²⁴ See information available at: www.paris.fr/politiques/les-politiques-parisiennes/l-eau/rub_9706_stand_82999_port_24008 (accessed 5 August 2013).

²⁵ Barlow and Clarke, *supra*, 73.

²⁶ V. Foster, 'Ten Years of Water Service Reform in Latin America: toward an anglo-french model' (2005) Water Supply and Sanitation Sector Board Discussion Paper Series (3) The World Bank Group, 21.

²⁷ Faco, Igor; Vieira, A. C. *Diferentes modelos de gestão da água e a inclusão hídrica universal*, Forhco-mining publication, 2017.

²⁸ A broader work on Sustainability standards has been published on Thorstensen, V. , Vieira, A. C., *Regulatory Barriers to Trade: TBT, SPS and Sustainability Standards*, São Paulo: VT, 2016.

Taking into consideration fragmented initiatives in the process of meta-regulation for sustainability standards, ‘the need for enhanced relationships, trust and understanding among the various actors involved is so big that these secondary effects of meta-governance initiatives are often considered just as important, if not more important, than the actual official outputs these processes generate’²⁹. Some multilateral stakeholder structure, such as ISO or UNFSS would gather together a larger number of stakeholders and could have more legitimacy on the setting of meta-regulation on market standards, which could diminish the problems of ‘greenwashing’, anti-competitive practices and malpractices in the standards- setting business³⁰.

Due to ‘their global reach, extensive expertise, strong legitimacy, perceived neutrality and ability to act as a gateway to more government involvement, UN agencies are particularly well-positioned to successfully take up such a meta-governance role (...) UN involvement would also be beneficial when it concerns the meta-governance of exclusively private standards setting fields’³¹.

The UNFSS could be well positioned in taking up such a role. In fact, under the auspices of the UNFSS, national platforms have emerged and, just as Vera Thorstensen and I have pointed out in our work “Regulatory Barriers to Trade: TBT, SPS and Sustainability Standards” (2016), the Brazilian Platform of Sustainability Standards was brought to life in 1st June 2017, having Inmetro as the Brazilian focal point. The main gain that is brought together with this initiative is Transparency: for traders, for producers, for partners, for consumers. In the end, transparency is also a matter of legal security that enables better negotiations and call attention of new investors, being an instrument for inclusive trade.

A recent DEIMA study has been developed on Sustainability Standards adopted by the Brazilian textile industry³². This study has focused on the southeastern region in Brazil, composed of the States of São Paulo, Rio de Janeiro, Minas Gerais and Espírito Santo, and, so far, it has come up with the conclusion that this is one of the main Brazilian industries that has been driven by Voluntary Sustainability Standards.

Conclusion

The SDG N. 17 stresses that the means of implementation for sustainable development should be strengthened and that the Global Partnership focused on the SDGs should be revitalized. A walk through the corridors of the WTO headquarters in Geneva show that the multilateral trade organization has been concerned to a large

²⁹ Thorstensen, V., Vieira, A. C., 2016.

³⁰ See Thorstensen, V., Vieira, A. C., Regulatory Barriers to Trade: TBT, SPS and Sustainability Standards, São Paulo: VT, 2016.

³¹ Derkx, 2013, at 19.

³² Zanella, Patricia Silva, Sustainability Standards on the Textile Industry (forthcoming publication), 2017.

extend with SDGs. The work of the Committee on Trade and Environment related to a treaty on Environmental Goods is just one of these means of implementation that has been on-going in Geneva. Besides, the work of the UNFSS (partnership of the UNCTAD, ITC, FAO and other O.Is) stresses the importance of Voluntary Sustainability Standards as a means to achieve some of the SDGs and, at the same time, show a kind of revitalization in order to achieve the desired goals. Nevertheless, on matters of trade of water services, the studies herein summarized present concerns of a conflict that might exist if the access to water and basic sanitation is not assured as a human right either under public or under private management.

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MITIGATION OF DAMAGES IN INTERNATIONAL TRADE IN THE STATE OF ESPÍRITO SANTO (BRAZIL) TOWARDS A SUSTAINABLE DEVELOPMENT

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Heloisa Helena Gomes de Almeida²

Introduction

In this globalized world, international trade of goods and the capital movements (between parties based in two or more countries) have grown rapidly and dynamically, in figures and complexity. The lack of uniform regulation, however, has posed a number of problems caused by legal uncertainty, both for buyers and sellers. For the state of Espírito Santo, in Brazil, which has a significant part of its economy relying on the export of ornamental stones, coffee and iron ore, it is necessary to highlight the problem resulting from the abandonment or rejection of these goods. This is one of the issues that would gain with adequate regulation, which can contribute to the mitigation of damages for the parties involved and to a sustainable development of the region. In an attempt to resolve issues arising from the lack of uniform regulation, Brazil has signed and ratified the Vienna Convention on Contracts for the International Sale of Goods, which created instruments to mitigate damages in international trade of goods. Nevertheless, the issue of abandonment of goods in this context still faces a wavering case law on the rules applicable to substitute sales under the Convention.

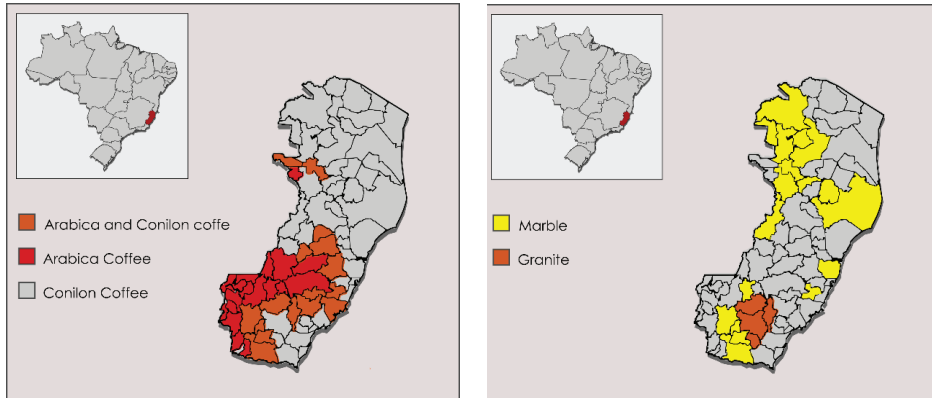
The possibility of substitute sale of abandoned or rejected ornamental stones, as an instrument of mitigation of damages

The article 75, in the second part of the Vienna Convention on Contracts for the International Sale of Goods, deals with some of the mechanisms for mitigating damages in operations covered by the Convention. These are the Substitute Purchase and the Compensatory Sale, solutions to be adopted in cases which the buyer does not withdraw the goods as stipulated in the contract. This abandonment is more common than expected, which justifies a greater interest of the state of Espírito Santo in

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this matter, since it can result in financial damages or even in the loss of goods.



*Main producing and exporting locations of coffee and ornamental stones

Source: the author (2017)

The Convention provides for certain conditions that must be observed for both substitute purchase and compensatory sale. The first is the termination of the contract; The second is that the substitute purchase shall be made by the original buyer or, in case of a compensatory sale, it is to be made by the original seller of the sale and purchase transaction. Finally, the third condition imposes a reasonable period and form for carrying out the operation, either substitute purchase or compensatory sale, focusing on the most advantageous solution for both parties interested in solving the damage caused by the abandonment.

The first condition presented is the termination of the contract, i.e. the injured party cannot promote a substitute purchase or a compensatory sale and wish to have Article 75 applied if it has not declared termination of the contract to the other party under Article 26 of the CISG.

The majority of the case law has tended toward the requirement of a declaration of termination as a condition for Article 75 of CISG to be applied to the case. Accordingly, a Spanish court has decided that Article 75 should not be applied³ in a case in which the buyer, who had made a substitute purchase, notified belatedly the seller that had carried out such substitute operation.

In the opposite direction, a German decision⁴ has held that the creditor does not need to notice expressly the termination of the contract when the debtor refuses to

³ CISG. CISG case presentation. Appellate Court Valencia. <http://cisgw3.law.pace.edu/cases/050331s4.html>. Accessed 13 Apr. 2017. Likewise, Oberlandesgericht Bamberg (Germany), 13-1-1999, n. 3 U 83/98. <http://cisgw3.law.pace.edu/cases/990113g1.html>. Accessed 13 Apr. 2017.

⁴ UNCITRAL. Oberlandesgericht Hamburg. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V99/903/75/PDF/V9990375.pdf?OpenElement>. Accessed 13 Apr. 2017.

perform its obligations. It is based on this decision that Schwenzer⁵ considers that, if it is clear to the creditor that the debtor will not comply with his obligation at the time the substitute operation is being carried out, especially if the debtor declares that will not comply with the contract, there is no need to notice the termination of the contract, as the debtor cannot contradict what it had previously said.

Concerning the existence requirement of substitute operations referred to in Article 75 of CISG, there are two: substitute purchase and compensatory sale, both already mentioned. These occur when there is default of one of the parties, either the buyer or the debtor, and the other, as an emergency measure, a substitute purchase⁶ or a sale in compensation⁷, depending on whether the creditor is the buyer or seller respectively.

