



Trading Places

Rethinking Trade Governance and the Status of Emerging Powers

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Summary

This dissertation examines recent contestation surrounding the status of emerging economies in international trade politics. In particular, it looks at the ways in which the rise of Brazil, India and China – the BICs – has shaped special rights for developing countries at the World Trade Organization (WTO). The primary focus of the thesis is the WTO's principle of Special and Differential Treatment (SDT), which provides developing countries with exemptions from certain liberalization commitments, implementation flexibilities, and pledges of technical assistance. At the WTO, access to such special rights is based on individual members' self-declaration as developing countries. However, as the BICs have risen, the 'North'- 'South' binary that underpins SDT has become less clear. The continued use of a legal norm based on the strict bifurcation of WTO members into sets of developed and developing countries has thus been called into question, most notably by the United States.

At the outset, the dissertation develops a conceptual framework for delineating the different ideal typical pathways along which special and differential treatment can develop. An overall process of fragmentation is then outlined, characterized by the unmaking of special rights for developing countries, in parallel to the resilience of differential treatment for the smaller sub-group of Least Developed Countries (LDCs). The thesis continues by examining the contestation at the heart of these processes more closely. In doing so, it sets up a novel theoretical framework to analyse the potential adaptation strategies that emerging economies can adopt in response to contestation of their special rights. Significant strategic variation amongst the BICs comes to the fore in a series of case studies, as well as two chapters on China's strong defence of its developing country status and Brazil's recalibration of its (previously held) Southern leadership role. The thesis closes with an in-depth case study of negotiations on intellectual property rights. While the divergence of emerging economy positions and the fragmentation of SDT have marked the WTO era, the final chapter shows that in areas where BICs unity is still possible – such as on LDC rights – normative erosion is slowed.

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Introduction

International Relations (IR) scholarship has often relied on North-South relations as a core structuring principle of world politics (Acharya and Buzan 2019; Lees 2012; Reuveny and Thompson 2007; Eckl and Weber 2007). The bifurcation of state actors into groups of 'developed' and 'developing' countries thus reflects stratification in a hierarchical international order (Viola 2020; Fehel and Freistein 2020; Zarakol 2017). Whilst structural differences in the economic make-up of these two sets of states serve as one definitional difference between the 'North' and the 'South', post-colonial legacies and Western othering have also bound together developing countries within a common identity category (Gelardi 2020; Farias 2019; Pu 2019).

Going beyond bare economics, the construction of a bipartite international system relies on the division of global politics into actors that are perceived to have been advantaged in the global system – the North – and those that seek to overcome a previously disadvantaged position – the South. The establishment and expansion of multilateral institutions in turn makes the full integration of these historically disadvantaged states a constitutional challenge for global governance frameworks. In the 20th century, these challenges were overcome by resorting to differentiation and compensatory rights for developing countries (Lamp 2017; Cullet 2016; Cullet 2003). In essence, members of the Global South could avail themselves of exemptions from core treaty obligations, implementation flexibilities or technical assistance provisions to ease their piecemeal integration into international institutions (Rajamani 2006). Across various regimes of international politics – including but not limited to climate mitigation, health protection and trade policy – developing countries are thus granted differential treatment to account for historical or contemporary imbalances in the global body politic. In this dissertation, I examine recent contestation concerning a particular institutionalization of such special rights, namely the Special and Differential Treatment (SDT) norm in the World Trade Organization (WTO).

Contestation of SDT rests on the unclear status of the Global South as an economic category or a group identity based on previous exclusion. As opposed to other

multilateral institutions, at the WTO compensatory differential rights are given to developing countries on a self-declaratory basis. In other words, WTO members have access to a catalogue of special rights if they self-identify as developing countries. Definitions that rely on fixed lists of beneficiaries or a set of socio-economic criteria to demarcate the scope of differential treatment are absent from the WTO's legal foundations.¹ While the binary North-South division and the logic of compensatory rights are not unique to international trade law, it is consequently here that the practice of self-declaration allows for a particularly strong and explicit contestation of special rights for the Global South (Weinhardt 2020).

This is due to two simultaneous trends: on the one hand, in the almost 30 years since the WTO's establishment in 1995, the global economy has undergone seismic shifts. These have allowed a handful of previously marginal economies to move to key positions in global supply chains and to become industrial powerhouses. Most notably, the export prowess of Brazil, India and China – the BICs – has allowed these states to significantly outperform smaller developing countries that continue to occupy the periphery of world trade. On the other hand, the set of agreements and norms that lay the constitutional basis of multilateral trade law have not undergone significant revision since 1995. Not only does this secure the applicability of self-declaration in the WTO – as members can continue to self-designate as developing countries – but it also ensures the continued access of emerging economies to a catalogue of special rights reserved for developing countries: in theory, states like South Korea or Singapore can still claim access to the same set of milder trade disciplines as Bolivia or Botswana.

While in the climate regime, the Paris Agreement's pledge-and-review mechanism overcame previous contestation over special carve-outs for developing countries (Pauw, Mbeva and Van Asselt 2019), similar change cannot be observed in the world

¹ Prior to the Paris Agreement, the climate regime relied on fixed lists of beneficiaries for differential treatment – termed 'Common But Differentiated Responsibilities'. At the United Nations on the other hand, membership of the Least Developed Country group is determined via a fixed set of economic criteria that allows for 'automatic' graduation of developing states when their economies pass a certain threshold.

trade regime. Instead, negotiations at the WTO have been characterized by a multi-decade deadlock. Atop this impasse, recent years have witnessed the emergence of an explicit contestation both of the existing system of differential treatment and the practice of self-declaration it is based on. Moreover, the rise of emerging economies lies at the heart of this contestation, as their continued status as developing countries is increasingly called into question (Hopewell 2022).

Following an abductive research approach, I analyse the relationship between the contestation of special rights and the status of emerging economies in international trade politics. This can be summarized in the following research question:

How has the rise of the BICs shaped special rights for developing countries in the world trade regime?

Answering this central question requires different levels of analysis and different sources of empirical material. This has led me to choose a cumulative format for the dissertation. While the first two papers provide broad overviews of change at the WTO since the 1990s, the following two chapters adopt an actor-centric approach, before the last chapter broadens the analytic lens again to a thematic, issue-based level of analysis. Each of the chapters takes an individual approach to the issues of contestation, differential treatment and the status of emerging economies in international trade politics. In conjunction, however, a clear picture emerges: the chapters that focus on special rights outline parallel processes of unmaking concerning differential treatment for developing countries and resilience with regards to the rights of the Least Developed Country (LDC) group. At the same time, the parts of the thesis that treat the status of emerging powers as their key focus delineate the divergence of emerging economies' strategies when faced with contestation of their status. As a result, the thesis not only examines the fragmentation of differential treatment, but also places status questions at the centre of the rising BICs' shaping of special rights for developing countries. This fills a clear gap in the academic literature, which has largely ignored the Southern norm of special and differential treatment in its analysis of the rise of the BICs – and its implications for the liberal international order.

Case Selection

The set of provisions that allow for SDT at the WTO was chosen as a case of differential treatment in international institutions for two reasons: as opposed to other areas of international relations, special rights in the world trade regime are underwritten by the practice of self-declaration, i.e. they are granted to member states that self-identify as developing countries. This places questions of status and identity centre-stage in ongoing negotiations and makes normative change or legislative reform more clearly linked to the (self-ascribed) status of emerging economies.

Moreover, while there are also identity-based factors at play in determining who belongs to the developing country group, this category has often been primarily defined with reference to economic imbalances – rather than political alignments. The North-South distinction in international relations is thus based on the historical division of the global polity into sets of industrialised and non-industrialised states.² Compared to climate or health politics, trade talks consequently focus on issues most overtly linked to economic development. This arguably allows developing country status at the WTO to be a particularly sensitive issue for emerging economies, relative to differential treatment in other diplomatic areas.

The trade regime is also characterised by a strong legal codification of its differential treatment norm, as compared to, for instance, health politics.³ This allows both for contestation to be more clearly targeted towards the applicatory framework of SDT and for discussions on special rights to be readily observable across negotiation documents. The WTO case is of further interest as debates in this forum have often been polarized along North-South lines. Recent contestation of SDT thus comes atop a history of division in multilateral trade talks over the operationalization of

² Eckl and Weber (2007) highlight and problematize this established binary as economic reductionism.

³ In our book on special rights for developing countries, Julian Eckl develops a new conceptualisation of emerging economies' capacity to pay, willingness to contribute and need (CWN) to study less codified, implicit differentiation in international health financing. The corresponding chapter is currently under review with Oxford University Press as Eckl, J. 'Capacity, Willingness, and Need in the Global Health Regime'. Dingwerth, K., Weinhardt, C., Eckl, J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

differential treatment and the re-balancing of international trade (Hoekman, Michalopoulos and Winter 2004; Narlikar 2004). The growing explicitness of SDT critiques in the latter half of the 2010s in turn imbues reform initiatives at the WTO with greater currency, as a multi-decade deadlock continues to frustrate multilateral trade legislation.

Methodology

Built on a constructivist research framework, the thesis examines how the rise of the BICs – and the shifting status considerations this entails – shapes special rights for developing countries at the WTO. A comparative case study approach, combined with qualitative text analysis, allows both for an in-depth examination of contestation – and status questions – in international trade negotiations and for analysis of variation both across the BICs and over time. This comparative approach allows the dissertation to present a diverse set of findings and to contribute to various debates in International Relations.

The empirical backbone of the thesis is the result of document analysis, using the online databases of the World Trade Organization⁴ and – in the case of China – the online archives of individual trade delegations.⁵ This textual data consists of minutes of meetings, reform proposals, draft documents, communications – both from individual delegations and coalitions of countries – as well as ministerial declarations, decisions, and secretariat notes. Due to the varying temporal frames of the different chapters, the source base broadly covers the WTO era (1995-present) with a particular focus on the early 2000s and the post-2015 period. These sources are supplemented by a series of 24 interviews that I conducted between October 2019 and February 2022. Interviewees included current and former members of trade delegations,⁶ officials of multilateral institutions, trade experts based at

⁴ Using the document symbols accompanying each WTO citation, referenced documents can be found in the WTO's online database: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx. This allows for a greater reproducibility of findings.

⁵ These statements are collected in the WTO section of the Ministry of Commerce of the People's Republic of China (MOFCOM) website: <http://wto.mofcom.gov.cn/article/meetingsandstatements/>

⁶ In the case of former delegates, these were usually active during key moments of WTO negotiations, such as the breakdown of talks at the 2003 Cancún Ministerial Conference.

various think tanks in Geneva, and academics with relevant research backgrounds. Dispute settlement case law and secondary literature at times round out these primary sources.

Methodologically, the dissertation rests on comparative case studies and qualitative text analysis. Two of the thesis chapters – the second and the sixth – analyse legal change in combination with analysis of contestation and the differing conceptions of legitimacy that SDT provisions are based on. These two chapters, along with the fifth chapter on Brazil, employ comparative analysis to delineate change over time: two periods of trade negotiations – the early 2000s and late 2010s – are placed in parallel to underline substantive changes in WTO politics. A comparative approach is also used by the third thesis chapter, which rests on individual case studies of the three BICs states to divine different approaches to status contestations amongst the largest emerging economies.

In the sixth chapter, the case of the BICs' positions on intellectual property rights is compared over two time periods, and is then further examined by considering – individually – the shifting influence of interests and coalitions, ideological factors, and institutional opportunity structures on negotiation outcomes. The chapter thus focuses on different explanatory variables in its unpacking of how negotiation conflicts unfolded, which is most in line with a process tracing approach.

The only chapter to depart from comparative methodologies is the fourth chapter on China. As the paper argues, recent contestation of self-declared developing country status has targeted China in particular. Qualitative content analysis of statements by the Chinese trade delegation thus zooms in on the narratives and images that the largest BIC state has used to defend its developing country status.

