TRENDS AND NATURE OF THE NEW REGIONALISM: THE SO CALLED REGIONALISM OF THE 21ST CENTURY AND FOREIGN DIRECT INVESTMENT[1]

TENDÊNCIAS E NATUREZA DO NOVO REGIONALISMO: O DENOMINADO REGIONALISMO DO SÉCULO XXI E O INVESTIMENTO ESTRANGEIRO DIRETO

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Abstract

The following paper aims to examine the so-called "21st Century Regionalism", as a new wave of regionalism following the 20th century models, focusing on deeper disciplines than the traditional – tariffs and trade barriers, which might be outdated or, maybe, unable to respond to the present century needs. Also, shall be briefly analyzed the influence of such New Regionalism in encouraging foreign direct investment, especially in developing countries, in order to foster development and economic growth.

Keywords: New regionalismo; Foreign Direct Investment; Development; Globalization.

Resumo

O presente artigo tem como objetivo examinar o denominado "Regionalismo do Século XXI", como uma nova onda de regionalismo, em relação aos modelos do século XX, e que foca em disciplinas à frente daquelas típicas do regionalismo tradicional – tarifas e barreiras comerciais, o qual talvez já esteja ultrapassado e incapaz de responder às necessidades do presente século. Ainda, analisar-se-á brevemente a influência desse Novo Regionalismo na receptividade do Investimento Estrangeiro Direto, especialmente nos países em desenvolvimento, para o estímulo do desenvolvimento e crescimento econômico.

Palavras-chave: Novo regionalismo; Investimento Estrangeiro Direto; Desenvolvimento; Globalização.

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1 INTRODUCTION

In the present paper it is intended to study the changes that the concept of regionalism has been experiencing through the last few years – specially the conception of a so-called "21st century regionalism" or "New Regionalism", and in which ways such changes may have an impact in foreign direct investment – specially under the perspective of developing countries.

As it will be pointed out in the next few pages, the notion of regionalism has been through changes since the early 20th century – if at once its main purposes were focused on economic growth, today we may think about development in a broader manner, instead.

This subject gains importance once one realizes that direct investments might have great importance in a country's development – specially once one has investment in infrastructure in mind, which, non rarely, is necessary to foster development through economic growth, regardless of giving much better living conditions, as well as dignity, to the local population.

Considering such panorama, we aim to study regionalism and the shifts that such subject has been going through the last few years, till we comprehend the meaning of such "term" in the 21st century and the possibility that it may be able to foster development by stimulating foreign direct investment.

2 A FEW WORDS ABOUT REGIONAL INTEGRATION

Regional integration is a phenomenon directly related to the globalization process, which softens the boarders of the States and amplifies the relations between them, breaking trade barriers and enlarging economic relations around the world, allowing the flow of goods, services and capital, cross-border investments and amplifying the transit of people between states, as well as communication.

Such process became more evident in the second half of the 20th century, after the II World War, when there was a need for reconstruction as well as for peace-keeping and economic interdependence grew, having as a consequence the increase in trade and investment flows.

Integration may be comprehended as

> a process usually stimulated by economic interests, facilitated by cultural inducers and associated with geographic proximity (specially neighboring frontiers), encourages people, nations, countries to create arrangements that allow joint actions which will result in gains to the parties involved. Such combined action is the result of the balanced adjustment of sovereignities once independent countries are concerned. Integration will be full and perfect when it elapses from the population's will or is ratified by it through its legitimately elected representants. (CHIARELLI; CHIARELLI, 1992, p. 28)

Older concepts of regional integration used to focus a lot in the geographical proximity as a main characteristic, as well as in the figure of the States as the only driver of the regionalism process[3]. However, contemporaneously, we might identify regions concerning non-neighboring countries, as well as a multiplicity of actors that may promote the regionalism process[4]. Philippe De Lombaerde defines the region building process as

> a multi-dimensional process of social transformation whereby actors, associated with (sub-) national governance levels and belonging to a limited number of different states, intensify their interactions through the reduction of obstacles, the implementation of coordinated or common actions and policies, and/or the creation of regional institutions, thereby creating a new relevant (regional) space for many aspects of human behaviour and activities. (DE LOMBAERDE, 2012, pp. 31-50. p. 32)

Accordingly, Pia Riggirozzi and Diana Tussie explains that

> regionness denotes two sets of dynamics: first, a sense of identity and belonging of state and non-state actors to a particular region based on shared values, norms and institutions that govern their interaction and the ways they perceive themselves within a common polity (self-recognition). Second, regioness denotes cohesive actions towards the outside (recognition by others). In other words, the idea of region as defined by who defined regionness in terms of organized social, political and economic trans-border relations (material foundations of regionalism), supported by a manifested sense of belonging, common goals and values (symbolic foundations), and institutions and regulations that enhance the region's

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[3] According to Nye, for example, regional integration would be represented by "a limited number of states linked together by a geographical relationship and by a degree of mutual interdependence". (NYE, 1971).