The substitute operation shall, in principle, occur in terms similar to which would have occurred in the original purchase and sale. In these terms, the China Chamber of International Commerce decided that a seller, even though he had received an eight extra days' notice to deliver the good, did not deliver it, so that the contract was denounced by the buyer, who effected two substitute purchases, which, according to the Chamber, were in a similar quantity and quality, with a small but reasonable difference in price, given the normal market change and the delivery time, so that the Chamber condemned the seller to pay the difference of the amount paid in the substitute purchase plus the fine for breaching of contract.⁸

Another requirement to be observed is the reasonable manner and term of the substitute operation.

The Article 75 of CISG prescribes that the substitute operation must take place in a reasonable and short time, starting from the termination of the contract⁹. This forecast aims to avoid the devaluation or appreciation of the price of goods in face of market fluctuations¹⁰.

Thus, the conditions of compensatory sale and substitute purchase must be reasonable, i.e. the seller shall try to obtain the highest price as possible and the buyer shall seek to buy at a more advantageous price, as far as the circumstances permit¹¹. If

⁵ SCHLECHTRIEM; SCHWENZER, 2010, p. 1029.

⁶ UNCITRAL. Schweizerisches Bundesgericht (Switzerland), 15-9-2000. n4C.105/2000. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V99/903/75/PDF/V9990375.pdf?Open+Element>. Accessed 13 Apr. 2017.

⁷ UNCITRAL. Supreme Court of Queensland (Australia), 17-11-2000. Decision n. 632. http://www.uncitral.org/clout/clout/data/aus/clout_case_631_leg-1872.html?lng=en. Accessed 13 Apr. 2017.

⁸ CHINA, 29 September 2004. CIETAC Arbitration proceeding (India rapeseed meal case). Case 1600. <http://cisgw3.law.pace.edu/cases/040929c1.html>. Accessed 14 Apr. 2017. Likewise, CISG. ICC. Arbitration case n° 8128 of 1995: chemical fertilizer case. <http://cisgw3.law.pace.edu/cases/958128i1.html>. Accessed 14 Apr. 2017.

⁹ KUYVEN; PIGNATTA, 2015a, p. 752.

¹⁰ NEUMAYER; MING, 1993, p. 499.

¹¹ KNAPP, 1987, p. 550.

they fail to do so, the values related to the amount of damages may be reduced, pursuant to Article 77 of CISG. The creditor is not required to make an exceptional effort to reach the best price, but shall seek the least disadvantageous solution¹².

International case law has also held that the substitute purchase and the compensatory sale cannot be carried out in any marketplace, but in a reasonable place, taking into account the circumstances.

The Danish Supreme Court ruled that a Danish seller had the right to effect substitute sale in face of a contract termination due to a default of a German buyer. However, the seller had the value of his indemnity reduced due to the fact that the price of the substitute sale was inferior than it would reasonably be in an international sale, on the ground that the seller only sold the goods within Denmark, where the price is considered to be lower than the selling price in Germany and has not made reasonable efforts to promote international sales at a better price¹³.

Likewise, if there is any other expense for the substitute commercial operation to be conducted, this amount may be included in the indemnification amounts, such as transportation, as long as it is reasonable¹⁴.

In any case, the issue of goods that are not withdrawn by the buyer still lacks uniform regulation, so that, in many cases, the substitute purchase and the compensatory sale end up not being adopted and the goods are taken to auction.

The economic impacts resulting from this underutilization of mechanisms designed to promote mitigation of damages are yet to be measured. However, it can be argued that the non-application of such thoughtfully discussed and signed rules for the mitigation of damages provokes the imposition of damages greater than those that would reasonable be inflicted on the parties in the resolution of the contract.

Conclusion

The rules to mitigate damages arising from the non-withdrawal of goods in the conventional period, in international purchase and sale operations, were designed to reduce damages caused to the non-abandoning party, but were also designed to reasonably stipulate the duty to indemnify.

The case law on the matter makes clear that we are still far from a uniformity in the application of these mechanisms - substitute purchase and compensatory sale – which end up not being applied due to some details that, on a case-by-case basis, are indicated as inhibitors of the objectives of the rules - the reasonable indemnity to those who did not give cause to the abandonment of the merchandise.

¹² HEUZÉ, 2000, p. 409.

¹³ UNCITRAL. Case 993. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V10/564/59/PDF/V1056459.pdf?OpenElement>. Accessed 14 Apr. 2017.

¹⁴ AUDIT, 1990, p. 169.

The analysis of concrete cases in which the Article 75 of the Convention has not been applied can guide the formulation of new rules to regulate the substitute purchase and the compensatory sale in a more detailed way.

The economic impacts resulting from the non-application of these mechanisms, as yet unmeasured, may be significant for the State of Espírito Santo because of its export matrix.

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The proliferation of non-governmental organizations that produce private standards as well as their diversity for market access gain importance for analysis, mainly related to their legitimacy, since there is no approval for such rules creation from any international organization or correlated entity.

In this scenario, the WTO Technical Barriers to Trade Agreement (TBT) establishes in its Annex 3 (Code of Good Practices) the norms and principles to which international standardization organizations must observe as means to safeguard international trade. Academia and jurisprudence have adopted the definition from ISO (International Organization for Standardization), so that the availability of standards for the public must also compose the set of guidelines for access to all those interested in its conformity, avoiding possible privileges.

Article 13 of the WTO Sanitary and Phytosanitary Agreement (SPS), in addition to determining the compliance of its standards by the international organizations that create the private standards, also demands the non-governmental entities of its own territory, as well as regional institutions, to do the same.

Paragraph E of the TBT Code of Practice states that it will be for WTO members to ensure that public or private bodies do not create unnecessary obstacles to international trade. Such an institute is applicable to the hypothesis of the creation of a particular private standard, without there being clearly the scientific basis necessary to legitimize its existence and observance.

Maintaining the market viability of products with higher production costs tends to favor those companies with higher production capacity. In this way, private standards, often introduced by the producers of goods and services themselves, become a means of concentration of economic and market power, being a discriminatory act to trade, since it prevents the insertion of small and medium producers, many from developing countries.

The WTO SPS Committee has oversighted the creation of private standards by

1 This study was based on the book Thorstensen, V.; Vieira, A.C., *Regulatory Barriers to Trade: TBT, SPS and Sustainability Standards*, São Paulo: VT, 2016.

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standardizing organizations. The purpose of such a mechanism is to prevent wrong doing in excess compliance requirements from constituting a barrier to trade.

In this sense, even if private standards have the role of promoting better quality products and their production processes, their creation and use should be carefully monitored by WTO members so that they promote the necessary governance for protection and incentive to the global market.

The global governance of private standards

The exponential increase of private standards with the purpose of regulating both the characteristics of products and the production process by involving the entire global chain, makes the subject an urgent one and brings the need of a composition dialogue.

The legitimacy and accountability of private standards are the subject of questioning, which is aggravated by the increase in cost of compliance and certifications that require a sophisticated corporate governance structure (THORSTENSEN, VIEIRA, 2016, p.88).

National governments efforts to strike a balance between private standards and public regulations might take many forms. Governments might: i) bring political and legal scope to action of normalizing entities; ii) act as an interest group in the case of specific rules; iii) Change the dynamics of the market through a government procurement strategy; iv) Comply with private standards, or bring support to exporters and products for the purpose of certification and consequent insertion in the market. (AMARAL, 2012, p.31)

Notwithstanding governmental action, the demand for organizations is increasing for the purpose of a resolution, more especially about the legitimacy and scientific basis of private standards, in order to offer a dialogue for producers, standard-makers, consumers, environmentalists and Governments.

Meta-regulation becomes a form of quest for composition capable of promoting the development of markets in a sustainable way, without private standards becoming discriminatory acts of international trade (THORSTENSEN, VIEIRA, 2016).

The ISO could be presented as a possible body for the meta-regulation of private standards, given that it also issues several certifications aimed at sustainable development. However, the relationship of ISO and its insertion into the WTO makes its position as a possible meta-regulation body questionable (THORSTENSEN, VIEIRA, 2016). Decisions about private standards in ISO are sometimes defined without the agreement of the entire global production chain, and so it could lack legitimacy.

Meta-regulation could also be under the umbrella of the UN system, wherein there is both concern for social and environmental issues, in particular in developing

countries, in addition to promoting dialogue between the actors in the global chain. Not only large but also small and medium-sized producers, together with civil society, may be included in trade through private standards, which means that such standards might become a means for their sustainability (THORSTENSEN and VIEIRA, 2016, p.89).

A joint initiative by FAO, ITC, UNCTAD, UNEP and UNIDO, so called the United Nations Forum for Sustainability Standards (UNFSS), discusses private sustainability standards (VSS). Such VSS provide requirements that producers, traders, manufacturers, retailers or service providers can be invited to meet, related to a broad range of sustainability metrics, which includes respect for basic human rights, worker safety, environmental impacts, relationships Planning, land use planning and others. (UNFSS, 2014; VIEIRA, 2016, p. 22)

The UNFSS brings to the VSS debate the small and medium-sized producers in developing and least developed countries, which have been at the margin of the compliance capacity for many of the private standards. One of the UNFSS aims is to lead them out of the market exclusion.

Considering that the UNFSS brings to the fore the pillars of sustainable development, environmental, social and economic standards, with emphasis on agro-food and VSS standards related to energy / resources / climate change, a balance is sought between food production and climate change, including ergonomics of energy demand (UNFSS, 2014).

These attributions favor a UNFSS contribution horizon for poverty reduction, enhanced food security, resource / material / energy efficiency improvement, and increased climate change mitigation and adaptation. (UNFSS, 2014; VIEIRA, 2016, p. 23).