In the one instance where the dissertation incorporates manual coding of negotiation decisions to quantitatively track normative change between two time periods – in the second chapter – inter-coder reliability is boosted by the simplicity of the underlying coding scheme: documents were coded to determine a) if they included differential treatment provisions (or not) and b) if the documents were directed at Least-Developed Countries.

Using qualitative methods to trace the evolution of differential treatment and its contestation necessarily comes with limitations. Members of different diplomatic delegations – and different groups of trade experts – vary in how prepared they are to contribute to interviews. This adds to the fact that access to diplomatic interview partners was usually based on referral from other interviewees in Geneva. Such sampling issues complicate analysis of WTO politics as, for instance, no members of the Chinese trade delegation were interviewed, but several Brazilian diplomats contributed to the research. These limitations were overcome by relegating interview material to a supplementary role, designed to flesh out and add emphasis to trends observed in negotiation documents. The fifth chapter on Brazil provides a partial exception, as its actor-centric approach does not raise the same type of sampling representativeness problems as chapters with a broader, multi-actor analytic lens. Moreover, where interview material was not available – such as for the fourth chapter on China – other source material was employed to delineate changes in narratives and strategies. The personal biases and tendencies for interviewees to drift off-topic were tackled by asking a uniform set of questions for each round of interviews.⁷

Another key limitation of qualitative methods comprises issues with the reproducibility of findings. To counter this, the thesis makes strong and frequent use of direct quotes from WTO documents and press releases that are derestricted and available to the public. Not only do document symbols – with which one can find cited documents in the online WTO database – accompany each citation in the reference lists, but so do URLs to each negotiation document. As opposed to archival research, the bulk of the empirical material gathered for this dissertation can consequently be directly (re-)evaluated by the reader.

A further issue when studying how the rise of the BICs has shaped special rights for developing countries is the question of causal direction. While these two phenomena can be co-constitutive, a comparative approach based on distinct time

⁷ In total three rounds of interviews, in the fall of 2019, 2020 and the fall and winter of 2021/22 focused on the contestation of SDT, intellectual property negotiations, and agriculture respectively.

periods can help to avoid a sense of causal aimlessness. With the exception of the fourth chapter, which heavily zooms in on recent narratives defending China's developing country status as part of the actor-centric portion of the thesis, all chapters rely on comparison. For the second, fifth and sixth chapter, two periods of negotiation activity are compared, while the third chapter traces change over time across three national case studies. While case studies and comparison of negotiation periods come with their own hazard of selection bias, this was tackled in this thesis by basing national case and time period selection on two factors. First, Brazil, India and China were chosen as the three largest developing economies by nominal GDP in the WTO era.⁸ Second, due to the breakdown of WTO talks in 2005-08 and their only piecemeal resumption in the early 2010s, WTO negotiations are already divided into two periods of activity. These periods in turn fit neatly either side of the Global Financial Crisis of 2008 – a moment that is frequently used as caesura for the rise of the BICs (compare Stuenkel 2013; Womack 2017).

Findings and Contributions

The first paper constructs a typology based on three ideal types to determine how differential treatment has adapted to the growing heterogeneity of developing countries. It demonstrates how conflicts over SDT and its applicatory framework have resulted in the fragmentation of differential treatment, as special rights are increasingly reserved only for the most marginal economies. The resulting unmaking of the traditional North-South binary in world politics begs the question of how different emerging economies have reacted to pressures to give up their access to special rights. The second paper addresses this question by developing a model of four ideal typical strategies with which rising powers can deal with their contested rights. It then employs an actor-centric analysis to examine the positions of Brazil, India and China in this typology. To properly understand these new positions, the third and fourth papers refocus the level of analysis to the individual country level by

⁸ Only in 2020 did South Korea slightly change this established twenty-year pattern by overtaking Brazil in terms of economic size. Calculations based on the World Bank's World Development Indicators, available online: <https://databank.worldbank.org/reports.aspx?source=2&series=NY.GDP.MKTP.CD&country=#>

examining China and Brazil respectively. How China defends its developing country status and the existing SDT system is of particular interest, as it has been the prime target of recent, US-led contestation of differential treatment. Brazil, on the other hand, stands out as an emerging economy that has completely recalibrated its negotiation positions in pursuit of a more pragmatic stance in international trade politics. The final paper takes a thematic approach, examining the development of conflict lines over special rights in the realm of intellectual property rights. In this case, I argue that in areas where the BICs' positions still maintain a certain level of unity – such as intellectual property exemptions for LDCs – the resilience, rather than the unmaking of special rights, takes precedence.

While the chapters of the dissertation each speak to specific debates – for instance on Brazil's status in world politics or the role of flexibilities in IPR discussions – cumulatively, the thesis provides theoretical contributions in four main areas. Firstly, it adds to recent research on the interaction of rising powers with international order. Scholarship on global power shifts has mainly focused on the role of emerging economies as challengers of the established norms and institutions of global governance (Lake et al. 2021; Zangl et al. 2016). Departing from this base assumption, the dissertation shows a) how established powers can act as challengers of rising powers' institutional rights; and b) how emerging economies adjust – or maintain – their status in response. As such, it expands on a recent literature on hierarchy in international order (Zarakol 2017; Mattern and Zarakol 2016) and the role of international organizations in reproducing and shaping inequalities (Fehl and Freistein 2020; Viola 2020). Moreover, it adds nuance both to accounts of the fall – or resilience – of the established international order (Mearsheimer 2019; Kahler 2013) and those that divine a move towards a 'multiplex' order (Acharya 2017), less reliant on hierarchical structures (compare Kupchan 2012).

Doing so allows the thesis to, second, build on recent work on the normative underpinnings of international relations. A hitherto focus on Western-authored, *liberal* norms of international order (Ikenberry 2018) is thus eschewed and replaced by analysis of differential treatment norms that were first developed by – and for – actors from the Global South (Lamp 2017). With the rise of the BICs the binary

North-South divide that carries differential treatment has become less clear and the bifurcation of actors into those with and those without special rights has become more controversial (compare Farias 2019). The dissertation consequently adds to scholarship on normative change (Wiener 2018), differentiation in world politics (Albert et al. 2013), and the erosion of differential treatment (Pauwelyn 2013) – as well as recent work on (special) responsibility in global politics (Bukovansky et al. 2013; Falkner and Buzan 2022).

A third theoretical contribution pertains to the status and narratives of individual BIC states. Rather than approaching emerging economies as acting uniformly when confronted with contestation of their status and rights, the actor-centric portions of the thesis allow for variation across the BICs. On the one hand, this allows the dissertation to contribute to recent scholarship on the path-dependent trajectories of individual BIC states and their *sui generis* handling of status ascriptions (Bishop and Zhang 2020; Esteves et al. 2020; Efstathopoulos 2012; Khong 2019; Deng 2008). On the other, it builds on a new and emerging literature that examines strategic narratives and status signalling in international relations – particularly concerning ‘poverty narratives’ and developing country identities (Narlikar 2020; Pu 2019).

Lastly, the empirical results of the paper add to ongoing academic and policy debates regarding negotiation deadlock at the WTO (Sinha 2021; Hannah, Scott and Wilkinson 2018). The thesis thus contributes to scholarship on the developing country category as a source of contestation (Weinhardt 2020; Farias 2019), the role of emerging economies in disrupting established modes of trade governance (Hopewell 2020; Hopewell 2016), and debates over policy space and the integration of developing countries into the multilateral trading system (Deere Birkbeck 2009). Moreover, the empirical results allow an assessment of if – and if so when – the unity of Southern actors is still possible in international trade politics (compare Johnson and Urpelainen 2020).

The following sections provide more detailed accounts of the individual papers and their contribution to the research question at the heart of the dissertation.

Chapter Two: The Unmaking of the North-South Distinction in a Multipolar World

The first paper of the dissertation emerged out of a three-and-a-half-year research project led by Clara Weinhardt and Klaus Dingwerth on differentiation in international politics.⁹ While working on a book chapter intending to provide an overview of differential treatment in the trade regime,¹⁰ it became clear that some of the key empirical trends in this regard also held a broader relevance. The resulting paper, which was published by *Third World Quarterly* in November 2021, unpacks how the North-South distinction has been unmade at the WTO (Weinhardt and Schöfer 2021). It relies on a database of WTO statements and documents collected and analysed between 2019 and 2021, as well as a series of six interviews with WTO officials, trade experts and (former) diplomatic personnel that I conducted in Geneva in October 2019. The debates and conflicts that permeate this empirical material shaped not only the aforementioned book chapter, but also the research that comprises all five of the papers included in this dissertation.

The chapter examines an issue-specific manifestation of the unmaking of the North-South distinction in international politics. It does so by delineating legislative trends and increased contestation of developing countries' special rights. More specifically, the evolution of equity-based differentiation is analysed using a novel, tripartite typology built on three potential pathways: graduation, individualization and fragmentation. The first of these trends, graduation, essentially entails shrinking the developing country group. As emerging economies rise, they give up their access to special and differential treatment at the WTO. Increased heterogeneity within the Global South is thus accounted for on the legal level by keeping SDT clearly bifurcated between a set of beneficiaries and a set of contributors. In other words, the North-South distinction is maintained. This is also the case for individualization, which foresees that the uniform catalogue of special rights for developing countries

⁹ The research project was supported by the German Research Foundation [grant number WE 6012/2-1].

¹⁰ This chapter is currently under review with Oxford University Press as Weinhardt, C. and Schöfer, T. 'The Gradual Unmaking of Special and Differential Treatment in the Trade Regime'. Dingwerth, K., Weinhardt, C., Eckl., J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

becomes fine-tuned to the needs of individual state actors. Direct unmaking of the North-South distinction is in turn reflected in the final ideal type; fragmentation. This conceptual pathway envisages the break-up of the developing country category into different sub-groups that compete for access to differential treatment.

With the conceptual framework in place, the chapter analyses WTO decisions and individual country statements for two periods since the organization's establishment – one before and one after the Great Financial Crisis of 2008. This was done in order to demarcate different trends 'before' and 'after' the rise of the BICs. Both the conceptual and empirical parts of the paper contribute to ongoing academic debates regarding international order and the status of emerging economies. In particular, the research agenda at the core of the paper helps to re-balance a bias in existing scholarship that primarily examines challenges to the *liberal* international order as a result of power fluctuations and looks at the status of rising powers as 'norm-takers' or 'norm-makers' (Stephen and Skidmore 2019; Ikenberry 2018; Pieterse 2011). The research approach of this paper – and this dissertation – departs from the base assumption that the emergence of new powers results in a drive on their part to alter the extant institutions of multilateral governance. Rather, it is precisely emerging economies' status as hitherto beneficiaries of equity-based rights systems that raises the question of how both differential treatment and the BICs' positions change as power political realities shift. This allows the paper to further contribute to a growing literature on the importance of status considerations in international relations, beyond interest-based narratives of global politics (Esteves et al. 2020; Murray 2019; Pu 2019; Renshon 2017). On the specific issue of SDT at the WTO, scholarship that emphasises the capacity for individualization to provide a roadmap out of contestation (compare Pauwelyn 2013; Almodarra 2022) is also re-evaluated.

Instead of individualization, this paper shows how fragmentation has been the main trend in the development of differential treatment as the rise of the BICs has made the granting of a one-size-fits-all catalogue of special rights more contested. While in the first period of analysis (1995-2008) SDT provisions are pervasive – both in the agreements establishing the WTO and in the decisions that immediately followed them – in the second period (2009-2019), explicit differential treatment provisions

are less central, found only in a minority of the decisions reached by the WTO Membership (see figure 1). Moreover, the focus of differential treatment shifts across both time periods, with SDT increasingly becoming targeted at the sub-group of LDCs (see figure 2). This sub-category of state actors not only represents a more marginal set of economies than the developing country superset, its membership is also more clearly limited. While contestation of SDT for developing countries is based – at least in part – on the practice of self-declaration to determine beneficiary status, membership of the LDC group is dependent on a fixed set of socio-economic criteria authored by the United Nations. This explains why as contestation of differential treatment has become more explicit and the legitimacy of the existing system of SDT has been eroded, LDCs and other sub-groups continue to be considered valid beneficiaries of special rights. While the paper also finds evidence for individualisation of differential treatment, this occurs at the margins of international trade talks and it is unlikely that these trends will extend beyond certain, less controversial negotiation areas.