[4] Norberto Bobbio, Mateucci e Pasquino comprehend regionalism as an ongoing process, resultant from historic, social and political contingencies. (BOBBIO; MATEUCCI; PASQUINO, 2004, p. 635-636).

> ability to interact autonomously in the international arena (external recognition as an actor) (RIGGIROZZI; TUSSIE, 2012, p. 05).

Hveem comprehends regionness as “a body of ideas promoting an identified geographical or social space as the regional project. Or it is the presence or the conscious construction of an identity that represents one specific region. It is usually associated with a policy program (goals to be achieved) and strategy (means and mechanisms by which goals should be reached), and it normally leads to institution building”. (HVEEM, 2000, p. 72)

Therefore, we may assert that through region building may be possible the institutional construction of common public policies for the countries which are part of a certain bloc in the economic, political and social fields.

3 REGIONAL INTEGRATION OVER TIME – FROM 20TH CENTURY REGIONALISM TO 21ST CENTURY REGIONALISM

Regional integration as presently known has its origins in the second half of the 20th century, after the end of the World War II. However, a more attentive look into history might show us that the creation of unions and associations among states in order to accomplish common purposes have more remote roots.

> The origin of the integrationist can be assigned to philosophers such as Immanuel Kant and his expectations in reaching ‘perpetual peace’ through a federation of free States regulated by the *ius gentium* and cosmopolitan law; or even to historic characters as Simon Bolívar, who proposed the ‘association’ of the recently independent Latin American States as a way of avoiding a possible recolonization by the European powers. (BÖHLKE, 2003, p. 25)

Chiarelli comprehends regional integration as a natural manifestation, which has always been taking place althrough history, even though assuming diverse configurations. He renders that its starting point would be the reunion of people, and, later on, social groups, posteriorly organized legally, politically and administratively as States, within its laws and regulations, its history and common aspirations in a certain time (CHIARELLI, 1992, p. 26). We might say that the phenomenon took place in ancient Greece and Rome, as well as in Germany in the 19th century, when its unification occurred and the *Deutsche Zollverein* was formed, conceding political unity to the region. Also, integration drove the formation of the United States of America, as the thirteen British colonies united themselves and were emancipates, constituting an autonomous and independent State.

During the 20th century it is possible to observe two principal waves of regionalisms after de World War II.

3.1 The Regionalism of The 20TH Century

The first one took place between the late 1950s until the 1970s, as Europe went trough a period of reconstruction, the world was bipolarized and a movement of decolonization took place, especially in Africa and the Caribbean.

A very important foundation or basis for the consolidation of the integration phenomenon is the arising of the General Agreement on Tariffs and Trade – GATT, a multilateral agreement regulating international trade signed in 1947 and that took effect in 1948, lasting until 1994, when it was replaced by the World Trade Organization – WTO. According to its preamble, its purpose was the "substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis" as well as promoting peace and economic prosperity through cooperation among its signatories.

The Agreement states two main principles that must be observed in international trade – the most favored nation (MFN) and the non-discrimination principle. As states article I, "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties". Exception to such liberalization principle is stated in article XXIV, which allows the creation of customs unions and free trade areas. Such norm may be comprehended as a stimulus to the regionalization process.

The definitions of a customs union and of a free trade area are stated in article XXIV.8 of the GATT, as follows:

> 8. For the purposes of this Agreement:
> (a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
> (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
> (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;
> (b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

The norm also determines that in case a contracting party decides to enter into a customs union or a free trade area or agreement, or an agreement that shall lead to the formation of such arrangements, it must notify all contracting parties of the GATT, rendering all the information regarding the proposed union or area, so that they are able to assure that other rules of the General Agreement on Trade and Tariffs are not being violated.

The article XXIV of the GATT was largely declared during the 1960s as a basis for the institutionalization of customs unions and free trade areas, justifying regionalism, as it allows that countries unite reducing or liberalizing tariffs among themselves and improving trade.

By then, the European Coal and Steel Community[5], which was followed by the European Economic Community – EEC (the precursor of the European Union), the European Free Trade Association – EFTA, and the CMEA – Council for Mutual Economic Assistance (a attempt by the Soviet Union to promote economic integration among its allies and foster the local industries), were established, along with regional trade blocs created by developing countries, specially in Latin America and Africa, willing to reduce their economic and political dependence on developed countries, reduce imports and foster the development of local industry.