The construction of the Sustainability Standards Platforms became the VSS governance agenda in international trade, since they could be viewed with greater transparency and strategic planning, in addition to the aforementioned dialogue among the agents involved.

In this way, national platforms were built in China, India, South Africa, Indonesia, and on June 1, 2017, the opening of the Brazilian Platform for Voluntary Sustainability Standards was launched (FIESP, 2017).

Such focal points have the purpose of granting access to the producers of goods and services about the compliance requirements of the private standards used in the global market. In this way, it is possible to solve issues that concern possible barriers caused by certification disguised as a discriminatory act, avoiding possible panels at the WTO dispute settlement structure, in order to build and solidify the definitions that surround the theme.

Conclusion

International trade finds its greatest challenge in private standards, especially in relation to compliance with the provisions of the WTO Technical Barriers to Trade Agreement and Sanitary and Phytosanitary Agreement. There is a need to frame the concept of private standards in the TBT and SPS agreements, whose observance is presumed to guarantee their legitimacy in international trade.

Although private standards are presented as voluntary norms, their fulfilment is indeed mandatory for the insertion and competitiveness of the international market, which compromises the possibility of insertion of small and medium entrepreneurs, who are dissociated from the reality. In order to achieve the compliance standards of private standards, given their multiplicity, complexity and consequent cost.

Legitimacy and accountability are two concerns that involve private standards. The first deals with the authority of the agents that have produced such standards. The second deals with science based approach and responsibility of state and non-state agents for the existence of such standards.

The meta-regulation comes to seek the resolution of these conflicts, in order to establish ways of greater participation of civil society in the construction of accessible standards.

The UNFSS, in cooperation with the proposed national platforms, has been gaining space on the global trade agenda, especially in developing countries, in order to coordinate relations between policymakers, decision makers, market and society on matters of voluntary sustainability standards.

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Context demanding sustainability standards

The world economy is increasingly structured in Global Value Chains – GVC, wherein fewer trade barriers represent greater opportunities for competition and national development. However, in order to guarantee its sustainability, trade policy has to be seen as a global public good (UNFSS, 2017, p. 2). GVC can become a mechanism for implementing sustainable trade and development. For example, by fostering the 17 sustainable development goals agreed to by the UN Member States on the 2030 Agenda (UN, 2015). The increasing interdependence of production processes makes global economic governance, international economic coordination and trade agreements necessary to economic growth, material well-being and social environmental sustainability.

Institutions can set the limits that a society establishes to discipline their interactions. Formal laws and rules alone do not form these boundaries but cover a set of recommendations, customs, and standards. Certainly, transnational institutions vary enormously from one country to another and also change greatly over time, for better or worse. Nevertheless, they have the potential to represent the interests of society in a much more granular way, given the recent weakening of traditional approaches to international relations and the tendency to question hierarchical sources of power. While this may be counterintuitive, GVCs tilt the balance of power away from the public sphere to a more market-driven network, empowering new international actors.

GVCs are especially key for developing countries because they enable the use of intermediate products from abroad and open opportunities to a myriad of players to take part in the production process in the way that suits them best without having to build an entire industry in a remote region. Integration to the international production networks is what really matters as a promising growth strategy. “In 2010, more than 25% of global gross exports were double-counted. In a world of GVCs, gross exports are therefore no longer sufficient for studying trade patterns as they mask the underlying structure and overstate export performance” (UNFSS, 2017, p. 4).

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This new reality of trade, technology and interactions on a global scale as well as the human impact on the environment, created issues that require cooperation, such as the climate crisis, transnational crimes and the use of forced labor equivalents. Countries increased interdependence and the need for coordination relativized their sovereignty. This highly heterogeneous set of rules leads to a ‘polyarchic’ distribution of power, wherein no single actor, not even the most powerful nation, has the capacity to impose its own solution without taking into account the views of the others (SABEL; ZEITLIN, 2010, p. 15). This book advances a novel interpretation of EU governance. Its central claim is that the EU’s regulatory successes within--and increasingly beyond--its borders rest on the emergence of a recursive process of framework rule making and revision by European and national actors across a wide range of policy domains. In this architecture, framework goals and measures for gauging their achievement are established by joint action of the Member States and EU institutions. Lower-level units are given the freedom to advance these ends as they see fit. But in return for this autonomy, they must report regularly on their performance and participate in a peer review in which their results are compared with those of others pursuing different means to the same general ends. The framework goals, performance measures, and decision-making procedures are themselves periodically revised by the actors, including new participants whose views come to be seen as indispensable to full and fair deliberation. The editors’ introduction sets out the core features of this experimentalist architecture and contrasts it to conventional interpretations of EU governance, especially the principal-agent conceptions underpinning many contemporary theories of democratic sovereignty and effective, legitimate law making. Subsequent chapters by an interdisciplinary group of European and North American scholars explore the architecture’s applicability across a series of key policy domains, including data privacy, financial market regulation, energy, competition, food safety, GMOs, environmental protection, anti-discrimination, fundamental rights, justice and home affairs, and external relations. Their authoritative studies show both how recent developments often take an experimentalist turn but also admit of multiple, contrasting interpretations or leave open the possibility of reversion to more familiar types of governance. The results will be indispensable for all those concerned with the nature of the EU and its contribution to contemporary governance beyond the nation-state. ISBN: 978-0-19-957249-6; shortTitle: Experimentalist Governance in the European Union; language: English; editor: [{“family”: “Sabel”, “given”: “Charles F.”}, {“family”: “Zeitlin”, “given”: “Jonathan”}], issued: [{“date-parts”: [“2010”, 5, 2]}], locator: “15”}], schema: “https://github.com/citation-style-language/schema/raw/master/csl-citation.json”. This polyarchy and the slowdown in formal international lawmaking is accompanied by the rise of novel forms of cooperation that use different approaches and involves an orchestra (ABBOTT, K. W. *et al.*, 2015; BIERMANN *et*

al., 2012; VEN; BERNSTEIN; HOFFMANN, 2017) collaborate and discover scientific publications, jobs and conferences. All for free.”URL”:https://www.researchgate.net/publication/268926143_Two_Logics_of_Indirect_Governance_Delegation_and_Orchestration”shortTitle”:”Two Logics of Indirect Governance”author:[{“family”:”Abbott”given:”Kenneth W.”},{“family”:”Genschel”given:”Philipp”},{“family”:”Zangl”given:”Bernhard”},{“family”:”Snidal”given:”Duncan”}],”issued”:{“date-parts”:[[“2015”]]},”accessed”:{“date-parts”:[[“2017”,6,25]]},”label”:”page”},{“id”:51,”uris”:[“http://zotero.org/users/3925584/items/8UFQTZPG”],”uri”:[“http://zotero.org/users/3925584/items/8UFQTZPG”],”itemData”:{“id”:51,”type”:”article-journal”,”title”:”Transforming governance and institutions for global sustainability: key insights from the Earth System Governance Project”,”container-title”:”Current Opinion in Environmental Sustainability”,”collection-title”:”Open issue”,”page”:”51-60”,”volume”:”4”,”issue”:”1”,”source”:”ScienceDirect”,”abstract”:”The current institutional framework for sustainable development is by far not strong enough to bring about the swift transformative progress that is needed. This article contends that incrementalism—the main approach since the 1972 Stockholm Conference—will not suffice to bring about societal change at the level and speed needed to mitigate and adapt to earth system transformation. Instead, the article argues that transformative structural change in global governance is needed, and that the 2012 United Nations Conference on Sustainable Development in Rio de Janeiro must turn into a major stepping stone for a much stronger institutional framework for sustainable development. The article details core areas where urgent action is required. The article is based on an extensive social science assessment conducted by 32 members of the lead faculty, scientific steering committee, and other affiliates of the Earth System Governance Project. This Project is a ten-year research initiative under the auspices of the International Human Dimensions Programme on Global Environmental Change (IHDP of actors and processes, outside the traditional legal methodology of the International Law.

Basically, this is because traditional legal systems fail to deal with multiple factors, trans-disciplinary issues and non country-specific interests (PAUWELYN; WESSEL; WOUTERS, 2014). The policy preferences of nations diverged from the saturated existing treaties; an increasingly diverse network enables new forms of collaboration transcendent to the states, and an increasingly complex information society, where specific knowledge such as those of expert bodies means recognition and relevance to coordinate actions in this orchestra (PAUWELYN; WESSEL; WOUTERS, 2014).

In this new context, reputation became a strong driver of actions, because it is valuable but extremely unsettling. It corresponds to a general organizational attribute that reflects how external stakeholders see the firm and value it as good or bad (ROBERTS; DOWLING, 2002, p. 1078). This subjective valuation has many practical effects, like the markup price for products and services and the possibility of attracting “the best and the brightest”(FISHMAN, 1998, p. 2) that is vital for a company’s

survival and development in the current information society.

Roberts and Dowling empirically analyzed that good reputation is a valuable asset that allows a firm to achieve persistent profitability in the long term and to sustain superior financial performance (ROBERTS; DOWLING, 2002, p. 1078). Reputation is extremely relevant for the current intangible economy and developing ways to measure and compare it become necessary to build those “orchestration platforms” (VEN; BERNSTEIN; HOFFMANN, 2017).