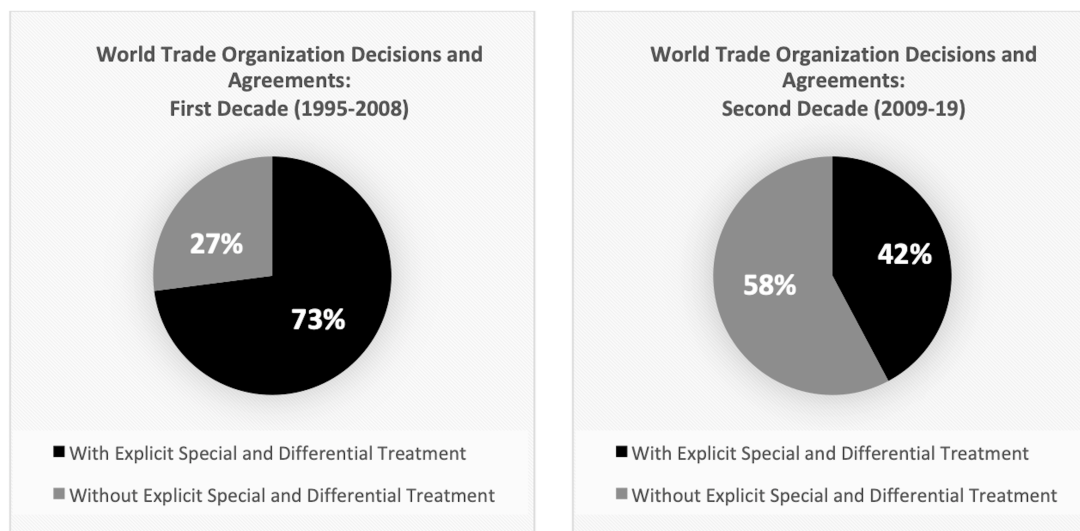


Figure 1. Pervasiveness of special and differential treatment provisions in WTO decisions, adapted from Weinhardt and Schöfer (2021).

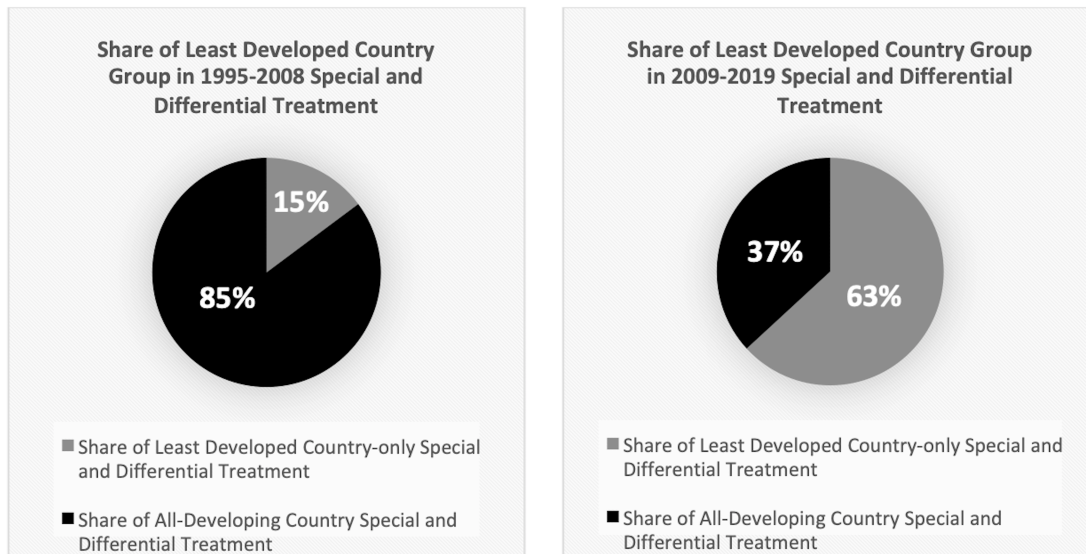


Figure 2. Share of Least Developed Country Group in special and differential treatment provisions, adapted from Weinhardt and Schöfer (2021).

As the first of the five middle chapters, the paper provides a primer for understanding differential treatment and its contestation in recent years. It also employs the broadest level of analysis, surveying legislative trends over two decades to provide a general picture of the unmaking of the North-South distinction in world politics via a case study of the World Trade Organisation. These results hold a key place in the dissertation as a whole: on the one hand, they speak to the thesis’ core research question concerning the relationship between the rise of emerging economies and special rights for developing countries. On the other hand, they also provide a general context in which the more specific questions and findings of the following four papers fit.

Chapter Three: ‘Privileges’ of the Weak – Emerging Powers’ Pursuit of Special Rights for Developing Countries

In chapter two, the empirical focus was on the development of special and differential treatment – and its contested nature – as the BICs rose. The third chapter reverses this line of inquiry by examining how the BICs have reacted and/or repositioned themselves amidst increased contestation concerning their access to SDT. In this case, the chapter emerged out of the empirical observation that there

was significant variation across the BICs with regards to their engagement with SDT and its contestation – and that this variation had not come to the fore in the previous paper or the overview chapter that spawned it. These differences became apparent in a further round of four interviews I conducted via telephone in June-September 2021 with former and current trade delegates from developing countries. The paper was honed by its inclusion in a series of workshops organized by members of the *Political Economy of International Organization (PEIO)* group at the University of Oxford. It has been accepted for publication in *International Affairs*.¹¹

The chapter is premised on turning the established basis of power shift theory on its head. Instead of assuming that the underlying principles and norms of international order are inherently liberal and supported by established powers, this paper examines contestation regarding elements of international order that have traditionally benefited marginalised actors. This in turn raises the question of how uniform reactions to contestation are amongst emerging economies: do they give up their access to special rights as they rise up? Moreover, in a situation in which such legal privileges are inextricably linked to questions of identity – due to the fact that SDT can be accessed by WTO Members that self-declare as developing countries – do they accept (external) redefinitions of their status? By analysing the BICs individually, this paper shows that there is no single form of rising power adaptation to reformative pressures at the WTO. Instead of uniformly resisting or accommodating moves to recalibrate special and differential treatment, each of the BICs has adopted a different strategy to deal with contestation of their rights.

Combining insights from power shift theory on institutional adaptation (Lavenex et al. 2021; Kruck and Zangl 2020; Zangl et al. 2016) and a constructivist recognition of status ascriptions (Narlikar 2020; Parlar Dal and Dipama 2019; Bishop and Zhang 2020), this paper teases out the different positions and strategies the BICs have turned to as their special rights have become more contested. In order to better

¹¹ This paper will be published as Schöfer, T. and Weinhardt, C. (2022). 'Developing Country Status at the WTO: Brazil, India and China's Divergent Strategies.' *International Affairs* 98:6.

position these strategies in relation to one another, the paper develops a novel conceptual framework built around four ideal types (see figure 3). We can expect change to fall along two dimensions; change in status and change in practices. The first position that states can take is full accommodation, whereby they accept both an official status change and give up their special rights. Alternatively, states can, in practice, give up their special rights but cling onto their official status as developing countries. This would amount to *de facto* accommodation. A third option is *de facto* resistance, which involves emerging economies accepting a status change but defending their right to differential treatment provisions. The last ideal typical strategy follows in the form of principled resistance, i.e. a rejection of either a status change or a change in the use of special rights for developing countries.

	Change in status	No change in status
Change in practices	Full accommodation	De-facto accommodation
No change in practices	De-facto resistance	Principled resistance

Figure 3. Four ideal typical strategies for emerging economies to adapt to contestation of their special rights.

With this typology in place, the paper draws on national statements, reform proposals, trade delegate interviews and the positions of the BICs *vis-à-vis* new areas of trade legislation to determine the individual adaptation strategies of the three largest emerging economies. It finds that India follows a strategy that is most clearly identifiable as principled resistance as it rejects both reformulation of its status in international politics or a curtailment of its special rights. A strong defence of developing country status is also practiced by China (see the following chapter), however on certain issues where its material interests have changed, it seems willing to not make use of special rights in practice. This amounts to a strategy of selective accommodation. A much stronger strategy of accommodation has been adopted by

Brazil, which is the only one of the BICs that has signalled that it would not make use of developing country status to access future SDT provisions.

These findings go beyond the established literature on the status of emerging economies in three ways: firstly, power shift theory relies on the implicit assumption that rising powers would be challengers of the core principles of international order (Lake et al. 2021; Mearsheimer 2019; Ikenberry 2018). Clearly, on SDT the first assumption does not hold. Beyond this however, it is notable that there is no common reaction amongst the BICs to contestation of their status and rights in international trade governance. Rather, reactions are mixed or ambiguous. Ambiguity of positions, selective approaches to reform and practical – as opposed to legal – changes show, second, that institutional change can be gradual and not directly linked to formal, legal reform (Roger 2020). Adaptation can thus take the form of changes in the *use* of special rights rather than the legal redefinition of individual states' developing country status. Thirdly, the empirical material reviewed in the paper underlines that rationalist approaches based on analysis of interests and bargaining strength are not sufficient to understand or explain the position of the BICs in world politics (Lavenex et al. 2021; Kruck and Zangl 2020; Zangl et al. 2016). Not only are status considerations important, but as demonstrated in this chapter, they can work to engender very different outcomes, ranging from support for reform to blocking strategies and resistance. Brazil's recent contributions to talks on investment facilitation, for instance, stand in stark contrast to an Indian focus on preserving existing special rights and the practice of self-declaration.

Placing the adaptation strategies of the BICs in parallel serves two broader purposes within the dissertation. On the one hand, it directly assesses the impact of SDT contestation on the negotiation strategies and positions of emerging economies. This effectively places the status of emerging economies and their divergent positions at the centre of the trends delineated in the second chapter. On the other hand, the comparative approach of the paper sets up the more detailed empirical accounts comprising the fourth and fifth chapters. These respectively examine how China has defended its developing country status and how Brazil has given up its erstwhile role as leader of the Global South at the WTO.

Chapter Four: Identity at the WTO – How China Defends its Developing Country Status

The fourth chapter picks up where the third one left off, namely the mixed approach to contestation that China has pursued in contrast to India's fierce resistance and Brazil's accommodation. Despite its position in the middle of the dissertation, this paper stems from research I conducted at the outset of my PhD. The impetus in this case was a large-scale qualitative analysis of Chinese state media during the Trump administration (2017-2021). Initially looking at how Chinese state narratives had been redirected towards relations with the European Union, a larger narrative trend soon became apparent: amidst a unilateral turn in United States (US) trade policy – which was significantly concentrated on targeting Beijing – China pushed for common international defences of a multilateral system at risk. A few months into the US-China 'trade war', such narratives re-emerged at the WTO in response to a new, US-led contestation of special and differential treatment. Such contestation hones in both on the desirability of carve-outs from trade liberalization for developing countries as well as the practice of self-declaration. This latter critique takes the form of direct attacks on emerging economies' continued access to special rights. How China, as the main focal point of US-led SDT critiques, reacts to contestation of its developing country status is consequently a question that I have sought to address with this chapter.