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[5] The European Coal and Steel Community was formed by the countries of the Benelux – a customs union comprising Belgium, the Netherlands and Luxembourg in an agreement signed in 1977 and is in itself a 20th century example of the (re-)emerging regionalism – as well as West Germany, France and Italy.

However, the developing countries models were not very successful, occasioning trade diversion. On the other hand, the arrangements settled among European developed countries achieved fine results, enhancing trade and contributing to political cooperation as well (POMFRET, 1988, p. 128, 138). In parallel, “the growing momentum of multilateral liberalization in the 1970s and 1980s contributed to the decline in the importance attached to regionalism”. (MATTHEWS, 2003)

By the end of the cold war, during the second half of the 1980s a second wave of regional integration took place, as there were changes in interstate power and security relations. The origin of such regionalism wave has been attributed to the drawn out nature and slow progress of the GATT Uruguay Round negotiations, to the apparent success and fears aroused by the European Union’s initiative aimed at establishing a Single European Market, and to the conversion of the United States to regionalism with its negotiation of the North American Free Trade Agreement – NAFTA and its Enterprise for the Americas initiative which has led to proposals for a Free Trade Area of the Americas – FTAA (MATTHEWS, 2003). In Latin America, previous integration arrangements were revisited and reinforced, such as the Central American Common Market and the Andean Pact, and new arrangements were created, such as Mercosur. In Asia, Association of Southeast Asian Nations – ASEAN embarked on plans for an ASEAN Free Trade Area – AFTA, the South Asian Association for Regional Cooperation agreed in 1997 to transform itself into the South Asian Free Trade Area while the Asia Pacific Economic Cooperation – APEC also committed to trade liberalization objectives on a non-preferential basis. The regionalism movement also took place in the African continent, where there was the reinforcement of existing regional groupings, as well as the formation of new ones, and even discussions on the formation of an African economic and political union were held.

Such wave “has been accompanied by high levels of economic interdependence, a willingness by the major economic actors to mediate trade disputes, and a multilateral (that is, the GATT/WTO) framework that assists them in doing so and that helps to organize trade relations” (MANSFIELD; MILNER, p. 589-627, p. 601) and limit the emergence of highly discriminatory blocs. Robert Z.

Lawrence analyzes the differences between the two regionalism movements, explaining that

> the forces driving current developments differ radically from those driving previous waves of regionalism in this century. Unlike the episode of the 1930s, the current initiatives represent efforts to facilitate their members' participation in the world economy rather than their withdrawal from it. Unlike those in the 1950s and 1960s, the initiatives involving developing countries are part of a strategy to liberalize and open their economies to implement export – and foreign investment – led policies rather than to promote import substitution. (LAWRENCE, 1996, p. 06)

As 20th century trade was majorly about goods crossing borders, twentieth-century regional trade agreements reflected such situation, therefore concerning mainly trade barriers at the border - especially tariff preferences and related rules, such as rules of origin, for example. (BALDWIN, 2014, p. 06)

Although, by the end of the past century and the beginning of the present one, such format was no longer enough to respond to reality.

3.2 Changes In Trade The Emergence Of 21st Century Regionalism And Its Characteristics

The increasing globalization process and the more advanced information and communication technology reshaped 20th century trade, as they diminish the distances and boundaries between countries and stimulates the flows of goods, people, ideas investment and technology among them. Evolution in transportation and communication technology, associated with the interest in greater gains in trade, decreasing the costs of production and enlarging the consumption market made international commerce more complex and created the so-called “trade-investment-service nexus” (BALDWIN, 2008, p. 05), as emerged the need of connecting means of production and doing business abroad.

Such trade-investment-service nexus comprehends an intertwining of trade in goods; international investment in production facilities, training, technology and long-term business relationships; and the use of infrastructure services to coordinate the dispersed production – e.g., services as telecoms, internet, transportation of goods, trade-related finance and customs clearance services (BALDWIN, 2008, p. 05). If this scenario already existed in the 20th century it has continuously grown since then, as globalization has deepened, reshaping regional trade agreements.

As Richard Baldwin explains,

> in the 21st century, trade flows became more complex, and supply chain linkages were developed. This led to a reliance on each stage of a supply chain working smoothly and efficiently, much like a widely-dispersed factory. As tangible and intangible assets are now exchanged all over the world, property rights have become a necessity for 21st century trade. 21st century trade is clearly significantly different from 20th century trade—not merely a continuation—as know-how and ideas are now a significant part of supply chains. (BALDWIN, 2013)

Nevertheless, by the end of the 20th century, preference margins have decreased, with many tariff lines applying MFN rates close to zero, so that no preference was possible any longer, and even where MFN tariffs were high, the goods were often excluded from RTAs.