Governing through these platforms corresponds to set clear quantifiable measurements and goals, establish adequate monitoring, review processes, implement evaluation mechanisms, and build convenient partnerships to take advantage of sub-national, intergovernmental and private commitments. The goals and metrics also allow valuation of what is working or not, to better plan the future actions and invest the resources wisely. And it has a collaborative intrinsic characteristic as well, this can favor transparency and good governance in many indirect ways, if political interests don’t obfuscates the “technocratic decisions” (VEN; BERNSTEIN; HOFFMANN, 2017).

At the same time that this complex normative context hinders legally binding approaches, it also strongly favors voluntary commitments and the implementation of quantitative and qualitative metrics to compare which of the competitors are doing better, and how well is the GVCs managed. So, nowadays, international rules, private and public, are designed using voluntary commitments, standards and certifications to obtain effectiveness as it will be exposed ahead.

Voluntary commitments system, standards and certifications

All the significant international recent treaties, such as the 2030 Agenda for Sustainable Development and the Paris Accord on Climate Change, are structured over voluntary commitments. Multilateral legally binding initiatives are facing deadlocks, such as Doha negotiations. Partnerships between multi-stakeholder have been more efficient to achieve cooperation and to solve problems. Voluntarily initiatives undertaken by business, governments, intergovernmental organizations, major groups and others stakeholders in smaller scale but more abundantly can contribute more to the implementation of what was inter-governmentally agreed as sustainable development goals in the Agenda 2030 and to what was stated as national commitments in the 2015 Paris Agreement, for example

In order to reflect the reality of GVC, legal relations, especially those related to International Economic Law, increasingly involve problems arising from the interaction between public and private persons of different nationalities. From this national, international, public and private intersection, methodologies of standard analysis

may be better systematized to deal with the transnational aspects. Regulation needs to be agile and pragmatic in order to be effective in a business environment based on global value chains, taking advantage of convergence, coherence and regulatory cooperation to ensure competitiveness.

The compliance with voluntary sustainability standards - VSS to those competing in Global Value Chain, can represent a mark up price on goods and services certified and labelled because it indicates better quality. It also increases marketability of sustainable exports to the growing and lucrative responsible markets. Besides, to some high-regulated markets, compliance is a condition to market access. Complying with these standards can contribute to better and more effective management of the production and distribution, putting in place more sustainable methods, which in the aggregate scale of many enterprises doing so locally, contributes to the achievement of sustainable development goals globally.

There are studies that conclude that VSS can actually facilitate trade (ITC, 2013). There are also arguments to support the lack of regulation on such standards, arguing that in this sense VSS may be more innovative and there are no restrictions on market dynamics, non-governmental organizations and companies could decide on how and which standards should be chosen and which standards are the most relevant to your business (INMETRO, 2017, p. 3).

Although they are officially voluntary, because no governmental or international entity enforces them, they may be, in practice, very binding and even become a type of barrier to access highly regulated markets, such as the European or the American ones. In so doing, they are strong mechanisms of implementing transnational legal order to address a problem, articulate a best practice or form a path to obtain collaboration.

In this sense, because standards are compulsory according to the transnational legal order (HALLIDAY; SHAFFER, 2015, p. 476) they should be object of a legal framework, to avert global problems related to the proliferation of private standards and to deal with their complexity, specially orienting what can be demanded through private standards and by whom. This meta-regulation can form structures and indicate bodies to host the negotiation of basic principles, rules, instruments of implementation, measurements of conformity, periodic reviews and dispute settlement mechanism.

Bringing together stakeholders - such as ISO, UNFSS and the International Trade Center (ITC) - representing a great number of stakeholders would improve the legitimacy over the standard setting providing a meta-regulation on market standards. This would allow the reduction of problems such as “greenwashing”, anticompetitive practices and irregularities in the activities of defining the standards (THORSTENSEN; KOTZIAS; VIEIRA, A., 2015, p. 4).

Private transnational regulatory organizations – PTROs - have proliferated; they are established and governed by actors from civil society, business, and other sectors to engage directly in transnational governance, adopting standards of conduct for business and other targets on regulatory issues from worker rights to climate change; promoting, monitoring, and enforcing those standards; and conducting related administrative activities. PTROs operate through markets, not through interstate negotiations or hierarchy; they adopt voluntary standards and rely on incentives such as consumer demand, reputational benefits, avoidance of mandatory regulation, and reduced transactions costs to induce participation and compliance. (ABBOTT, K. W.; GREEN; KEOHANE, 2016, p. 2)

Meta-regulation and National platforms

The efforts of constructing a base rule on which the standards should be created and administered is led by the United Nations Forum on Sustainability Standards (UNFSS), a collaborative work among: Food and Agriculture Organization (FAO), International Trade Centre (ITC), United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP), and United Nations Industrial Development Organization (UNIDO). UNFSS also relies on the “partnership of many experts representing civil society, producer associations, processors and traders, standard-setting organizations and certifiers, trade negotiators, consumers, and researchers”(UNFSS, 2017, p. ii).

The UNFSS scope is to analyse voluntary sustainability standards and disseminate information about them, “by pooling resources, synchronizing efforts and assuring policy coherence, coordination and collaboration, in line with the “One UN” concept” (UNFSS, 2017, p. ii). The main function of the UNFSS is to provide a forum for multistakeholders, intergovernmental bodies and intra national actors of many levels to facilitates dialogue and knowledge exchange, accessing problems with a practical and collaborative approach.

Governments can drive transformational changes leading the involvement with voluntary sustainability standards by setting the underlying conditions necessary for an effective implementation of standards and by tailoring them for better local applicability. Public policy demanding and recognising the standards amplify the benefits and creates a fair play ground level forcing all competitors to comply and inciting the unusual partnerships between multi-stakeholder that not necessarily have the same interests but can be gathered in “grand global coalitions of ‘bootleggers and Baptists’ in which most government, business and NGO actors” (BERNSTEIN; CASHORE, 2012, p. 603)including climate change, forest degradation and biodiversity loss, are governed by an array of mechanisms—legal, non-legal, governmental and non-governmental—in complex arrangements. Examining the combined effects of these in-

ternational and transnational efforts on domestic or firm policies and practices—the usual targets of such efforts—requires expanding a focus on regime ‘compliance’ and ‘effectiveness’ to ‘influence’ factors from beyond state borders. To facilitate such a move, the authors develop a framework that distinguishes four distinct pathways through which actors and institutions influence domestic policies: international rules; international norms and discourse; creation of, or interventions in, markets; and direct access to domestic policy processes. Propositions are then developed on the conditions under which, and processes through which, actors and institutions affect domestic and firm policies and practices along each pathway. The framework is applied to the case of forest governance, a prototypical example of complex global environmental governance.”DOI”:”10.1111/j.1468-2346.2012.01090.x”,”ISSN”:”1468-2346”,”shortTitle”:”Complex global governance and domestic policies”,”language”:”en”,”author”:[{“family”:”Bernstein”,”given”:”Steven”},{“family”:”Cashore”,”given”:”Benjamin”}],”issued”:[{“date-parts”:[[“2012”,5,1]]}],”locator”:”603”}],”schema”:”https://github.com/citation-style-language/schema/raw/master/csl-citation.json”} are united around enforcing sustainability standards and curbing illegal actions and unfair competition.

The Brazilian VSS national platform is an initiative leaded by Instituto Nacional de Metrologia, Qualidade e Tecnologia – Inmetro that is responsible for different activities in the Brazilian quality system, and is also the Brazilian Focal Point to TBT and SPS Agreements. The main goals of the national platform is to be a reference centre to map all the VSSs that affect the Brazilian economy, in the domestic market and blocking access of Brazilian products to external markets. As a think tank will collect, discuss and prepare studies on VSS suggesting proactive national policies on maximizing positive economic, social and environmental results of the implementation of VSS mitigating their effect as obstacles to free trade.

The Brazilian platform is structured to develop studies, data and analyses capable of enabling the Brazilian Government to have more accurate, unbiased and profound information about VSS, its implications, benefits and costs for Brazilian production and its exports. By identifying the productive sectors and specific product groups to which exports are most affected by VSS and reviewing the experience of these sectors and product groups enhance the benefits to sustainable development and markets access that VSS compliance can provide. It is also important to map the VSS that are being developed by interest groups in Brazil, the reasons and objectives of these VSS and their impacts. (INMETRO, 2017, p. 5).

The Brazilian platform aims to develop studies, data and analyzes capable of enabling the Brazilian Government to have more accurate, unbiased and profound information about VSS, and its implications, benefits and costs for Brazilian production and its exports. This is very important to identify the productive sectors and specific product groups whose exports are most affected by VSS demands. Buttressed on this

kind of empirical local studies, the national platform will be in a better position to suggest policies and measures in tune with international free trade rules. It will also facilitate the use or development of VSS by national producers of the most exposed sectors in international markets with the objective of maximizing the development benefits and minimizing the cost resulting from the compliance with VSS.

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QUALITY OF LIFE AND SUSTAINABLE ECONOMIC DEVELOPMENT IN SANTOS/SP

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Introduction

How well have we lived lately? Have we lived within a context that express a good living standard? These reflections cannot be restricted only to one's life since the facts that surround us are interconnected by the environment that we live in, exerting a strong influence on all of us. Thus, one has to "simply be aware of what is happening around me and react not only to what is immediate, to what touches me closely, but also to what happens geographically away from me, but that still affects me" (SOYINKA, 2001, p.50).