By zooming in on a corpus of statements submitted by the Chinese trade delegation to the WTO between 2017 and 2021, I delineate the various categories of arguments and self-images that China promotes to secure its self-designated status as 'the world's largest developing country'. In doing so, the paper reaffirms the dissertation's contribution to scholarship on how status considerations significantly influence and/or complicate rising powers' navigation of their position in a hierarchical international order. It further speaks to two avenues of China-related research that have become prominent over the past decade: first, scholarship on status signalling in China has often attempted to divine the different pairs of images and audiences that make up Beijing's strategic narratives, both domestically and across global governance institutions (Yang 2021; Pu 2019; Pu 2017). Going beyond

this work, I show that even in a specific forum and on a specific issue – SDT in the WTO – Chinese status signalling avoids a single, coherent form that would in turn be suitable for an overarching, neat model of signalling strategies (compare Yang 2021). Linked to this analysis of China’s strategic narratives on the world stage, the paper further adds nuance to definitive portrayals of China as a challenger, reformer, or maintainer of the international status quo (Jones 2019; Malkin 2019; Wu 2018; Yang 2020; Nordin and Weissmann 2018). The premise of the dissertation already suggests that strict characterizations of emerging economies as challengers of international order are ill fitting. The specific case of China’s defensive narratives at the WTO adds to this by accentuating that China’s own self-images on the world stage often overlap, thus detracting from the type of focus and coherence that would be required for an incipient Chinese grand strategy.

Adopting a qualitative text analysis approach, the chapter’s empirical analysis starts by taking a closer look at US proposals for reform of self-declaration. In the process, it becomes clear that US criticisms of the continued relevance of SDT overwhelmingly target the Chinese economy’s alleged departure from developing country levels. The paper then draws on statements and communications submitted to the WTO by the Chinese trade delegation since 2017 to determine different categories of arguments that China has adopted in response to such singling-out of its developing country status.

The first of these sets of defensive arguments comprises a pushback against a range of socio-economic indicators employed by the US trade representative to erode China’s developing country credentials. This reaction is based both of the use of alternative criteria to underline the continued developmental challenges faced by China, as well as criticisms of the suitability of any set of indicators to ‘objectively’ demarcate the division between developing and developed countries. Linked to the aforementioned calls for a defence of multilateralism, the second arguments set is based on the need to defend a system of special rights – and the practice of self-declaration – as part of an established multilateral system at risk. In a third category of arguments, these special rights for developing countries are further reframed both as integrative tools that could aid the better incorporation of the Global South

in international trade flows, and as compensation for imbalances in historical and contemporary trade rules – labelled ‘reverse SDT’ – that favour industrialised economies. The existing SDT framework is thus made into a palliative or compensatory mechanism in an unfair system of trade regulation. The last of the four categories of arguments that permeate China’s recent statements on SDT concerns its supposed status as a model member of the WTO. China argues that its alleged adherence to accession requirements, limited use of SDT provisions and flexibility concerning use of future differential treatment underline that it is not a spoiler of WTO politics. This responsible behaviour in turn requires that power political shifts on the world stage should be reflected in changes in practices, not changes in status. In other words, developing country status should not be altered, thereby stripping individual members of their rights. Rather, emerging economies should decide for themselves what level of practical SDT use corresponds to their position in world trade.

Out of these four categories of arguments, four self-images emerge that China attempts to simultaneously promote at the WTO. First, indicator fights seek to position China as an objectively classifiable developing country. At the same time, China portrays itself as a defender of a multilateral system at risk. This system in turn incorporates SDT as a tool against persistent inequalities. This makes China, third, a victim of historical and contemporary imbalances to the advantage of the Global North. Lastly, China is portrayed as a strong, responsible member of the international trading system, reluctant to have its rights changed on the legal level – though with recognition that nuance in practice may be needed. These overlapping images underline both how important status considerations are for China’s positioning in trade governance and how ambiguous this position becomes as it tries to marry its economic rise with existing practices of international trade law.

Such a multi-faceted defence of self-declared developing country status – for the world’s second largest economy – contrasts strongly with the negotiation position that Brazil has assumed in recent years. This chapter of the dissertation consequently sets up a further national case study, which departs from the defensive attitude to developing country status outlined above.

Chapter Five: From Southern Leader to Flexible Negotiator – New Directions in Brazilian Trade Policy

Changes in Brazilian trade policy have comprised a recurring theme of the latter two years of my PhD. This can be partially attributed to a book chapter I co-authored on agriculture negotiations at the WTO, currently under review at Oxford University Press.¹² On the one hand, agriculture is one of the only economic sectors where a handful of developing countries have a comparative trading advantage. On the other, the agricultural sector accounts for large sections of developing country labour markets. These factors, amongst others, make agricultural trade reform a particularly sensitive issue for developing country delegations.

Whilst conducting research for this chapter, I interviewed a range of trade delegates and experts all of whom pointed to the significant shifts that have occurred on agriculture as a result of Brazil's repositioning. Follow-up interviews with former and current Brazilian trade representatives¹³ quickly helped to solidify a picture of an emerging economy that has completely recalibrated its trade strategy and geopolitical placement – not just on agriculture. This chapter thus juxtaposes the defensive status considerations outlined previously in the case of China with a substantive shift in Brazil's negotiation strategy towards a more flexible approach, detached from the North-South distinction as a key structuring principle of Brazilian diplomacy. This further teases out the different reactions that emerging powers have had to contestation of their status and special rights as developing countries.

While the previous chapter delineated Chinese reactions to recent, direct attacks on its developing country status, analysis of Brazil's shifting position at the WTO requires a broader temporal frame. The severity of Brazil's shift best comes to the fore via a comparative approach that places its recent negotiation positions in parallel to a previous, 2000s status quo. In order to unpack how Brazil has upended

¹² This chapter is currently under review as Weinhardt, C. and Schöfer, T. 'Conflicts over Trade in Agriculture'. Dingwerth, K., Weinhardt, C., Eckl, J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

¹³ In total, ten interviews were conducted via telephone between August 2021 and February 2022 on agriculture negotiations in general and the changing position of Brazil in particular.

its trade strategy since the mid-2010s, the paper examines a mix of Brazilian reform proposals, trade delegate interviews, dispute settlement case law, government statements, and secondary literature.

In the early 2000s, Brazil became a leading actor in the core decision-making circles of the WTO. In pursuit of liberalized agricultural trade, this involved a strong reliance on North-South confrontation in order to place Brazil at the head of a large and diverse developing country group. High agricultural subsidy levels in the Global North allowed the Brazilian trade delegation to ignore interests in Southern markets in order to build this more confrontational developing country coalition that would, in turn, form the G20 negotiation group. Together with Brazilian successes in dispute settlement against the EU and the US, the 2000s thus witnessed the emergence of Brazil as a champion of the Global South and as a leader of a developing country alliance that successfully blocked trade talks in 2003.

This strong Southern leadership position that Brazil assumed at the WTO in the early 2000s contrasts heavily with developments in the 2010s. It is of particular note that the G20 has disappeared as a negotiation grouping, while other groups that were established at the same time – like the G33 – continue to be active. In its stead, Brazil has turned to close collaboration with the EU in order to promote reform, primarily on agriculture. This has in turn often put it into conflict with other emerging economies – notably China and India on domestic support. Beyond partnerships with the EU, Brazil has also supported several initiatives that push the WTO's legislative frontier to new areas of trade regulation. Brazil's backing of plurilateral initiatives further marks a caesura compared to a previously strictly multilateralist position. Change is also reflected in Brazil's targeting of actors from the Global North *and* the Global South in its dispute settlement practices. Perhaps the clearest recalibration however occurs on special and differential treatment, where Brazil has announced that it will forego its special rights in future. This explicit distancing from contemporary conflicts over self-declaration also comes to the fore in Brazil's absence from initiatives designed to defend the existing system of special rights – these are primarily carried by China and India.

The empirical findings of the paper contribute to scholarship on Brazil's status in international relations in three ways: firstly, they add nuance to debates over Brazil's status signalling and its identity as a member of the Global South (De Sá Guimaraes 2020; De Carvalho 2020; Aoki Inoue and Costa Vaz 2012). Historically, Brazil has had to incorporate different discursive elements in its strategic narratives in order to play a bridging role between different groups, such as the West and the Global South. However, with the advent of the Lula administration (2003-2010), these narratives were reshaped to focus on South-South cooperation and the expansion of ties with other developing countries. In contrast, the empirics presented in this paper suggest a return to greater flexibility in Brazil's positioning, less reliant on North-South relations as a guiding principle. This means, second, that a recent literature on Brazilian coalition building needs to be re-evaluated. While previously, scholars pointed to Brazil's leadership role in the Global South as a primary driver of its foreign policy – even going so far as to place maintenance of followership at the heart of Brazilian international relations (Doctor 2015; Efstathopoulos 2012; Dauvergne and Farias 2012) – recent years have witnessed a complete deviation from such diplomatic practices. Nevertheless, such changes rest on a pragmatic approach to trade negotiations that seeks to break deadlock and advance talks on key issues. As a result, the paper lastly questions the accuracy of academic analyses that diagnose Brazil as suffering from a 'graduation dilemma' (Margheritis 2017; Milani, Pinheiro and Soares de Lima 2017; Harig and Kenkel 2017).

Amidst US-Chinese contestation at the WTO, Brazil has consequently attempted to engage in new directions of trade policy-making that promise advancement of trade talks. In the process, its positions in trade negotiations have shifted. This chapter thus underlines how Brazil's previous Global South leadership strategy has dissipated, making way for a more flexible approach. The desire to advance negotiations however suggests that Brazil is not caught in a 'graduation dilemma' but rather has divorced itself from the North-South binary that previously allowed it to gain more influential positions in international trade governance. In combination with the defensive attitude outlined in the previous chapter on China, flexibilisation of Brazil's trade strategy provides a detailed example of how emerging economies

have adopted different adaptation strategies when confronted with contestation of their status. Together with the previous two chapters, this paper consequently addresses how contestation of the status and special rights of emerging economies has affected their positions and strategies in international trade.

Chapter Six: Conflicts over Special Rights – Southern Unity in Intellectual Property

The final chapter of the dissertation hones in on the question of what the unmaking of the North-South distinction – described in chapter two – looks like in a specific sub-field of international trade law. Of the five papers included in the dissertation, this is the only one that is written as a book chapter, included in Clara Weinhardt, Klaus Dingwerth, Julian Eckl, Simon Herr and my manuscript on differentiation in world politics, currently under review with Oxford University Press.¹⁴ The chapter emerged out of exploratory research I conducted in early 2020, trying to inductively uncover if differential treatment provisions had been particularly contested in the TRIPS Council – the WTO’s main forum for intellectual property negotiations. In the process, I realized that transition schedules for developing countries – often considered an uncontroversial issue – were actually a subject of debate in the early 2000s. Similar discussions in turn accompanied LDC attempts to gain further transition schedule extensions in the 2010s. A series of eight interviews with officials at the WTO, World Intellectual Property Organization (WIPO) staff, intellectual property experts and (former) trade negotiators¹⁵ helped to flesh out this picture, resulting in the chapter included here.

I chose to include a thematic case study of intellectual property negotiations at the WTO – as opposed to a chapter on agriculture – for two reasons. On the one hand, it is an area of negotiation where the narrowing of special and differential treatment’s scope to the LDC group – termed fragmentation – is clearly observable. Special rights are consequently unmade for the developing country group as a whole, however

¹⁴ This chapter is currently under review as Schöfer, T. ‘Conflicts over Transition Periods for Intellectual Property Rights’. Dingwerth, K., Weinhardt, C., Eckl, J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

¹⁵ Due to the 2020-22 COVID-19 pandemic, interviews were conducted via telephone in October 2020.

stay resilient for LDCs. On the other hand, it is instructive that resilience of intellectual property-related SDT for this marginal sub-group of the Global South is based on the support that it receives from the BICs. This adds a final dimension to the dissertation's analysis of how the position of emerging economies shapes contestation of special rights for developing countries: when the BICs lose a direct stake in special rights discussions, it is easier for them to coalesce in support of special rights for smaller economies. This unity in turn fends off the erosion of SDT altogether and allows differentiation to remain – in part – resilient.