In parallel, the interest from private companies – especially those from developed countries – in investing in developing and least developed nations, as well as in accessing new purchasing markets, was not compatible to agreements that addressed basically the tariff issue.

Also, emerging economies from the south[6] – mainly the BRICS – started playing a bigger role in 21st century economy and trade scenario.

In order to follow such changes, and considering the different nature from 21st century trade to 20th century's, a different regulation is necessary. Baldwin apprentices two main regulation categories – supply-chains disciplines and offshoring disciplines.

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[6] According to Shaw, Grant and Cornelissen, "at the start of the new millennium, the appearance and recognition of 'emerging economies' or BRICs, succeeding the erstwhile NICs, along with the definition and identification of 'developmental' and 'fragile' states, has challenged not only notions of 'South' and 'North' but also of regionalism (s). This trend has become more pronounced given the extension of the BRIC perspective by Goldman Sachs into the 'next-11'(or 'N-12' if South Africa is included in the list). This leads to questions relating to the degree to which emerging economies and developmental states may advance regional organizations to enhance their own leverage and status. (…) At the same time, the financial and economic crises of 2008 and 2009 stimulated a number of multilateral developments that may yet have far-reaching institutional spin-offs." (SHAW; GRANT; CORNELISSEN, 2012, p. 09).

The first concerns connecting the geographically dispersed stages of production, as asserts Grant and Cornelissen, affirming that they

> include not only liberal trade policy barriers but also excellent transportation services, guaranteed business mobility, and guaranteed communication services. Rather than thinking of supply-chain disciplines in terms of lowering tariffs in order to sell more, thinking in terms of ensuring that each part of the chain can work smoothly and efficiently together may be more beneficial. (SHAW; GRANT; CORNELISSEN, 2012, p. 09)

As for the offshoring disciplines,

> these refer to protection of companies' tangible and intangible assets that they have placed abroad. This ranges from factors such as international investment to application protection of technology abroad and the local availability of business services. (SHAW; GRANT; CORNELISSEN, 2012, p. 09)

Clearly, 21st century regionalism goes a step further when compared to 20th century regionalism, highlightening the proliferation of deeper regional trade agreements, aside the multilateral system, instead of the shallow trade agreements that prevailed in the regionalism model of the 20th century[7].

According to Shaw, Grant and Cornelissen, "new regionalisms" rise as a "response to (i) uneven globalizations – not just economic and strategic but also cultural, ecological and technological; (ii) the proliferation of states, especially small and weak ones; and (iii) the rise in the number of non-state actors, both private companies and civil societies". (SHAW; GRANT; CORNELISSEN, 2012, p. 05)

As Baldwin shortly explains, "in a nutshell, 21st century regionalism is not primarily about preferential market access as was the case for 20th century regionalism; it is about disciplines that underpin the trade-investment-service nexus. This means that 21st century regionalism is driven by a different set of political

[7] Jim Rollo defines shallow and deep integration, stating that:

"Shallow, or negative, integration involves the removal of border barriers to trade, typically tariffs and quotas.

Deep, or positive, integration involves policies and institutions that facilitate trade by reducing or eliminating regulatory and behind-the-border impediments to trade, where these impediments may or may not be intentional. These can include issues such as customs procedures, regulation of domestic services production that discriminate against foreigners, products standards that differ from international norms or where testing and certification of foreign goods is complex and perhaps exclusionary, regulation of inward investments, competition policy, intellectual policy protection and the rules surrounding access to government procurement". (JIM in BALDWIN; LOW, pp. 684-704, p. 698).

economic forces; the basic bargain is "foreign factories for domestic reforms" – not "exchange of market access"". (BALDWIN, 2011, p. 03)

Maurice Schiff and L. Alan Winters (SCHIFF; WINTERS, 2003, p. 06) list some objectives of the present century regional agreements – whether they are stated or implicit –, mentioning:

- governments' wish to bind themselves to better policies – including democracy – and to signal such bindings to domestic and foreign investors;

- a desire to obtain more secure access to major markets;

- the pressures of globalization, forcing firms and countries to seek efficiency through larger markets, increased competition, and access to foreign technologies and investment;

- governments' desire to maintain sovereignty by pooling it with others in areas of economic management where most nation states are too small to act alone;

- a desire to jog the multilateral system into faster and deeper action in selected areas by showing that the GATT was not the only game in town and by creating more powerful blocs that would operate within the GATT system;

- a desire to help neighboring countries stabilize and prosper, both for altruistic reasons and to avoid spillovers of unrest and population;

- the fear of being left out while the rest of the world swept into regionalism, either because this would be actually harmful to excluded countries or just because "if everyone else is doing it, shouldn't we?"