Considering that improving quality of life is always "mankind's desire", and that living in society is a great exercise for that continuous development of the human species through citizenship, consumption and labor" (LAVORATO, 2004, p. 1), this study aims to investigate to what extent the city of Santos provides quality of life and to discuss the factors that lead people to choose Santos as their home city. As for the methodology used, qualitative research was adopted, due to the effort in identifying information and data and in interpreting them; it is also bibliographical research because it covered well-established authors, laws, publications in journals, newspapers and on the Internet; and theoretical research, because, according to Mezzaroba and Monteiro (2008), there is a sufficient and rigorous set of bibliographical references that support the approach of the object of study.

1 Sustainable development

Increasing evolution of technology applied to the means of production resulted in increase of productive capacity, generating surpluses, which turned into more wages and public savings. Having a larger number of wages in circulation, the demand for goods and services increases, giving rise to the so called 'consumer society' (BUARQUE, 2002). This model reproduces the logic in which increased production generates jobs, which, in turn, increases incomes. Having higher incomes, people buy more. The cycle: demand increases, companies produce more and generate more jobs.

We should live now just as we would like to live in the future. In this way, any

action that compromises this principle would damage the central goal of sustainable development. This discussion is rather complex, since sustainability contemplates different dimensions, according to Sachs (2002).

The social dimension of sustainability refers to social homogeneity, income distribution and fair employment conditions. The economic dimension refers to economic actions with conscious behaviors, involving increased productivity, elimination of waste, better product quality, processes and services, innovation and investments in technologies, ideas and pro-sustainability solutions. The ecological dimension of sustainable development contemplates the responsibility that the productive system and the consumer society have over the use of resources in order to avoid its depletion. The cultural dimension brings to light the discussion of applying models that worked well in some locations, but may not work in others, since these solutions take into account the specificities of the place, its ecosystem and culture. It also includes spatial dimension, balanced distribution of the rural-urban population, as well as of urban settlements and economic activities (SACHS, 2002).

2 Quality of life

But is meant by 'quality of life'? In what dimensions can it be formulated? We often see this expression being used in the most varied contexts of daily life. We seek quality of life in physical exercises, food, leisure, living conditions, health, mobility, interpersonal relationships, and security, among others, but in all these aspects, the possibility of access becomes fundamental. The place where we live can be a restrictive factor for a well living if it does not offer opportunities for having income that will allow access to infrastructure, goods and services. This brings us back to the relationship between the city we choose to live in and the quality of life it can offer us.

The World Health Organization (WHO) defined quality of life as: "[...] the individual's perception of their position in life in the context of the culture and value system in which they live and in relation to their goals, expectations, standards and concerns" (WHO apud KLUTHCOVSKY; KLUTHCOVSKY, 2007).

The development of a city, region or nation is usually measured by the value of the Gross Domestic Product (GDP) per capita; however, the Human Development Index (HDI), created in 1990, in an attempt to overcome the deficiencies of this form of measurement, considers in addition to income: the longevity of a population and the degree of educational maturity (UNITED NATIONS DEVELOPMENT PROGRAM, 2017).

The Pólis Institute developed the Municipal Index, which includes four indexes: income, housing, environment and literacy, and the Municipal Social Index, including two indexes: education and health. In addition, the Social Progress Index (SPI), created by Michael Porter (2013), links social and environmental indicators such as

health, housing, personal security, access to information, basic sanitation, sustainability, access to education and tolerance to differences.

3 Urban planning

Management without planning is like drifting aimlessly. Planning is what defines the paths that will be pursued by governments and organizations in general. The construction of a model of sustainable development, including indicators of quality of life, is part of the planning process, as well as the means to make this construction possible (MAXIMIANO, 2000).

In order to have urban planning as a reality, wherein plans and investments do not go opposite ways, social players must participate in its elaboration, just as established by the Brazilian Law 10257 (2001), so termed the City Statute, which regulates articles 182 and 183 of the Brazilian Federal Constitution. This document strengthens democratic management by establishing urban policy councils, popular initiative laws, debates, hearings and public consultations for the approval and implementation of executive plans and budget norms (SÃO PAULO, 1996).

According to Buarque (2002), the plan should have a long-term view, establishing feasible objectives and defining an organizational structure consistent with the objectives; competent and committed human resources; technologies that provide greater efficiency in the use of resources and effectiveness in reaching the objectives outlined; compliance with legislation; attention to local demographic data versus proposed ideas; and attention to macroeconomic conditions in the region.

These ideas are aligned with the definitions of the Third United Nations Conference on Housing and Sustainable Urban Development (Quito, 2016): cleaner cities and more inclusive urban settlements, which promote end of different kinds of discrimination; full respect for the rights of refugees and migrants; reduction of carbon emissions; increased use of renewable energy, greener transport systems and sustainable management of natural resources (HABIT III, 2016).

4 - The City of Santos

The city of Santos has a total area of 280.6km² (SANTOS, 2017) and 419,400 inhabitants, a growth of only 0.33% in relation to 2000 (IBGE, 2010). It is part of the Metropolitan Region of Baixada Santista, along with the municipalities of Bertiooga, Cubatão, Guarujá, Itanhaém, Mongaguá, Peruíbe, Praia Grande and São Vicente. The Baixada Santista region has the Development Council of Baixada Santista (CONDESB) as its deliberative body and the Metropolitan Agency (AGEM) as its executive body to comply with decisions made by CONDESB (SÃO PAULO, 1996).

The city of Santos' GDP, in 1999, was R\$4,800,727.00 – the 4th place in the state of São Paulo ranking of cities. In 2010, the GDP was R\$ 27,619,431.00 – the 7th place in

the ranking (IBGE , 2010) -, representing an increase of 475.31% in 11 years.



Source: www.google.com.br/search?q=MAPA+DE+SANTOS&tbm=isch&imgil=RHOrm-



Source: www.google.com.br/search?q=MAPA+DE+SANTOS&tbm=isch&imgil=RHOrm-

5. Quality of Life in Santos

According to a survey conducted by the Municipal Management Center of the Pólis Institute (1994), covering the 180 most populated municipalities in Brazil, the city of Santos (figure 1) was ranked 1st in the quality of life ranking, with a Municipal Index of 0.930 (data related to income, housing, environment and literacy). As for the Municipal Social Index, which includes education and health, the city was ranked 2nd, having an index of 0.826.

The World Social Forum (2003) presented the Social Exclusion Index (SEI) of the municipalities, a study developed by researchers from PUC-SP and USP/SP, who took into account poverty, number of young people, literacy, formal employment, inequality and violence. Santos appeared in the 4th place, having an SEI of 0.765 (SANTOS, municipality, 2003).



Figure 1. Map of Brazil, detached the City of Santos within the State of São Paulo

Source: The authors (2017)

The Index of Human Development of Municipalities (IHDM), developed by the United Nations Development Program with the IPEA (Institute of Applied Economic Research) ranked Santos in the 3rd place in the state of São Paulo and 6th in the country, with an IHDM of 0.840 (SANTOS, municipality, 2003).

The periodic Revista Exame (2010) stresses that Santos is the best city on the coast of São Paulo for retirees to live in, having payment programs to promote their inclusion. The article also brings the following information: percentage of retirees - 17.6%; IHD - 0.871; temperature range - 18-25°C; longevity - 76 years; water treatment - 100%; sewage collection - 100%; sewage treatment - 77%; low level of pollution; and

relatively light traffic with rush hour peaks (ABRANTES, 2010).

According to the IBGE, the 2010 Census pointed out that 97.8% of the population in Santos is literate. As for elementary education, public vacancies represent 61.05% of the total, 42.25% of which offered by the municipality and 18.80% offered by the state. As for high school, the offer of public vacancies represents 65.73%, all offered by the state government. Thus, in the city of Santos, the majority of students occupy vacancies offered by the public sector.

In relation to infrastructure, the city has a good network of health equipment (public hospitals, emergency rooms, the 'Casa da Gestante' for pregnant women and the 'Instituto da Mulher' with exclusive services for women) and, therefore, it receives a large demand from neighboring cities. Regarding public transport, part of the fleet of vehicles is equipped with air conditioning, internet, sound and equipment that makes disabled people's mobility easier. The Light Rail Vehicle (VLT) started to operate in January 2017, becoming a reality of implementation of 11.5km rails that links the city of São Vicente to the city of Santos (SANTOS, municipality, 2017).

Santos has a large number of public attractions that collaborate on spreading culture and leisure, such as the Orchid Garden, the Aquarium, Patrícia Galvão Culture Center, Botanical Garden, the 'Bolsa do Café' (Coffee Exchange), and several museums. The largest public attraction in the city, however, are the seven miles of beaches surrounded by a garden measuring five miles long and 218,800 square feet. It has been included in the Guinness Book of Records as the largest beachfront garden in the world (SANTOS, municipality, 2017).

Despite the good numbers presented so far, it is also important to highlight a dark side of the city, portrayed in an article by Alcione Herzog (2012): "Santos has had an increase of 4,766 households in favelas in the last 10 years. Currently, there are 10,767 such households, compared to 5,998 in 2000, which shows an increase of 79.5% in precarious housing in the 24 settlements registered by the IBGE". During this period, the population of the Santos has grown 0.3% and the dwellings in favelas has grown sharply 79.5%.