The chapter's findings contribute to discussions on the contestation of special and differential treatment in three main ways. First, they show that unity of emerging economies around SDT is more feasible when their direct stake/interests in a specific sub-field of negotiation are diminished or even negligible. This indicates, second, that forms of contestation and changes in differential treatment vary within the trade regime with nuanced developments in negotiations on individual issue areas. Third, even when SDT is reserved for a smaller sub-group of Global South states, actors from the Global North still resist expansion proposals and continue to contest differential treatment.

Empirically, the chapter looks at transition periods in the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement. It compares the period 2001-03 – when developing countries and LDCs separately attempted to extend their transition periods – with the period 2011-15, when LDC transition periods were tabled again at the WTO. The minutes of TRIPS Council meetings make up the source base of the chapter, along with interviews and secondary literature on intellectual property rights (IPR). At the outset, an overview of the TRIPS Agreement, its history as part of wider North-South divisions on IPR and the importance of IPR flexibilities are delineated. The two conflict moments are then elucidated: in the early 2000s, India and Brazil joined the African Group in its attempt to secure transition schedule extensions both in general and on the specific issue of pharmaceutical production. These initiatives ran parallel to similar initiatives by the LDC Group. In the end however, only LDCs were granted longer grace periods, both for pharmaceuticals and general TRIPS implementation. When these two extended transition periods

were set to elapse in the 2010s, the LDC group went beyond extension requests and simply proposed to be exempted from TRIPS implementation altogether. These waiver proposals were in turn supported by the BICs but received heavy opposition from Global North actors. While such waiver requests were unsuccessful, the extensions that LDCs were given in the 2010s arguably prevented complete erosion of differential treatment in IPR.

I look at three categories of factors to explain why the BICs continued to support smaller developing countries in their SDT expansion initiatives. From an interests and coalitions perspective, greater coordination on IPR in the 2010s and the desire to secure flexibilities on intellectual property enforcement form part of this rationale. Legitimacy-based concerns in turn allowed the BICs to side with LDCs due to divisions over the relationship between strong IPR enforcement and economic development. Divides between maximalist and minimalist readings of intellectual property regulation – particularly in the case of least developed actors – allowed for contestation over the need to integrate all states into a universal IPR minimum. Lastly, institutional factors, and extra-WTO developments suggest that the BICs assumed a defensive position on flexibilities at the WTO to counter so-called ‘TRIPS+’ provisions negotiated in non-multilateral fora. Together these factors allow for a strong BICs support of SDT-related proposals, even when they are not directly affected by these changes.

These findings reverse several prevalent assumptions in the academic literature on intellectual property rights. Most directly, the empirical results uncover divisions in an area of trade governance that is often deemed uncontroversial – transition scheduling (compare Moon 2011). They further add to an established scholarship on the approach of emerging economies to intellectual property. While some scholars see the positions of the BICs as mixed, incorporating elements of ‘maximalist’ and ‘minimalist’ positions (Morin et al. 2018; Serrano 2016), the Southern unity described in this chapter underlines that – at least concerning LDCs – the BICs remain sceptical of the developmental knock-on effects of strict IP enforcement. The entrenched position that the BICs have assumed in this regard comes atop various Global North initiatives – in- and outside the WTO – to pursue IP legislation beyond

the TRIPS Agreement. As a result, the chapter also contributes to academic discussions concerning vertical forum shifting (Sell 2015), the development dimension in IP governance institutions (Deere Birkbeck 2016; May 2007), the importance of flexibilities and policy space in TRIPS for developing countries (Deere Birkbeck 2009; Musungu and Oh 2005), and South-South collaboration on IPRs (Yu 2022; Zeferino de Menezes 2018).

Within the dissertation, the chapter serves to provide an in-depth case study of contestation and change concerning the norm of special and differential treatment. It does so in order to add nuance to the general picture of unmaking and fragmentation that emerges from the first two chapters, as well as to the divergence of positions that comes to the fore in the middle chapters. The chapter shows how in those areas that can still unify the BICs in their positions, some limited SDT can still be granted. While legal fragmentation thus unmakes the North-South distinction in international trade politics, resilience of a smaller subset of special rights can be secured via the political unity of actors from the Global South.

Reference List

- Acharya, A. (2017). 'After Liberal Hegemony: The Advent of a Multiplex World Order'. *Ethics and International Affairs* 31:3, 271-285.
- Acharya, A. and Buzan, B. (2019). *The Making of Global International Relations: Origins and Evolution of IR at its Centenary*. Cambridge: Cambridge University Press.
- Albert, M., Buzan, B. and Zürn, M. (2013). *Bringing Sociology to International Relations: World Politics as Differentiation Theory*. Cambridge: Cambridge University Press.
- Almodarra, B.B.M. (2022). 'The Special and Differential Treatment Provisions in the Trade Facilitation Agreement: New Teeth for an Old Gum?' *African Journal of International and Comparative Law* 30:2, 135-148.
- Aoki Inoue, C.Y. and Costa Vaz, A. (2012). 'Brazil as 'Southern donor: beyond hierarchy and national interests in development cooperation?' *Cambridge Review of International Affairs* 25:4, 507-534.
- Bishop, M.L. and Zhang X. (2020). 'Why is China a Reluctant Leader of the World Trade Organization?' *New Political Economy* 25:5, 755-772.
- Bukovansky, M., Clark, I., Eckersley, R., Price, R., Reus-Smit, C. and Wheeler, N.J. (2012). *Special Responsibilities: Global Problems and American Power*. Cambridge: Cambridge University Press.
- Cullet, P. (2003). *Differential Treatment in International Environmental Law*. London: Routledge.
- Cullet, P. (2016). 'Differential Treatment in Environmental Law. Addressing Critiques and Conceptualizing the Next Steps'. *Transnational Environmental Law* 5:2, 305-328.
- Dauvergne, P. and Farias, B.L.D. (2012). 'The Rise of Brazil as a Global Development Power'. *Third World Quarterly* 33:5, 903-917.

- De Carvalho, B. (2020). 'Brazil's (Frustrated) Quest for Higher Status'. Esteves, P., Gabrielsen Jumbert, M. and De Carvalho, B. (eds.) *Status and the Rise of Brazil*. Palgrave Macmillan.
- De Sá Guimaraes, F. (2020). 'The uneasy 'well-placed' state: Brazil within Latin America and the West.' *Cambridge Review of International Affairs* 33:4, 603-619.
- Deere Birkbeck, Carolyn (2009) *The implementation game: the TRIPS agreement and the global politics of intellectual property reform in developing countries*. Oxford: Oxford University Press.
- Deere Birkbeck, Carolyn (2016) 'WIPO's Development Agenda and the push for development-oriented capacity-building on intellectual property: How poor governance, weak management, and inconsistent demand hindered progress.' *GEG Working Paper Series* 105.
- Deng, Y. (2008). *China's struggle for status: the realignment of international relations*. Cambridge: Cambridge University Press.
- Doctor, M. (2015). 'Brazil's Role in Institutions of Global Economic Governance: The WTO and G20'. *Global Society* 29:3, 286-300.
- Eckl, J. and Weber, R. (2007). 'North-South? Pitfalls of Dividing the World by Words.' *Third World Quarterly* 28:1, 3-23.
- Efstathopoulos, C. (2012). 'Leadership in the WTO: Brazil, India and the Doha development agenda'. *Cambridge Review of International Affairs* 25:2, 269-293.
- Esteves, P., Gabrielsen Jumbert, M. and De Carvalho, B. (2020). *Status and the Rise of Brazil*. Palgrave Macmillan.
- Falkner, R. and Buzan, B. (2022) *Great Powers, Climate Change, and Global Environmental Responsibilities*. Oxford: Oxford University Press.
- Farias, D.B.L. (2019). 'Outlook for the 'Developing Country' Category: A Paradox of Demise and Continuity.' *Third World Quarterly*. 40:4, 668-687.

- Fehl, C. and Freistein, K. (2020). 'Organising Global Stratification: How International Organisations (Re) Produce Inequalities in International Society.' *Global Society* 34:3, 285-303.
- Gelardi, M. (2020). 'Blurring Borders: Investigating the Western/Global South Identity of Human Security'. *Alternatives: Global, Local, Political* 45:3, 143-161.
- Hannah, E., Scott, J. and Wilkinson, R. (2018). 'The WTO in Buenos Aires: The Outcome and its Significance for the Future of the Multilateral Trading System'. *The World Economy* 41:10, 2578-2598.
- Harig, C. and Kenkel, K.M. (2017). 'Are rising powers consistent or ambiguous foreign policy actors? Brazil, humanitarian intervention and the 'graduation dilemma''. *International Affairs* 93:3, 625-641.
- Hoekman, B., Michalopoulos, C. and Winter, L.A. (2004). 'Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancún'. *The World Economy* 27:4, 481-506.
- Hopewell, K. (2016). *Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project*. Stanford: Stanford University Press.
- Hopewell, K. (2020). *Clash of Powers: US-China Rivalry in Global Trade Governance*. Cambridge: Cambridge University Press.
- Hopewell, K. (2022). 'Emerging Powers, Leadership, and South-South Solidarity: The Battle Over Special and Differential Treatment at the WTO'. *Global Policy* 00, 1-14.
- Ikenberry, G.J. (2018). 'The End of Liberal International Order?' *International Affairs* 94:1, 7-23.
- Johnson, T. and Urpelainen, J. (2020). 'The More Things Change, the More they Stay the Same: Developing Countries' Unity at the Nexus of Trade and Environmental Policy'. *The Review of International Organizations* 15:2, 445-473.

- Jones, C. (2019). 'Contesting within order? China, socialisation and international practice.' *Cambridge Review of International Affairs* 33:1, 105-133.
- Kahler, M. (2013). 'Rising powers and global governance: negotiating change in a resilient status quo.' *International Affairs* 89:3, 711-729.
- Khong, Y.F. (2019). 'Power as prestige in world politics.' *International Affairs* 95:1, 119-142.
- Kruck, A. and Zangl, B. (2020). 'The Adjustment of International Institutions to Global Power Shifts: A Framework for Analysis.' *Global Policy* 11, 5-16.
- Kupchan, C. (2012). *No-One's World: The West, the Rising Rest, and the Coming Global Turn*. Oxford: Oxford University Press.
- Lake, D.A., Martin, L.L. and Risse, T. (2021). 'Challenges to the Liberal Order: Reflections on International Organization.' *International Organization* 75:2, 225-257.
- Lamp, N. (2017). 'The 'Development' Discourse in Multilateral Trade Lawmaking', *World Trade Review* 16:3, 475-500.
- Lavenex, S., Serrano, O. and Büthe, T. (2021). 'Power Transitions and the Rise of the Regulatory State: Global Market Governance in Flux'. *Regulation and Governance* 15, 445-471.
- Lees, N. (2012). 'The Dimensions of the Divide: Vertical Differentiation, International Inequality and North-South Stratification in International Relations Theory'. *Cambridge Review of International Affairs* 25:2, 209-230.
- Malkin, A. (2019). 'Challenging the liberal international order by chipping away at US Structural power: China's state-guided investment in technology and finance in Russia.' *Cambridge Review of International Affairs* 33:1, 81-104.
- Margheritis, A. (2017). 'Introduction The 'graduation dilemma' in foreign policy: Brazil at a watershed.' *International Affairs* 93:3, 581-584.
- Mattern, J.B. and Zarakol, A. (2016). 'Hierarchies in World Politics'. *International Organization* 70:3, 623-654.