On this path, we may affirm that the 21st century RTAs are more complex than those of the past century, covering a greater range of subjects, beyond tariffs and trade barriers (as the main characteristic of the 20th century instruments), such as services, agriculture, investment, intellectual property rights, government procurement, trade facilitation, dispute settlements, competition policy, etc. It involves elements found in the deepest level of integration, possibly including, for example[8]:

[8] As pointed out by Mary E. Burfisher, Sherman Robinson and Karen Thierfelder. (BURFISHER; ROBINSON; THIERFELDER, 2004, p. 11)

a) facilitating financial and foreign direct investment flows by estabilishing investment protocols and protections;

b) liberalizing movement of labor within the RTA;

c) harmonizing domestic tax and subisdity policies, especially those that affect production and trade incentives;

d) harmonizing macro-policies, including fiscal and monetary policy, to achieve a stable macroeconomic environment within the RTA, including coordinated exchange rate policy;

e) establishing institutions to manage and facilitate integration (e.g., regional development funds, institutions to set standards, dispute resolution mechanisms);

f) improvements of communications and transportation infrastructure to facilitate increased trade and factor mobility;

g) harmonizing legal regulation of product and factor markets (e.g., anti-trust law, commercial law, labor relations, financial institutions); and

h) monetary union estabilishment of a common currency and completely integrated monetary and exchange rate policy;

i) security issues and policies;

j) regulations in subjects such as environment protection and pollution.

Not only contemporary regionalism concerns varied issues, it also comprehends several different configurations, varying in size. They can be “macro” (e.g. European Union, Organization of American States), “meso” (e.g. Mercosur – Mercado Común del Sur, ASEAN – Association of Southeast Nations and CARICOM – Caribbean Community an Common Market) or “micro” (specially in Africa, under the configuration of development corridors – as the Maputo Corridor, peace-parks and triangles, for example) (SHAW; GRANT; CORNELISSEN, 2012, p. 13). Such variety of different types of regional integration agreements evidences the possibility of a country joining an assortment of diverse RTAs, in a manner that being part of an arrangement is not an impediment to adhere to others.

An additional characteristic of this novel regionalism is the creation of trade agreements between developed countries and developing countries (also known as North – South relations), as well as relations among developing countries (South – South relations). As an example, we may quote the agreements in which the United States of America engaged with Mexico (NAFTA), Jordan and Chile. As for European Union, it has used regional trade agreements as a part of its strategy for economic development assistance – in 2004, 35 of its 50 RTAs were signed with developing countries partners, including eastern European countries which entered European Union later on (BURFISHER; ROBINSON; THIERFELDER, 2004, p. 11-12). Non-independent countries may be part of RTAs as well, as do some Caribbean and South Pacific ones. As Shaw and Fanta points out,

> The pattern of inter-regional relationships (Fawn 2009) is in flux. From the traditional North-South dependencies, the world is evolving towards a new axis that gives a greater role to the South, whether it evolves around new powerhouses like China and India or signifies a rapprochement between Latin America and the Arab World (Vagni 2009). Symbolically, Africa's regions' reluctance to sign EPAs with the EU at the turn of the decade, despite a mix of pressures and incentives, may mark a turning point as global rebalancing continues: Europe of the Eurozone crisis around the PIIGS and Asia of the BRICS transforms policy options and calculations for the continent". (FANTA; SHAW, p. 01-17, p. 06)

The 21st century RTAs also evidence the importance of non-state actors in global trade and regionalism, admitting the participation of civil society representants, particularly international non governmental organizations, as well as private companies, including transnationals, as stakeholders, in the formulation of regulations, as they influence political decisions or act as observers. Not rarely non-state actors play a relevant part in initiatives aiming regional development and security – for example through international NGOs as Global Witness and Partnership Africa Canada, as well as the Kimberley Process and Ottawa Process, and also through private companies which might invest in infrastructure areas in least developed and developing countries.

An interesting possible consequence of the 21st regional trade agreements pointed out by Mansfield and Miller refers to the use of the instruments as a way to expand and reinforce democracy around the globe, by vetoing the engagement of non-democratic countries. According to the authors,

> using PTA membership to stimulate liberal economic and political reforms is a distinctive feature of the latest wave of regionalism. That these reforms have been designed to open markets and promote democracy may help to account for the relatively benign character of the current wave. Underlying demands for democratic reform are fears that admitting nondemocratic countries might undermine existing PTAs composed of democracies and the belief that regions composed of stable democracies are unlikely to experience hostilities. (MANSFIELD; MILNER, 2006, p. 606)

4 21ST CENTURY REGIONALISM AND FOREIGN DIRECT INVESTMENT

Another possible positive turn-out of contemporary regionalism concerns development and economic growth as a consequence of foreign direct investment – promoting investment may be an objective of regional trade agreements, specially of bilateral investment treaties – BITs.Once we think about developing countries or least developed countries, being attractive to foreign direct investment seems to have even greater importance, mainly if investments in infrastructure are considered.