Having in mind a future scenario, wherein the 'development wave' is a reality, the attraction of new residents should be balanced by increases not only in the demand for services, but also increases in the demand for more varieties of goods offered in local commerce as well as the growth of local industry. In short, a dweller of a neighboring city with an employment contract based in Santos will consume more things in the city where he resides, thus contributing to the consequent development of neighboring municipalities.

The herein pointed desired development also contributes to reducing urban violence in the metropolitan region, since greater employment opportunities point to this direction. This is an element that raises much concern ever since sustainable

development is the goal, requiring well-planned local action. Public safety is closely related to quality of life.

Conclusion

Based on the results of our research, we believe that the quality of life in Santos can be a factor of attractiveness for new residents and the economic growth of the city, mainly due to its close proximity of the capital, São Paulo, which is the largest metropolitan area in Brazil. We believe that democratic management with the participation of the population in the terms of the City Statute, even in the implementation of urban planning, may include actions that provide: the setup of new companies due to the proximity of Brazil's largest port and the consequent job creation; generation of jobs and occupations related to the activities developed along the beaches; more comprehensive and better quality public education, including the physical facilities of schools; more effective public actions related to violence with an emphasis on the causative factors; effective actions to eliminate the number of people living on the margins of society.

Cooperation between governments, private initiative and other sectors of society must be pursued in the development of actions for social and economic development and sustainable development, according to Sacks (2002).

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THE ACCESS TO INFORMATION IN MERCOSUR FOR SUSTAINABLE DEVELOPMENT¹

Gabriela Soldano Garcez²

Introduction

Article 225 of the 1988 Brazilian Constitution sets out the fundamental right to a balanced environment, treating environmental quality as an indispensable element to a healthy and decent life. In this context, the access to environmental information is an important precondition for public participation in environmental matters. Public access to environment related informational sources as well as the provision of environmental education is considered to significantly contribute to the process of raising society's consciousness and serve the purpose of building a sustainable development.

In these terms, it is necessary to analyze the sources and types of environmental information as well as public access to them in the countries composing the group referred to as MERCOSUL, and, finally, the importance of public information as an instrument for incentivizing environment- friendly behavior, raising consciousness and enhancing sustainable development is identified.

Access to information in MERCOSUR countries

In 1991, after the Asunción Treaty was signed, an international market among Brazil, Paraguay, Argentina and Uruguay (MERCOSUL) was established and jointly regulated, in an attempt of achieving economic, political, social and cultural integration for the Latin-America people.

The right to free access to informational sources in the MERCOSUL countries is extremely important as it constitutes a particularly relevant stage in the process of public policies integration for the benefit of the environmental surroundings of this Latin-American community.

In relation to Uruguay, the concept of environment was elevated to the constitutional level in 1996 (article 47), laying the responsibility its protection and preser-

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vation on both the public power and to the community. Regarding the information access, Uruguay enacted the Law on access to Public Information (Law 18.381/08, regulated in 2010), explicitly stating that the access to information is everyone's right, including both physical and legal persons and also applying to all public bodies.

In relation to Paraguay, the 1992 National Constitution determines that every person has the right to a healthy and ecologically balanced environment. It also sets the preservation, reconstitution and improvement of the environment as well as its conciliation with the full human development as a primary objective (article 7). As for the right of access to information, the Paraguayan Constitution guarantees that every person has the right to generate, process and disseminate information, also protecting the freedom of expression and of the press as well as the right to propagation of thoughts and opinions. Consequently, those rights being constitutional, there is no law that could limit their freedom to be exercised (article 26). On the other hand, Paraguay has not even issued a law concerning the regulation of access to public information in general.

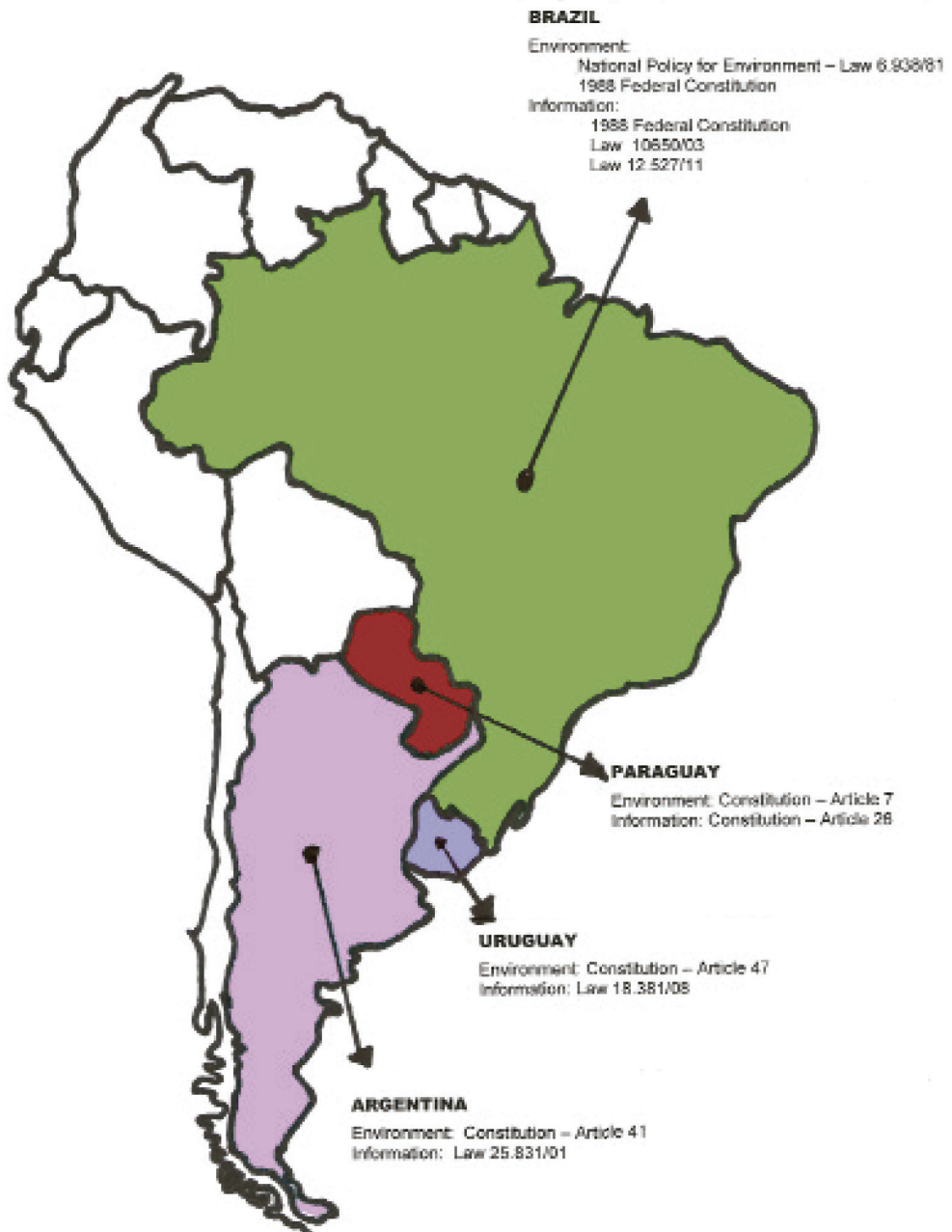
In the case of Argentina, the Constitution includes national regulation regarding the responsibility of protection and preservation of a healthy, balanced environment, suitable for human development and not compromising future generations, imposing the obligation to preserve it on all legal subjects (article 41). Regarding the legal retrenchment of the right to information access, Law 25.831/04 has been updated: the new version regulates free access to public environmental information, being valid nationwide and establishing the minimum level of protection of this right regarding access to information either owned by the State or self-regulatory entities and companies offering public services (article 1).

According to this Argentine Law, "environmental information" is defined as any form of expression and manifestation related to the environment, the natural resources and the process of sustainable development (article 2). The law disposes also that the access to the information will be free of charge, and should be provided within 30 days from request, not being necessary to mention the reason to obtain it (articles 3 and 8).

Finally, in Brazil, in the end of the Military Dictatorship, the National Policy for Environment was enacted (Law 6.938/81), providing (articles 6 and 10) the framework for environmental research and licensing. Later, the 1988 Federal Constitution (besides the guarantees of article 5, subsection XIV and XXXIII) reinforces the wide societal dissemination of the information contained in the Environmental Impact Study for the cases of construction sites installation or performance of activities being likely to cause substantial environmental degradation (article 225, paragraph 1, subsection IV).

There is also Law 9.795/99, which establishes that the mass media have the

Environment and Information in MERCOSUR



Source: The authors (2017)

responsibility of cooperating with National Policy for Environmental Education “*in an active and permanent way serving the purpose of information dissemination and incorporation of the environmental dimension in educational practices*” (article 3th).

Moreover, Law 10.650/03 guarantees the accessibility of all the information available in the entities of the National System for Environmental Information (known as SISNAMA), through “*public access to documents, measures and administrative processes which address environmental issues*” granted within 30 days from the request, by any citizen (article 2). In case of refusal, the decision has to be reasoned and is subjected to hierarchical appeal. In this way, any individual, regardless of providing proof of specific interest or not, has access to all available information, upon written request.

Recently, Law 12.527/2011 was edited to include rules regarding access to information concerning the environmental field. This legislation allows for a request of access to information to be presented by any interested part, upon identification of the applicant and specification of the required information (article 1 and 10).