- May, C. (2007) 'The World Intellectual Property Organization and the Development Agenda.' *Global Governance* 13, 161–170.
- Mearsheimer, J.J. (2019). 'Bound to Fail: The Rise and Fall of the Liberal International Order.' *International security* 43:4, 7-50.
- Milani, C.R.S., Pinheiro, L. and Soares de Lima, M.R. (2017). 'Brazil's foreign policy and the 'graduation dilemma'. *International Affairs* 93:3, 585-605.
- Moon, Suerie (2011) 'Rising Powers, Emerging Markets: Implications of Multipolarity for Intellectual Property Rules, Access to Medicines and Global Health.' Working Paper presented at the *International Studies Association Convention*, Montreal, 16–19 March 2011.
- Morin, J.F., Serrano, O., Mira, B. and Bannerman, S. (2018) 'Rising Economies in the International Patent Regime: From Rule-breakers to Rule-changers and rule-makers.' *New Political Economy* 23:3, 255-273.
- Murray, M. (2019). *The Struggle for Recognition in International Relations: Status, Revisionism, and Rising Powers*. Oxford: Oxford University Press.
- Musungu, S.F. and Oh, C. (2005) 'The Use of Flexibilities in TRIPS by Developing Countries: Can They Promote Access to Medicines?' *Commission on Intellectual Property Rights, Innovation and Public Health Study*. Available online at <https://apps.who.int/iris/handle/10665/43503>
- Narlikar, A. (2004). 'Developing Countries and the WTO'. Hocking, B. and McGuire, S. (eds.) *Trade Politics*. London: Routledge.
- Narlikar, A. (2020). *Poverty Narratives and Power Paradoxes in International Trade Negotiations and Beyond*. Cambridge: Cambridge University Press.
- Nordin, A.H.M. and Weissmann, M. (2018). 'Will Trump make China great again? The belt and road initiative and international order.' *International Affairs* 94:2, 231-249.

- Parlar Dal, E. and Dipama, S. (2019). 'G20 Rising Powers' Status Seeking through Social Creativity: The Case of South-South Development Cooperation.' *South African Journal of International Affairs* 26:4, 663-684.
- Pauw, P., Mbeva, K. and Van Asselt, H. (2019). 'Subtle differentiation of countries' responsibilities under the Paris Agreement'. *Palgrave Communications* 5:86.
- Pauwelyn, J. (2013). 'The end of differential treatment for developing countries? Lessons from the trade and climate change regimes', *Review of European, Comparative & International Environmental Law*, 22:1, 29-41.
- Pu, X. (2017). 'Ambivalent accommodation: status signalling of a rising India and China's response.' *International Affairs* 93:1, 147-163.
- Pu, X. (2019). *Rebranding China: Contested Status Signaling in the Changing Global Order*. Stanford: Stanford University Press.
- Rajamani, L. (2006). *Differential Treatment in International Environmental Law*. Oxford: Oxford University Press.
- Renshon, J. (2017). *Fighting for status: hierarchy and conflict in world politics*. Princeton: Princeton University Press.
- Reuveny, R.X. and Thompson, W.R. (2007). 'The North-South Divide and International Studies: A Symposium' *International Studies Review* 9:4, 556-564.
- Sell, S. (2011) 'TRIPS Was Never Enough: Vertical Forum Shifting, FTAs, ACTA and TPP.' *Journal of Intellectual Property Law* 18:2, 447-478.
- Serrano, Omar (2016) 'China and India's insertion in the intellectual property rights regime: sustaining or disrupting the rules?' *New Political Economy* 21:4, 343-364.
- Sinha, A. (2021). 'Understanding the 'Crisis of the Institution' in the Liberal Trade Order at the WTO'. *International Affairs* 97:5, 1521-1540.
- Stephen, M.D. and Skidmore, D. (2019). 'The AIIB in the Liberal International Order.' *The Chinese Journal of International Politics* 12:1, 61-91.

- Stuenkel, O. (2013). 'The Financial Crisis, Contested Legitimacy and the Genesis of Intra-BRICS Cooperation'. *Global Governance* 19:4, 611-630.
- Viola, L.A. (2020). 'US Strategies of Institutional Adaptation in the Face of Hegemonic Decline.' *Global Policy* 11, 28-39.
- Weinhardt, C. (2020) 'Emerging Powers in the World Trading System: Contestation of the Developing Country Status and the Reproduction of Inequalities'. *Global Society*, 34:3, 388-408.
- Weinhardt, C. and Schöfer, T. (2021). 'Differential Treatment for Developing Countries at the WTO: The Unmaking of the North-South Distinction in a Multipolar World'. *Third World Quarterly* 43:1, 74-93.
- Womack, B. (2017). 'International Crises and China's Rise: Comparing the 2008 Global Financial Crisis and the 2017 Global Political Crisis'. *The Chinese Journal of International Politics* 10:4, 383-401.
- Wu X. (2018). 'China in search of a liberal partnership international order.' *International Affairs* 94:5, 995-1018.
- Yang, X. (2020). 'The great Chinese surprise: the rupture with the United States is real and is happening.' *International Affairs* 96:2, 419-437.
- Yang, Y.E. (2021). 'China's Strategic Narratives in Global Governance Reform Under Xi Jinping'. *Journal of Contemporary China* 30:128, 299-313.
- Yu, P. (2022). 'TRIPS Wars: Developing Countries Strike Back'. George, A. (ed.). *Flashpoints: Changing Paradigms in Intellectual Property and Technology Law*. New Orleans: Quid Pro Press.
- Zangl, B., Heußner, F., Kruck, A. and Lanzendörfer, X. (2016). 'Imperfect Adaptation: How the WTO and the IMF Adjust to Shifting Power Distributions among their Members.' *The Review of International Organizations* 11:2, 171-196.
- Zarakol, A. (2017) *Hierarchies in World Politics*. Cambridge: Cambridge University Press.

Zeferino de Menezes, H. (2018) 'South-South Collaboration for an Intellectual Property Rights Flexibilities Agenda.' *Contexto Internacional*. 40:1, 117–138.

Chapter Two

The Unmaking of the North-South Distinction in a Multipolar Era¹⁶

The growing economic importance of emerging powers such as Brazil, India and China is altering the balance of power in international politics. Whether or not the power shift towards emerging countries represents a fundamental challenge to the Western norms that shape global order is a question that has received significant scholarly attention (Nölke et al. 2015; Ikenberry 2018; Mearsheimer 2019). Simultaneously, the shift in power from the North Atlantic to the Pacific Rim has affected the architecture of global politics in more subtle ways that have received less attention in political science: scholars from political geography and related disciplines claim that the rise of new centres of economic gravity has begun to erode the distinction between the ‘North’ and the ‘South’, or ‘developed’ and ‘developing countries’, as a central structuring principle that emerged in the second half of the twentieth century (Farias 2019; Alami and Dixon 2020, 3).

This binary differentiation has – in various different manifestations – served as a significant ordering principle of world politics since around the 1960s. It has, for instance, become deeply embedded in the architecture of international institutions such as the World Bank, the World Trade Organization (WTO) and the United Nations Convention on Climate Change. What is notable is that all of these institutions grant special rights to developing as opposed to developed country members, such as access to non-concessional loans or climate-related funds, or less extensive obligations and greater flexibility regarding regime-specific goals. They thus count as what we refer to as equity-based differentiation, which grants disadvantaged countries – in this case developing countries – special rights.

¹⁶ This chapter was co-authored with Clara Weinhardt and published as Weinhardt, C. and Schöfer, T. (2021). ‘Differential Treatment for Developing Countries at the WTO: The Unmaking of the North-South Distinction in a Multipolar World’. *Third World Quarterly* 43:1, 74-93.

The emergence of economically powerful players in the Global South, however, sits uneasily with a division of the world into a 'developed North' and a 'developing South'. While the binary structure of the North-South categorisation has always been an oversimplification (Eckl and Weber 2007), the growing role of countries such as China, India or Saudi Arabia as aid donors has further put strain on the distinction (Sidaway 2012, 55). Alami and Dixon (2020, 3) observe the 'partial breakdown of the North/South axis which has structured much of the thinking and practice in world politics over the past 80 years'. Farias (2019, 1) even claims that the 'the label "developing" will increasingly become analytically useless'. Against this backdrop, this article seeks to assess how the proclaimed irrelevance of the North-South distinction in world politics manifests itself at the level of issue-specific global governance. The basic expectation is that established powers demand a greater recognition of the 'in-between' position of emerging economies.

Our empirical analysis focuses on the case of WTO. The global trade regime is selected as a case in which the 'North-South' distinction has played a prominent role in the past decades: one of its core principles is Special and Differential Treatment (SDT) for members that are classified as 'developing countries' as opposed to 'developed country' members. This principle was introduced in the world trade regime in the 1960s to counterbalance demands for trade liberalization with the special needs of developing countries, given their disadvantageous position in the world economy. To achieve this, developing countries receive flexibilities and exemptions from trade liberalization commitments, while developed countries supposedly provide developing countries with more favourable access to their own markets. However, in the past decade, developed country members of the WTO – and in particular the United States (US) – have increasingly called for a reform of differential treatment. This is because the US and other major developed country members are unwilling to grant special rights to countries such as China, India and Brazil that traditionally belong to the group of developing country members. In 2017, US Trade Representative Lighthizer prominently complained at the WTO that '[t]here is something wrong, in our view, when five of the six richest countries in the world presently claim developing country status' (Lighthizer 2017).

To assess the evolution of the SDT principle in response to these pressures for adaptation to global power shifts, we develop a conceptual framework that portrays three main pathways in which differentiation based on the North-South distinction could evolve in a multipolar era: *graduation* of some developing countries from developing to developed country status; the *individualisation* of special rights within the developing country group; or the *fragmentation* of differential treatment, i.e. a scenario in which special rights are no longer granted for ‘developing countries’ in general, but instead reserved for specific subgroups of them. We expect that the outcome depends both on the costs of granting differential treatment to emerging economies and the (dis)continued legitimacy of using the binary ‘North-South’ distinction to differentiate among WTO members. We assess changes across two distinct time periods: 1995-2008 and 2009-2019. In terms of methods, we combine the analysis of legal changes of the SDT principle with a constructivist focus on processes of contestation that emphasise the unstable, and constantly changing legitimacy conceptions that underpin principles of global order (Hurrell 2007). In terms of primary sources, we draw on all WTO decisions and agreements concluded between 1995-2019 and a set of five interviews conducted in Geneva in October 2019 with trade officials and trade experts.

We find that the North-South distinction loses traction as an ordering principle to differentiate between ‘advantaged’ and ‘disadvantaged’ members of the WTO in the past decade. In the first time period (1995-2008), the North-South distinction remains fairly central to WTO trade policymaking. This changes in the second time period (2009-2019), when the emerging countries’ developing country status becomes a central issue of conflict and contestation in the WTO. While differential treatment for developing countries as such retains its centrality, the polarised and unresolved debates about the possible reform of the SDT principle lead to fragmentation as an outcome. WTO members have so far failed to adjust the North-South distinction in a meaningful way to the new power realities. This facilitates the rise of competing sub-groups of developing countries – in particular the Least Developed Countries (LDCs) – that claim SDT. Taken together, these developments

contribute to the unmaking of the North-South distinction as a central ordering principle of multilateral trade policymaking.

These findings shed new light on debates about the implications of the rise of emerging powers for global governance. Much of the existing literature focuses on the question of whether or not the power shift to new economic and political players – most notably Brazil, India and China – presents a fundamental challenge to Western norms – so far with contradictory assessments (Ikenberry 2018; Mearsheimer 2019). We add to this debate by highlighting a more subtle shift in global politics: the erosion of the geopolitical division of the world into the ‘North’ and the ‘South’ or ‘developed’ and ‘developing countries’, and how this has affected global governance. This allows us to, first, correct a bias in the existing literature that relates the implications of the shifting balance of power for global governance to the *liberal* international order (Ikenberry 2018) – rather than to ordering principles that are linked to equity-based differentiation. Second, we add to the growing literature on differentiation and hierarchy in international relations that emphasises that status considerations shape and structure interstate relations (Lake 2009; Bukovansky et al. 2012; Donnelly 2012; Zarakol 2017) by showing how the ‘developing country’ status shapes state hierarchies (and how this changes over time). Lastly, our research contributes to the issue-specific existing literature on SDT in the world trade regime. We challenge the prevailing assessment that differential treatment of developing countries moves towards individualisation in the WTO (Pauwelyn 2013) by uncovering how differentiation rather becomes fragmented over time.