Foreign direct investment (FDI) has a big impact on the country where it is settled, creating significant changes on its surroundings[9]. It may have a great importance on continued economic growth and prosperity around the world – especially in developing countries[10]. This can be clearly observed as infrastructure investments are concerned.

Infrastructure, such as transportation – roads, railroads, airports –, water and electric systems, sanitation and telecommunication are essential for a society welfare. It allows not only living with dignity, within all the social benefits it brings, but it also provides services that support economic growth, stimulating the development of local industries and small business growth, reducing the costs of production, raising profitability, employment, consumer sales and income.

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[9] According to José E. Alvarez, “the permanent presence of a foreign controlled enterprises produces far more sociological, economic and cultural consequences for the home State of the enterprise and particularly for the host State in which that foreign enterprise is located. These effects can be positive or negative or in all likelihood both, but they are hard to ignore”. (ALVAREZ, 2011*,* p. 18)

[10] According to T. R.Braun, “least developed countries receive more than one-third of all investment flows”. (BRAUN, 2010, p. 491)

However, infrastructure investments tend to be high-cost and, and even though they might be a State responsibility, it is not unusual that private partners may be required to accomplish a project. In addition, especially considering developing countries, it is possible that neither public and local private sectors could have the required expertise or financial resources to build such infrastructures. Therefore, foreign investors are welcome.

Once we think about regionalism, the logic is that larger markets, with greater competition, and improved policy credibility will increase the incentives for investment and so elevate incomes.

20th regional integration agreements were activist and interventionist, co-opting regional integration into import substitution at a regional level. Such policies were not really successful and have been outdated by a more market friendly approach that emphasizes policies guaranteeing the fair treatment of investment. On this path, bilateral investment treaties typically contribute to investment specially by prohibiting certain policies hostile to investment rather than by requiring policies that actively encourage investment still, they play an important part in facilitating investment flows. Also, the engagement of a country in a BIT might add credibility and trustiness to government policies in general and thus help increase investment and attract foreign direct investment.

Bilateral investment treaties have become an important part of the regulation of worldwide investment flows. Currently, there are more than two thousand BITs connecting countries on all continents and at different levels of development.

Such instuments tend to be reciprocal and usually contains sections dealing, specifically, with their scope of application – clauses concerning the definition of investment regarding such instrument, the admission and legality of such form of investment (which usually defers to the pre-existent domestic law), general standards regarding its treatment – which might just reproduce the local law investment policy, as well as any other provisions regarding that specific situation. Still, as point out Maurice W. Schiff and Allan Winter, "governments retain almost complete discretion to manage the sectors in which FDI occurs and the shares of ownership that foreigners may hold". (SCHIFF; WINTERS, 2003, p. 105)

Concerning standards of treatment, once an investment has arrived in the host country, basically, all BITs impose fair and equitable treatment, security of ownership, and freedom from unreasonable or discriminatory restrictions on the operation of investments. Nearly all guarantee compliance to the more favored nation treatment principle (the principle under which no foreigner should be treated more favorably than the partner country's residents, known as MFN). The majority of BITs contain provisions on the transfer of funds associated with foreign direct investment and on expropriation. Dispute settlement provisions vary but usually define arbitration procedures that in recent treaties are set upon international standards as those of the World Bank Group's International Centre for Settlement of Investment Disputes (ICSID). Concerning conflicts that may arise from an investment relation between the private investor and the host country, provisions usually authorize expressively that the private party from a partner country take action against the government of the other.

The deepest investment provisions are those from the European Union, which aim to create a common market for capital and investment. Under those, there are no restrictions on investment and the movement of people, being the most sensitive issue areas those that concern differences in taxation and company law.

The United States has also been very forward in its bilateral investment treaties. The North America Free Trade Agreement contains a deep and pioneering investment chapter (specially considering that it is only a free trade agreement not a customs union). So far, it has actually become a model for other associations such as the Group of Three and for the Asia-Pacific Economic Cooperation, as far as its non-binding investment principles are concerned. NAFTA disciplines national treatment in establishment, more favored nation (MFN) treatment in establishment and operation, prohibition on new performance, guarantees of convertibility at market-exchange rates of funds for repatriating profits, disinvestments (and so on), ban on expropriations except for public policy reasons on a nondiscriminatory basis and with full compensation.