Evidently, there are currently advanced legislation in Brazil consolidating the right to free and public access to environmental information. However, the big challenge is in the instrumentalization of the right to information through the establishment of procedures, terms, organization and standardization of data bank, in order to be effectively used as a mechanism of popular participation in governmental decisions and social control (GRAFF, 1998, p. 14).

The building of sustainable development through Environmental Awareness resulting from information

The quality and amount of information significantly influence the intensity with which the public participates in the sociopolitical sphere. “*Ignorance leads to either apathy or inertia of those who would be legitimized to participate*” (MACHADO, 2006, p. 34).

Citizens with access to quality information are more likely to articulate desires and ideas in a decisive manner and thus to take part in decisions directly concerning them, the defense of undisputable rights, such as the one to a healthy and balanced environment. The right to information becomes, therefore, an essential prerequisite for active social participation in public discourse.

The subject of right to information has a necessary interface with the right of the individual to be aware of the issues related to the protection of the environment as well as the subjective right to participate in political-administrative decisions of the State (SOARES, 2003, p. 611).

Civil society's engagement is considered the keystone of the struggle for an ecologically balanced environment, once environmental education depends on the quality and accessibility of relevant information, as civil society's participation requires access to information as well as training. Advanced environmental legislation is not enough if citizens are not educated to take initiatives for defense and protection of the environment. Public awareness and civil society's participation render constitutional rules for environmental protection effective by impelling compliance with legislation.

It is useless to establish ways of participating if the population doesn't have the necessary information to form their own opinion. This is why, as a projection and pre-requisite for participation, the Environmental Right has developed their own institutions related to the transparency of the public or private activities on the matter. I refer to the Right to Environmental Information (FERRER, 2013, p.357).

Besides, through the provision of high quality education basic actions and procedures related to the concept of the Environmental Right could be realized, such as sustainable development, which stipulates that socio-economic development should be compatible with the preservation of the environmental quality and ecological balance, necessary for ensuring a high level of well-being.

The principle of participation is a principle whose guidelines work with the clear advantage of tackling the environmental problems at source: the environmental awareness. What is expected from society is exactly a proud, altruistic, ethics and interactive position (RODRIGUES, 2002, p. 255).

Thus, environmental protection, economic growth and social equity should be balanced.

The principle of sustainable development reflects the concern with reaching development, using rational actions to preserve the essential processes and systems to life and the maintenance of ecological balance. It is necessary to think of building a more sustainable society, socially fair and ecologically balanced (BARRAL; FERREIRA, 2006, p. 28).

However, public policies addressing environmental education and awareness cannot be performed in a sectioned way. Integration on an international level among countries sharing the same borders and aspiring to form an economic, political and cultural union of the Latin American people, in the MERCOSUR, is considered essential.

Integrated management is a fundamental element of a model of sustainability, aiming at the production and dissemination of high quality information translated into knowledge. Such a type of management would also enhance the provision of

environmental education, benefiting the cooperation between Brazil, Uruguay, Paraguay and Argentina towards the defense and protection of the environment.

Cooperation aims at promoting, facilitating and guiding exchange of information, in order to promote the goals of ecological balance and sustainable development. Cooperation is, therefore, one of the basic normative instruments used to increase the amount of information available and expand civic involvement in decision-making processes concerning environmental policy. In these terms, the obligations of each country in the Mercosur are to ensure the continuous flow of information related to environment protection.

Consequently, information as well as cooperation between Latin American states are fundamental elements of the effective environmental policies' implementation, encouraging sustainable development, in the terms of Principle 12 of Rio Declaration on Environment and Development.

Conclusion

Public access to environmental information is considered to raise environmental awareness, providing the basis for a system based on sustainable development. Given the assertion that it is the community's obligation (as well as its power) to defend and protect the environment for the present and future generations (according to article 225, of the 1988 Brazilian Constitution), civil society's participation is a significant prerequisite for effective environment protection.

It is impossible for public discourse to be well-grounded and fruitful, lacking the provision of a broad information network. Public access to information allows citizens to participate effectively in the decision-making process as well as to supervise the level to which the political parties in power keep their promises in the implementation of public policy. In this context, information becomes an indispensable tool in qualifying the public, so that the procedures of participative environmental democracy have satisfactory outcomes.

Thus, the principle of civic participation guarantees the protection of the environment on the legal level, as it allows public involvement in the specifications in order to defend the collective right to a healthy environment as well as to contribute in the progress of sustainable development.

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CHINA'S COMMITMENT TO CLIMATE CHANGE MITIGATION: OBLIGATIONS AND OBEDIENCE¹

Renata Thiebaut²

International law documents have tackled climate change for over four decades. Undeniably, the need to enhance global cooperation in law enforcement that aims at reducing high levels of greenhouse gases emission, control global warming, as well as creating better mechanisms to finance renewable energy became paramount.

Undeniably, the Kyoto Protocol was one of the most important and controversial legislation to address climate change mitigation. The contentious aspect regards the non-compliance binding targets, which resulted in Canada's withdrawal, and the United States' refusal to ratify. (TIANBAO, Qin, 2007, p. 64).

Though adhering to such an international norm is mostly based on the common understanding of achieving a final goal, which in this case, is to mitigate climate change itself, soft law and hard law characteristics justify some nations' international positioning.

Koh (1997) justifies international commitments to the soft law by stating that "[I] international rules are rarely enforced but usually obeyed," which is determined by a moral duty caused by the need to cooperate in an increasingly interdependent international system. Guzman adds that the consequence to decide against ratification results in reputation loss (GUZMAN, 2002, p. 1864). The lack or reduced legal obligation is the main reason why international quasi and non-binding rules are preferred over binding rules (KOH, 1997, p. 2601) and this premise is particularly applicable to international documents regarding environmental protection.

The Kyoto Protocol, for instance, has a high level of obligation, high level of precision, high level of delegation, even though it contains soft law provisions, such as the flexible mechanism³.

Sustainable development norms present soft law features rather permitting different governments to make adjustments in view of their domestic legal and economic realities, which may cause a higher level of obedience.

¹ This working paper is part of the doctorate dissertation titled "BRICS: Transnationalism and Legal Cooperation Towards Sustainability" published by Shanghai Jiaotong University Press.

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³ Being a developing nation has also benefited China, since it able to use the flexible mechanism of the Kyoto and Paris Agreement.

The 2015 Paris Agreement, art. 6.1 brings about the voluntary contribution for mitigation and adaptation acts, according to each party's own capabilities and needs, without stipulating non-compliance standards for greenhouse gas release and target breaching. Due to the combination of binding and non-binding characteristics, 197 States agreed to adopt the Paris Agreement in addition to enhancing cooperation.

The United States, under Obama's leadership, has committed to the Paris Agreement, adopting a different stance from the Kyoto Protocol. Though this shift has much to do with the political party's agenda, the United States' compliance is significant not only because it is still one of the most important global powers, but also because the nation is one of the highest emitters in the globe. In 2017, Donald Trump initiated his presidential mandate and called to pull out from the Paris Agreement.

Overall, moral obedience has less impact on the United States than on developing nations, like China. This evidence is not only found on the Chinese economic dominance but the rational international positioning it has adopted since the unification and invitation to be a permanent member of the United Nations Security Council. China has actively participated in some of the most important international negotiations regarding climate change, including the Paris Agreement, and it is expected that the nation will exercise dominance in its further implementation after the United States' departure.

International obedience through the realm of the Chinese values is directed by two main principles: the traditional belief of being a 'responsible stakeholder'⁴ and the alignment between the international and internal political agendas, being the "One Belt, One Road"⁵ the latest one. The core principles of sovereignty, national security, and economic development directives (TIANBAO, 2007, p. 65) are grounded in those traditional socialist ideologies, strongly present in the three political, legal and societal spheres. For China, Socialism is suitable for the sustainable development objectives since its core source is to promote the society's well-being. The Paris Agreement came to complement China's growing efforts to normalize its green industry; and North-South and South-South cooperation are both welcomed by Beijing.

China's efforts to establish a growing green finance industry was heavily influenced by the Paris Agreement. The United Nations recommended setting up a large Green Development Fund under the leadership of the Peoples' Bank of China. China was the first country to ever develop official rules on green bond issuing, through the "Guidelines for Establishing the Green Financial System" (PAN GONGSHENG, 2015, p. 07). In 2015, the Agriculture Bank of China issued a 500 million USD in ren-

⁴ The definition of responsible stakeholder regards China's international commitments with sustainable development, international peace and economic growth.

⁵ The "One Belt, One Road" Initiative was first proposed by the Chinese paramount leader Xi Jinping to develop the so-called Silk Road (or EuroAsia) in the fields of trade and financing, security, economic, social and cultural cooperation. The creation of the AIIB and the Silk Road Fund corroborated with the initiative as well as enhance green finance in the region.

minbi dominated green bonds listed on the London Stock Exchange (WEIHUI DAI, 2016, p. 07). Other national banks are able to issue green bonds, such as the China Industrial Bank and Shanghai Pudong Development Bank; and those banks are encouraged to implement several financing mechanisms, including emissions trading and water use permits, especially within the five newly established green finance zones.