The rest of the article is structured as follows: first, we present our conceptual framework for assessing the changing nature of what we refer to as equity-based differentiation. The subsequent empirical analysis highlights the changing nature of differential treatment for developing countries in the trade regime and examines our argument of increasing fragmentation via a narrower focus on narrower sub-groups of developing countries. In the conclusion, we reflect on broader implications of our argument.

Differentiation in world politics: Reconceptualising the North-South distinction in a multipolar world

The binary distinction between the 'North' and the 'South' has been a central ordering principle in world politics since decolonialization (Eckl and Weber 2007). It is associated with the categorisation of states as either 'developed' or 'developing' countries. However, the rise of emerging economies increasingly blurs this binary distinction. Within the existing literature, scholars examine whether the power shift towards emerging countries presents a fundamental challenge to Western norms—so far with contradictory assessments. While some project the demise of the existing global order or a major turn in globalization (Pieterse 2011), others emphasize continuity and the integrative potential of rising powers (Stephen 2014; Ikenberry 2018). However, there is so far little scholarship on how *hierarchical* ordering principles, such as the North-South distinction, have changed in response to the rise of new powers in the Global South. Against this background, we develop a conceptual framework to assess the evolution of the differentiation between the rights and obligations of states based on the North-South distinction. We see three main ideal-typical options for adaptation in the light of growing heterogeneity within the group of developing countries: graduation, individualisation or fragmentation of differential treatment for developing countries.

Differentiation and hierarchy in world politics

Our conceptual framework builds on the work of scholars who write about differentiation and hierarchy in international relations (Lake 2009; Bukovansky et al. 2012; Donnelly 2012; Zarakol 2017; Viola 2020). Common to these theoretical approaches is the assumption that the international level at which state interaction takes place is not 'anarchical' in the sense that no higher authority, and hence no rule-based system, exists - a neo-realist claim. As observed by Viola (2020, 12), there are – despite anarchy – 'many different types of hierarchical relations that can exist in world politics'. States, however, cannot simply claim to hold a particular status; they depend on 'the collective imposition and recognition of the particular status the object or person holds' (Bjola and Kornprobst 2010, 11). In these ways, power relations and hierarchies are at least in part dependent upon social construction. In

line with this body of literature, we understand principles of differential treatment for ‘developing’ as opposed to ‘developed’ countries as partly socially constituted structures that are inherently political and concern power relations (Zarakol 2017, 3).

Status ascriptions – such as the ‘North’ and the ‘South’ – thus potentially (re)create structures of global order. In other words, the rules that define status in international cooperation and conflict do not merely reflect existing power relations but hold the potential to (re)create hierarchies, as they can grant differential rights and obligations to different groups of states. This process has been referred to as stratification - the reproduction or transformation of unequal power relations among states through the assignment of differentiated social roles and responsibilities (Albert, Buzan and Zürn 2013, 6). A common focus of this literature has been on how stratification reinforces hierarchical relations by producing ‘categories of super- and subordination’ (Viola 2020, 71). Along these lines, status ascriptions of ‘developing’ versus ‘developed’ countries have been seen as ways to reiterate hierarchical relationships (Escobar 2011).

What has been largely overlooked, however, is how status ascriptions may also serve as a basis for mitigating existing power hierarchies. In many international institutions, for instance, ‘developing’ countries hold special rights, while those that are considered ‘developed’ are assigned special responsibilities. Along these lines, Fehl and Freistein (2020) recently advocated for a research agenda that focuses on how international organisations can reproduce, but also transform, inequalities among their members. Building on these insights, we develop a conceptualisation of developing country status as a basis for equity-based differentiation in the following section.

Equity-based differentiation: Special rights of disadvantaged regime members

We conceptualise equity-based differential treatment as an ordering principle that (a) differentiates between groups of states that are understood to be in a more advantageous position than the members of the other group; and (b) stipulates that those perceived to be in a less advantageous position are given more extensive rights, and/or those perceived to be in a more advantageous position are given more extensive obligations. There is thus a constitutive dimension – who counts as

‘disadvantaged’ or ‘advantaged’ country in a particular regime – as well as an instrumental dimension – what are the differential rights and obligations that follow from one or the other status?

Moreover, differentiation is equity-based because its goal is to provide ‘disadvantaged’ countries more favourable treatment compared to ‘advantaged’ countries. Notably, the gains associated with the developing country status are material in nature, since the special rights granted to ‘disadvantaged countries’ commonly result in less extensive obligations, more implementation-related flexibilities and/or access to financial assistance (compare Rajamani 2006). We thus emphasise what Viola (2020, 19) refers to as the ‘material side of status’, rather than the social side of status (Paul, Larson and Wohlforth 2014). The latter sees social considerations about prestige as a driving force to obtain a higher status rank in world politics. In the case of equity-based differential treatment principles, however, a lower social status, i.e. that of a developing country member, can be used strategically to secure special rights and greater access to resources.

Since the developing country status is associated with material gains, it matters what group of countries counts as disadvantaged or advantaged. In this regard, we build on Rajamani (2008, 926), who highlights three different legal approaches that are commonly used in international organisations to determine the status of ‘disadvantaged’ regime members: the *definition, list, and auto-election* approaches. The definition approach relies on benchmarks to determine who counts as a developing country, while the list approach lists ‘categories of Parties, based on which differentiation between them can be effected’ (Rajamani 2008, 926); both approaches may come with criteria for graduation according to which country status can be adjusted. Finally, the auto-election method does not rely on objective criteria but allows countries to decide for themselves what category they belong to. The world trade regime follows an auto-election approach that allows countries to self-designate who counts as a developing member of the WTO and, hence, an SDT beneficiary.

The history of differentiation in the world trade regime

In the trade regime, equity-based differentiation in favour of developing countries was firmly established before the creation of the WTO in 1995. Already in the 1950s, minor exemptions from core treaty obligations for the purposes of economic reconstruction were included in the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). The pluralisation of international politics as a result of the ongoing processes of decolonisation then allowed for the increased incorporation of a developmental focus in the trade negotiations of the 1960s and 1970s (Lamp 2017),¹⁷ including exemptions from liberalisation commitments and preferential market access for developing countries. The emergence of preferential trading schemes for developing countries such as the US' Generalized System of Preferences (1974) or the European Communities' Lomé Convention (1976), for instance, allowed for unilateral market opening that benefited developing countries within the framework of the GATT. These forms of SDT for developing countries were rendered permanent in 1979 with the addition of the Enabling Clause to the GATT.¹⁸

Once institutionalised, demands for reform of the SDT principle began to appear. The differing economic trajectories of developing countries in the 1980s – exemplified by the failure of import substitution industrialisation in Latin America and high growth rates in East Asian Newly Industrialised Countries – resulted in a partial rethinking of exemptions as useful policy tools for developing countries. With increasingly neoliberal loan requirements being used by international financial institutions during this period, a new type of developing country trade policy emerged that promoted greater integration of smaller economies into the global market (Easterly 2001). These developments explain – at least in part – the changing format of SDT during the Uruguay Round (1986-94) talks: a retooling of differential treatment away from exemptions and towards integrative measures such as

¹⁷ The creation of the United Nations Conference on Trade and Development in 1964, moreover, facilitated the growing institutionalisation of a developmental dimension in international trade politics.

¹⁸ Note that the Enabling Clause continues to serve as the legal basis for current preferential trading schemes for developing countries, including the EU's Everything But Arms trading scheme for Least Developed Countries (LDCs), the US' African Growth and Opportunity Act or preferential trading schemes for LDCs put in place by emerging economies such as China or India.

differentiated transition schedules and pledges of technical assistance. However, SDT remained contested, as developing countries claimed that these special rights also failed to be effective in addressing the disadvantaged structural position of developing countries in the first place.

While equity-based differential treatment was thus already subject to contestation in trade diplomacy before the rise of Brazil, India, China and other emerging economies, this more recent global power shift created new uncertainties about SDT as a core principle of the WTO-centred multilateral trading system.

Tracing the evolution of the North-South distinction in a multipolar era

Our basic assumption is that the binary distinction between ‘developed’ and ‘developing countries’ (as a group) as a constitutive basis for equity-based differentiation has come under pressure to adapt in a multipolar world. In particular, emerging economies fall increasingly in between the two camps. Given the material benefits associated with the developing country status that Brazil, India and China traditionally hold, established powers have long demanded that emerging economies give up (some of) their special rights as developing countries in international regimes. These countries are increasingly seen as competitors, rather than disadvantaged regime members. Our conceptual framework thus reverses the assumptions of power transition theory, namely that established rather than emerging powers resist adaptation to safeguard their own institutional privileges (Daßler et al. 2019). How differentiation is adapted to this increasing heterogeneity within the Global South, however, can unfold in different ways.

Against this background, we develop a conceptualisation of three ideal-typical pathways that capture how the North-South distinction – as its constitutive basis – may be adapted in the light of global power shifts: graduation, individualization and fragmentation. All three have in common that they respond to the increasing pressure on the status quo, i.e. a status quo that allows emerging economies to claim the same special rights as other developing countries. They differ, however, in terms of the extent to which they replace or retain the ‘North-South’ distinction as the central ordering principle of world politics.

In the first option, *graduation*, emerging economies graduate from their status as developing countries, which results in a shrinking of the group of developing countries that have access to differential treatment. Emerging economies thus lose all access to special rights for developing countries. The binary distinction between ‘developed’ and ‘developing countries’, however, remains largely intact. In the second option, *individualization*, the developed/developing country distinction also remains central for differentiation. However, developing countries are not treated as a homogenous group anymore. Instead, special rights are individualized across developing countries to take into account their (increasingly) diverging capacities. Emerging economies thus do not lose special rights as developing country members, but receive less extensive rights as compared to developing countries with fewer capacities. In the third option, *fragmentation*, equity-based differentiation becomes increasingly fragmented in the sense that narrower sub-groups of developing countries gain prominence and compete with each other for differential treatment.¹⁹ Special rights are thus no longer granted for ‘developing countries’ in general, but instead specific sub-groups compete over access to them. If these other sub-groups become central for differentiation, we can speak of the unmaking of the North-South distinction in global governance in a given regime.

To unpack whether differential treatment for developing countries is changing in the WTO, and which of the three ideal-typical pathways prevails, we analyse WTO decisions and agreements published since 1994. As a first step, we examine whether equity-based differentiation continues to matter by exploring the share of WTO decisions and agreements that allows for differential treatment for developing countries. We then explore whether adaptation has taken place, and which of the three pathways prevails. We examine whether developing countries are treated as a homogenous group, or whether their special rights are increasingly *individualised* in line with their respective capacities. To analyse potential *fragmentation*, we assess whether competing ordering principles are emerging that focus on a different group

¹⁹ Note that the scenario of fragmentation overlaps with individualisation in the sense that special rights are granted to more individualised sub-groups of developing countries. It differs, however, because rights within each of these sub-groups are not individualised.

of beneficiaries among developing country members that receive differential treatment. A focus on the group of LDCs stands for an alternative ordering principle that pits only the economically weakest segment of the international community against all other WTO members. Lastly, we assess whether we observe a shift towards the *graduation* of emerging economies from developing country status.

In our empirical analysis, we compare two separate periods of policymaking, 1995-2008 and 2009-2019 in order to trace possible shifts in differential treatment. These two time-periods roughly divide the WTO era in a first 'decade' and a second 'decade' of policymaking. The second time period demarcates more clearly the shift towards a multipolar world, which is likely to increase pressure on adjusting the pre-existing binary differentiation scheme. The year 2008 was chosen as a cut-off because the financial crisis is commonly seen as a turning point after which the new realities of a multipolar world became apparent, since emerging economies were more resilient throughout the crisis (see, e.g. Christensen 2015; Pu 2017).