Even though it is not a regional agreement, OECD's Codes on Liberalization of Capital Movements and Current Invisible Operations, and its National Treatment Instrument, also embodies national treatment, requiring that nonresident enterprises which have been permitted to establish in host countries are treated in the same manner as domestic firms. A number of developing countries have agreed to sign such code.

A country intent on restoring or accelerating growth through the reception of foreign investment must improve its economic management, as well as endure investment friendly policies and reinforce its credibility towards investors, in order to lower eventual suspicion that might come from prospective investors. On this matter, standing against corruption and having strong policies against this type of practice, concerning both public administration and private partners, may enlarge the trust that an impending long term foreign investor will have in a certain country – specially as far as developing countries are concerned.

> Potential investors, domestic or foreign, are likely to be suspicious of the government's stated intentions if they have had or have known of bad experiences in the past by sudden tariff changes, tax increases, or nationalizations. Thus, the benefits of economic reform through investment will be slow to arrive if credibility lacks and needs to be built up over time: investors may not respond.In developing countries, poor credibility can stem from a number of factors. Governments driven by interest groups or reelection pressures may be tempted to reverse reforms, or elections may bring a party opposed to the reforms into power. Unless governments can make a convincing case that they will refrain from such actions, investment is likely to remain low. Therefore, regulations gain great importance. (SCHIFF; WINTERS, 2003, p. 107)

5 CONCLUSION

Considering such scenario, being part of a BIT may be a way of a country to externalize its solid commitment towards investors[11]. In parallel, engaging in multilateral schemes – such as ratifying agreements as the Washington Convention, adhering to the ICSID dispute settlement system, can also externalize the state's

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[11] According to Schiff and Winters:
"If entering an RIA entails (political) sunk costs in terms of challenging interest groups that will lose from increased competition, and if it requires liberal or sound policies to make sense, entry provides the government with a signaling device, for only a government with genuinely liberal intentions would sign. So, in the presence of asymmetric information about the type of government, an RIA could improve credibility." (SCHIFF; WINTERS, 2003, p. 111).

oath to the rule of law, especially when the national legal framework concerning foreign investment lacks discipline.

Nevertheless, unilateral reforms in the national legal system, disciplining foreign investment may also create a more investor-friendly atmosphere.

As it is possible to observe, the unilateral (national), regional and multilateral levels of regulation do intertwine in order to better address foreign investment. The fast expansion of transnational affairs and the growing interpenetration of foreign and domestic policy is evident. It is in order to deal with collective policy problems that global administrative law emerges[12], as a form of regulation, associated with the conception of governance[13]. On this matter, aligning domestic regulation on foreign direct investment and institutional behavior with global administrative law[14], absorbing concepts such as governance, transparency, consultation, participation, reasonable decisions, review mechanisms and compliance may endorse the country as an accountable State, liable and committed to its investors. Domestic and international laws are no longer enough to solve all the situations that emerge, especially because many of them are not connected only to relations between two States, but also between a State and a foreign private investor.

In parallel, once a country is part of a BIT, if it fails to comply with its commitments towards investors, other parties of the treaty may adopt measures in order to punish the violating party. According to Maurice Schiff and L. Alan Winters,

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[12] According to Benedict Kingsbury, global administrative law may be comprehended as "the legal mechanisms, principles and practices, along with supporting social understandings, that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring that these bodies meet adequate standards of transparency, consultation, participation, rationality and legality, and by providing effective review of the rules and decisions these bodies make". (KINGSBURY, 2009, p. 25)

[13] According to Andrew Hurrel, such governance is characterized by the complexity of global rule making; the role of private market actors and civil society groups in articulating values which are then assimilated in inter-state institutions; and the increased range of informal, yet norm-governed, governance mechanisms often built around complex networks, both transnational and trans-governmental, and the inter-penetration of international and municipal law and of national administrative systems. (HURREL, 2010, p. 2)

[14] As far as foreign direct investments are concerned, José E. Alvarez, explains that "the investment regime shares many features of global administrative law. By accepting the investor guarantees accorded in BITs and FTAs, States have accepted an internal form of supervision. They accept their own laws, courts and administrative agencies can be judged by objective international standards". (ALVAREZ, 2011, p. 441-442)

"by writing the reforms into an RIA agreement, subsequent punishment is given a formal legal basis, and if the reforms also affect the partner countries' welfare, their imposition of punishments is legitimized politically". (SCHIFF; WINTERS, 2003, p. 108)

Another benefit of deep agreements of regional integration, that goes beyond tariff reduction, which might foster the entrance of foreign investment, is the fact that integration may raise the efficiency of the financial sector, reducing lending margins and the cost of funds (SCHIFF; WINTERS, 2003, p. 114). This seems to be especially relevant as far as developing countries are concerned: they may benefit by integrating their financial sectors because of the enlarged competitiveness and since integration may allow them to expand their portfolios and reduce their risks[15]. However, we may recognize that financial integration is an aim which is very hard to reach – taking the European Union as an example, the bloc needed many decades to perceive such level of integration, going through a great amount of negotiations between the parties involved.