Below is China's map indicating the pilot zones in different provinces in the East and West:



Source: the author (2017)

Notwithstanding, China has adopted a proactive stance through the New Development Bank (NDB), Asian Development Bank (AIB) and the Silk Road Fund, exercising leadership in green finance developments. The NDB, for example, issued its first green bond in renminbi and the total amount of 3 billion renminbi within the China's interbank market in 2016 (NEW DEVELOPMENT BANK, p. 2017)

Domestically, the implementation of public-private partnership for investments was enabled by the 13th Five Year Plan, which not only reiterated its international commitments with the Paris Agreement but also set further guidelines of green finance to promote the low carbon industry from 2016 until 2020. In the recent years, China became the leading producer of solar panels and wind power "(T) through a combination of market competitiveness and strong government backing." (KOCH-WESER, 2015, p. 08) It is believed that with the promulgation of new legislation to regulate and stimulate the green finance system, other renewable energy sectors will be benefited through investments in R&D and self-developed technologies.

China's obedience is influenced by a combination of traditional socialist values and political directives. While the impact of reputational loss is debatable, the nation has indicated the preference for soft law instruments, through which it is able to adequate international norms to its economic reality. The Paris Agreement, in particular,

became the international platform for China to exercise its international leadership, voicing to mitigate climate change through sustainable development investments. In the past years, China's efforts to legalize green bond issuing have much impacted industry. Since 2016, China has become the global issuer of green bonds through public and private banks, as well as multilateral banks, such as the NDB, which China is a member.

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THE TRADE FACILITATION AGREEMENT AND ITS IMPORTANCE ON PORT ACTIVITIES IN BRAZIL

Rodrigo Luiz Zanethi¹

Introduction

Nowadays, international trade has a great importance in the economy of a country, whereas the developed countries have in your economic development motive of trade between Nations.

Nóbrega and Ribeiro (2016) treat so explicit about the importance of economic integration, financial and commercial aspects, for both using lesson of Frankel (2010) feature that trade integration: *"... allows for greater absorption of technologies and best practices of international management, contributing greatly to innovation and cost reduction."*

The economic integration always have at hand the importance of the multilateral trade. Oliveira (2013) sets the multilateral trade regime as being composed of *"... principles, norms, rules and decision-making procedures around which actors 'expectations converge the international trade relations'"*.

So, either by economics or the need to adapt the multilateral trade regime, any kind of bureaucracy to be deployed by States means an increase in commercial activity, extracting advantages for public or private bodies affected by this.

It turns out that such supervision and liberalization must be preserved and hence appears the WTO as this organization. Furthermore, driving countries to trade facilitation, aimed at collaboration between States, coupled with the fact that the World Trade Organization is the main body of the multilateral regime. And this cooperation and trade facilitation above comes up with great strength towards the trade facilitation agreement (TFA), this Agreement created under the auspices of the World Trade Organization, which strengthens the port activities in General and for immediate further develop the port activities in Brazil, and may become a propulsive spring for the Brazilian economic development. In the first chapter of this paper, using as a working methodology the method of research and data collection, will be presented to WTO as the principal forum and international trade body, which should get the dissemination of international trade, seeking to reach the "free trade", pillar of WTO, hence, as vital to international trade, the adoption of the rules of the Trade Facilitation Agreement.

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The WTO is the main international organ and regulatory forum, defense and commercial and pacification, through multilateral and plurilateral negotiations seeking the evolution of international trade, in order to secure global trade liberalization, aiming at a world economic growth and development, and has, as an inheritance of the GATT, a set of principles of multilateral trade rules : a) the most-favoured-nation (MFN); b) national treatment; c) transparency. Thus, it remains clear that the primary objective of the WTO is to promote international trade to develop in a secure, transparent and predictable.

In addition to the three basic principles mentioned above, the World Trade Organization (WTO, 2017) concerns about: a) a greater incentive to international trade through the reduction of tariff and non-tariff barriers; b) transparency of companies; c) more competitiveness, discouraging “unfair” practices of international trade such as export subsidy and dumping, by imposing additional import duties calculated in order to compensate for the damage caused by unfair trading practices; d) benefits for the least developed countries; e) finally, the protection of the environment, avoiding only protectionism.

The source of the trade facilitation agreement (AFC) was the first WTO Ministerial Conference, Singapore (1996) where there was discussion of, as explained by Baral (2007), “new subjects of international trade”, which are: competition, investments, Government and trade facilitation, and, in the case of trade facilitation.

The theme “trade facilitation” was introduced on the agenda of multilateral trade negotiations from 2001, with the launch of the Doha Development Agenda, where it was stipulated that the Council for trade in Goods of the WTO “... *will review and, if applicable, will clarify and improve relevant aspects of articles V (freedom of transit), VIII (fees and Formalities for imports and exports) and X (publication and administration of Trade Regulations) of the GATT 1994 and identify needs and trade facilitation priorities of members, particularly least-developed countries and in development* “. And, just during the IX Ministerial Conference in Bali (Indonesia), the General Council of WTO adopted in anticipation of the other subjects of the round, along with your attached, the agreement on Trade Facilitation (AFC), through an amendment introduced in annex 1A of the WTO agreement, constituting the first document to be included in the list.

There was a consensus among WTO members that administrative complex customs procedures and methods, too bureaucratic and with little transparency can harm international trade transactions, affecting the so-called “free trade”, one of the pillars of the WTO. The agreement covers Trade facilitation measures to modernize the customs administration, as well as actions to simplify and streamline procedures for foreign trade, aside from the possibility of cooperation between the members in preventing and combating customs offences, as well as in providing technical assistance and training, in addition to special and differential treatment for developing

countries and least-developed , targeting principally directed to overcome administrative barriers, which may then understand the need for mitigation of non-tariff barriers.

In addition, the agreement includes Trade facilitation negotiations on tariff barriers, which involve the reduction of taxes on imported products, with the same goal of liberalization of international trade, where, in addition each WTO member shall publish promptly and facilitate the access to all the rules for the classification and determination of customs value (the agreement also stipulates that adherents to allow sending and electronic processing of documents enabling the interested parties to appeal against customs charges in addition to proposing modifications on the systematics adopted by the agreement on trade facilitation), to complete information on transit procedures and all customs tariffs, taxes and administrative measures on exports and imports.

There are consistent estimates of the WTO (WTO, 2013) that the agreement of trade facilitation can reduce trade costs between \$ \$350 billion and US \$ \$1 trillion, besides generating an increase of \$ \$33 billion to \$ \$100 billion in overall annual exports and \$67 billion in global GDP (Industry Portal, 2013).

Hufbauer and Schott (2013) point out that the estimated increase of \$ \$950 billion in bilateral trade resulting from the adoption of significant trade facilitation measures would result in an increase of approximately \$ \$440 billion in the GDP. For developing countries, the estimated increase of \$ \$1 trillion in the bilateral trade would result in an increase of \$ \$520 billion in the GDP. In total, the potential trade expansion arising from a comprehensive facilitation agreement would translate into an increase of \$ \$960 billion annually in global GDP.

The trade facilitation agreement is in full force since 22 February 2017, when completed the 2/3 number of 164 members of the WTO needed for your ratification, having to be emphasized the participation of the WCO (World Customs Organization) for your implementation.

Thus, the agreement includes Trade facilitation, so absolutely clear, measures to modernize the customs administration and simplify and streamline procedures for foreign trade, besides enabling cooperation between members in preventing and combating customs offences, as well as in providing technical assistance, capacity building and special and differential treatment for developing countries and least-developed to promote the negotiation of an agreement aimed at the overcoming of any administrative barrier, i.e. since it doesn't affect the sovereignty of the country, international trade, creating a favourable environment for imports, exports and transit of goods. Now, the second part will deal with the importance of trade facilitation for the port activities, analyzing the port activities in Brazil, and as the rules of the agreement on the facilitation of Trade ally to investments that can be made by all those

involved will be of extreme importance not only for the efficient movement of goods, but to the growth of the Brazilian economy, dependent on a good drive in foreign trade. The ports are strategic for the country because it is one of the main foreign trade support infrastructure.

In Brazil today, the port activities are based in the Federal Law 12.815/13, the Decreto 8.033/13, which suffered interesting change with the recent Decree 9048/17, which, in Brazil, the port that portrays the port in force national economy is the port of Santos. During the first quarter of 2017, taking as an example the largest port in Latin America, the port of Santos, which reached 27,903,506 tons of cargo throughput, handling record for the period as compared to previous periods, been exports reached 19,663,950 tons and imports recorded volume of 8,239,556 tons, 18% higher than the accumulated result in the first quarter of 2016.

And all this strength will be increased with the implementation of the trade facilitation agreement, because certainly the movement of loads will be made more quickly and this will result in a need for greater agility in the port activities in order to operationalize the incoming or outgoing goods, this efficiency that cannot be considered as only taking into account their inherent activities but also the entire chain, because nothing good would have modern equipment and port workers competent and specialized if the organs of control and supervision as the IRS or customs, the Ministry of agriculture, livestock and food supply (MAPA), Ministry of health through your regulatory agency (ANVISA) and those involved in foreign trade as importers, exporters, carriers, customs brokers, among others, are not inserted in this dynamics necessary for the evolution of the economy.

Thus, before all the above and by ahead international commercial scenario, the Brazilian ports need to fit the standards of the trade facilitation agreement to participate in the new international trade: simplified, facilitated, dynamic and vital to the economic development of the country. Finally, in the concluding remarks, working paper is scoped and aims to bring to light the need to align the main international trade rules, the rules of trade facilitation and modernization of port activity, making it crystal clear that a foreign trade developed and facilitated increases the economy of a country.

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