An additional positive aspect of regionalism related to foreign direct investment attraction concerns the expansion of companies' market. A industry may find it attractive to be situated in a country which is part o regional trade agreement and to service the other members of the bloc through intra-members exports, since there might be increasing returns to scale in production – mainly when such production has an elevated cost, being viable just above a certain size[16]. The integrated market might, then, possibly, become large enough to bear the fixed costs of the establishment of new foreign affiliates. Consequently, the regional agreement shall attract more foreign investment into developing regions as a whole than isolated national markets would.

One more stimulus to foreign investment entry concerning regional agreements is related to the fact that the removal of internal barriers in the region

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[15] Schiff and Winters emphasize, though, that "The benefits of increased competitiveness are likely to be more important in an RIA with a large partner that has a well-developed financial sector than in an RIA between developing countries—and the gains from nondiscriminatory liberalization will be even larger". (SCHIFF; WINTERS, 2003, p. 115).

[16] Considering the European Union as an example, the European Commission (1998) found that the EU's share of worldwide inward FDI flows increased from 28 to 33 percent during 1982–93.

allows companies to allocate operations across member countries more efficiently – this is more clear regarding North-South arrangements[17], as explains Schiff and Winters:

> Thus, if RIA members differ in their endowments, the RIA may stimulate vertical FDI. This potentially important aspect of North-South arrangements lies at the heart of Ethier's (1998) theoretical exploration of the benefits of regionalism. With guaranteed preferential access to the northern market, the southern country becomes an attractive location for labor-intensive activities. Knowing this, it is more confident of receiving inflows of investment and is hence more comfortable with liberalizing than it would be under multilateral liberalization, where it would face fiercer competition for inflows. This argument is equally applicable to intrabloc FDI and to that from outside (SCHIFF; WINTERS, 2003, p. 119)

According to Venables, a low-income country is best off forming a trade agreement with a high-income country, since "trade creation is maximized and trade diversion minimized with such a partner" (VENABLES, 2003, p. 758). Thus, a developing country would be better off joining a North-South rather than a South-South agreement.

Nevertheless, South-South agreements have been gaining importance and growing in numbers[18]. Therefore, it is important that, considering the complexity of regional trade agreements and that the gains a State might achieve depends also on the negotiations that precede it, developing countries acquire knowledge on how to negotiate, phrase such agreements and deal with eventual dispute resolutions, in order to pursuit deep integration and avoid trade diversion, and build a specific framework that is able do address its needs.

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17 Regarding the agreements between North-South countries, according to WTO, FDI to Mexico rose from $4.3 billion in 1993 to $11 billion in 1994, the year NAFTA came into force. The turn-outs of regional agreements between middle-income countries is also similar: for example, following the signature in 1991 of the Treaty of Asunción that established MERCOSUR, FDI in member countries increased from $3.5 billion in 1991 to $18 billion in 1996 and to $38 billion in 1998. With nearly $11 billion in FDI in 1996 (up dramatically from $1.1 billion in 1991), Brazil surpassed Mexico as the largest FDI recipient in Latin America.

18 Between 1990 and 2003, low-income countries signed 70 new PTAs (WTO, 2003). South-South arrangements account for more than 50 percent of all new trade agreements. Important examples of such arrangements include the Southern Cone Common Market (MERCOSUR) in South America and the Common Market for Eastern and Southern Africa (COMESA) in Africa. Countries that are both poor and small frequently enter into PTAs; Africa alone has 30 such arrangements, as points out Yang and Gupta. (YANG; GUPTA, 2005)

Considering that regionalism seems to be a ever-increasing phenomenon and that bilateral and regional trade agreements are here to stay (ROLLO, 2009, p. 703), it is important that developing countries and least developed countries extract the best out of it, using such instruments as a mechanism to foster development.

Engaging in bilateral investment treaties, in order to attract foreign direct investment, might be an interesting way to achieve that, specially as far as investments in infrastructure are concerned, given the fact that this sort of investment is high-cost and demands technology and expertise. Creating an investment friendly environment, making use of unilateral (national regulation), regional (bilateral investment treaties) and multilateral (joining the ICSID system, for example) instruments, would be a clever posture to be adopted by governments and in accordance with the 21st century reality, permeated by regioness and globalization, to promote progress and development and enhancing the population quality of life.

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