The unmaking of the 'North-South' distinction in the WTO: From great expectations to fragmentation

This section traces the evolution of the SDT principle in the WTO era by analysing how equity-based differential treatment has changed over two time periods (1995-2008; 2009-2019). Doing so allows us to assess whether and how the proclaimed erosion of the 'North-South' framework due to the rise of emerging powers has led to graduation, individualisation or fragmentation. We show that while the North-South distinction remains relatively unchanged in the first time period, the second time period is characterised by increasing fragmentation.

The status quo: Equity-based differentiation in the world trade regime

The relevance of the North-South distinction in the WTO is exemplified by the principle of Special and Differential Treatment for 'developing' as opposed to 'developed' country members. Under SDT, developing country members have access to exemptions from liberalisation commitments, are allowed longer transition periods in the implementation of these commitments, and may receive financial support. According to the WTO, its agreements contain 178 such differential treatment provisions. With regard to the institutionalisation of equity-based differentiation, two aspects are particularly noteworthy: first, WTO members can self-declare the status they hold (auto-election approach). This allows emerging economies to maintain their claims to special rights. While this approach was established in the 1960s as a means to strengthen South-South solidarity, it remained unchanged when the WTO was founded in 1995. Today, the WTO continues to reiterate that

'[t]here are no WTO definitions of "developed" and "developing" countries. Members announce for themselves whether they are "developed" or "developing" countries. However, other members can challenge the decision of a member to make use of provisions available to developing countries' (WTO webpage 2020).

Second, developing countries are primarily treated as a homogenous group, i.e. all developing countries have access to the same special rights. This approach was

informed by the ideological notions of three ‘worlds’ that emerged during the Cold War: the ‘First World’ of capitalist industrialised countries, the ‘Second World’ of communist industrialised countries and the ‘Third World’ of underdeveloped, non-industrialised countries (Weinhardt 2020). Taken together, this illustrates that the status quo of equity-based differentiation strongly relies on the binary North-South distinction.

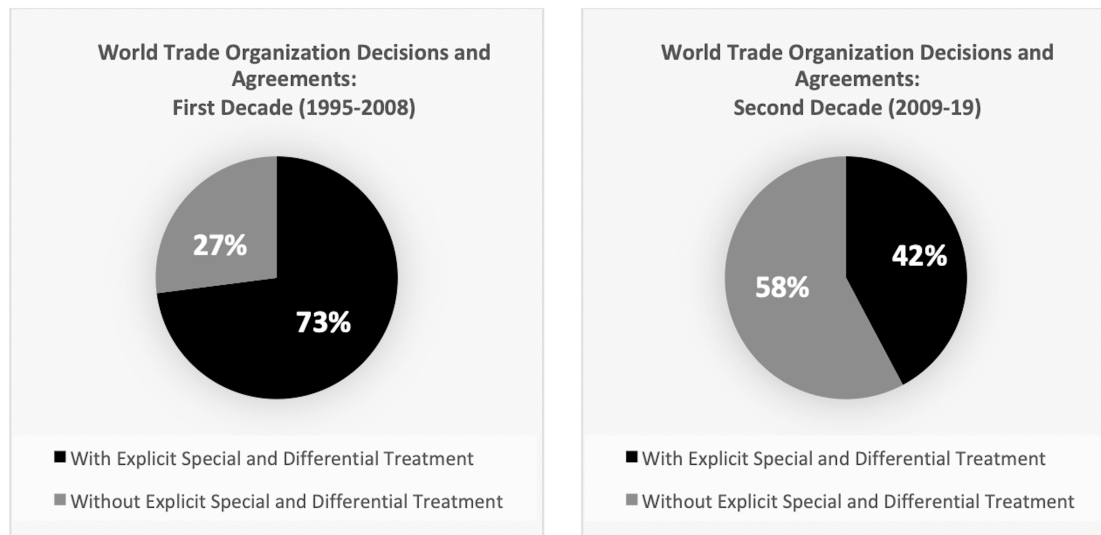
Great expectations (1995-2008): the ‘North-South’ distinction remains central

This first period of multilateral trade policymaking at the WTO is best characterised as one of great expectations. Partly in response to the September 11th attacks, the early 2000s marked a unique moment for a solidaristic approach to global trade policymaking. Expectations were elevated with the launch of the WTO’s Doha Development Round in 2001, the first development-oriented negotiation round in multilateral trade policymaking. The Doha Ministerial Declaration explicitly ‘reaffirm[ed] that provisions for special and differential treatment are an integral part of the WTO Agreements’ (WTO 2001, para. 44). This high normative support for differentiation for developing countries as a group helps us to understand the centrality of SDT provisions for developing countries in WTO decision-making in this earlier time period.

Despite disagreements on how to readjust the existing rules of the trading system in line with a development orientation, we find that the North-South distinction remains central in this initial period of multilateral trade governance. The pattern that emerges from our assessment of legal developments is one of high activity, focused almost exclusively on developing countries as a whole, especially in the early years. The 1990s are dominated by a myriad of agreements that laid the basis for the establishment of the WTO in 1994/5. What makes the 1994 bundle of legal provisions remarkable is the wide coverage that differential treatment receives at the end of the Uruguay Round: roughly half of all decisions and agreements contain some type of SDT provision. SDT continues to feature prominently in the decisions and agreements reached in later years: out of the 12 agreements and decisions that were reached subsequently, 11 contain SDT provisions. Overall, we see the

pervasiveness of the North-South distinction: SDT provisions were included in 73% of Ministerial decisions and agreements (see figure 1).²⁰

Figure 1. Centrality of Special and Differential Treatment provisions in World Trade Organization decisions and agreements

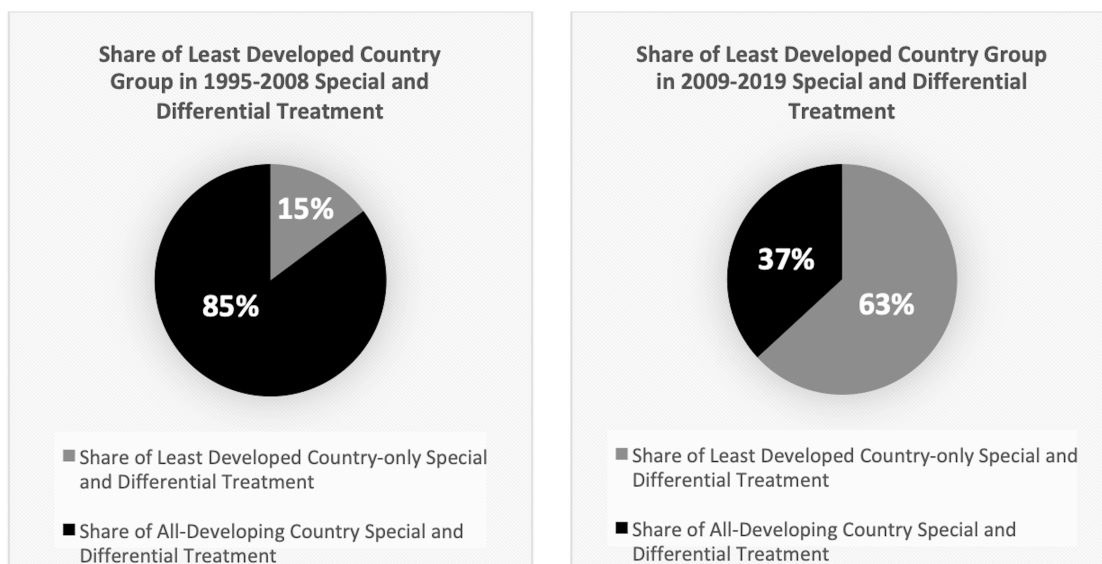


Moreover, there are few signs of adaptation of the binary North-South distinction as a basis for differentiation. Most manifestations of the SDT principle treat developing countries as a homogenous group. The Agreement on Agriculture, for instance, grants all developing countries a 10% de minimis exemption for the provision of domestic support, while developed countries receive a 5% de minimis. Similarly, transition periods for the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights differ in length for developed as opposed to developing country members. An exception to this general rule of treating developing countries as a homogenous group is the accession of China to the WTO in 2001. Its accession protocol lays down more individualised liberalisation commitments, which fall on average in between those of other developed and developing country members. Notably, however, China insisted at the time on joining the WTO as a developing country member.

²⁰ Authors' own calculations. Documents were counted as SDT-inclusive if they entailed explicit provisions on differential treatment.

Lastly, there are few signs of fragmentation. The North-South distinction is much more prevalent compared to competing groups of ‘disadvantaged’ WTO members, specifically the group of LDCs: in the initial years, there are only four decisions that limit differential treatment to the group of LDCs compared with a total of 26 legal documents. This share rises slightly in the 2000s, accounting for 25% of differential treatment. Taken together, we find that LDC-only legislation made up only 15% of documents with SDT in the first time period (see figure 2).²¹

Figure 2. Share of Special and Differential Treatment-inclusive legal documents that target only the Least Developed Country Group



Fragmentation of equity-based differentiation (2009-2019): the unmaking of the North-South distinction

In the aftermath of the Global Financial Crisis of 2008/2009, we see that – in contrast to earlier – the momentum of WTO policymaking appears to increase gradually. This development culminates in the conclusion of the WTO era’s first multilateral trade agreement – the Trade Facilitation Agreement – at the Bali Ministerial Conference in 2013. This slight revival of WTO decision-making does not, however, engender a

²¹ Authors’ own calculations. Texts were counted as LDC-only if the document as a whole was explicitly targeted at this sub-group.

strengthening of SDT. While differentiation as such remains part of the trade regime, its focus evolves considerably and becomes narrower and less central. We thus find that equity-based differentiation becomes increasingly fragmented as emerging economies gain in power.

A first notable development at the legal level is that the SDT principle becomes less central in trade policymaking in this time period. This is manifest in the sharply decreasing relative number of SDT-inclusive decisions and agreements: SDT provisions were included in only around 40% of 2010s legislation (see figure 1 above) – as opposed to more than 70% in the earlier period. Moreover, the absolute number of documents with explicit SDT provisions also drops from 27 in the first period to 19 in the second decade.

With regard to the substantive evolution of differentiation, we find, first, that calls for adjusting differentiation in line with the option of *graduation* are increasing significantly, but do not lead to meaningful changes in this direction.

By the late 2010s, critiques of the auto-election approach become central to WTO debates about differentiation. These highly polarised debates primarily pit the US and its traditional ‘Quad’ allies – in particular the European Union and Canada – against emerging countries, and among them most prominently India and China. The former advocate for a reform of differential treatment (WTO 2019a); the latter defend the status quo that allows them to self-declare their status. A common thread of the reform proposals is the focus on the option of graduation that would result in shrinking the number of developing country members. According to the criteria²² proposed in a US communication to the WTO General Council (WTO 2019c), 34 self-declared developing country members of the WTO were to graduate to developed country status. Furthermore, a 45-page US proposal from 2019 calling explicitly for an end to an ‘undifferentiated WTO’ (WTO 2019a) questioned the legitimacy of the status quo on the grounds that it had ‘severely damaged the negotiating arm of the WTO’ (WTO 2019a, para. 1.8). In a similar vein, a 2018 EU

²² The proposed criteria are: membership in the OECD or G20, a classification as high-income by the World Bank, and accounting for no less than 0.5 per cent of global merchandise trade.

concept paper on WTO modernisation complains ‘the system remains blocked by an antiquated approach to flexibilities which allows over 2/3 of the membership including the world’s largest and most dynamic economies to claim special treatment’ (European Commission 2018, 2).

In response to the US memorandum, a group of 52 developing countries – including India and China – submitted a joint statement at the General Council of the WTO in which they defended their status as developing countries (WTO, 2019d). More recently, a group of emerging economies that self-declare as developing country members tabled a 39-page communication dedicated to their defence of the status quo (WTO, 2019b). In the communication, China, India, South Africa and Venezuela defend the North-South division as a basis for differentiation:

Despite impressive progress achieved by developing Members since the creation of the WTO, old divides have not been substantially bridged and, in some areas, they have even widened, while new divides, such as those in the digital and technological spheres, are becoming more pronounced (WTO 2019b, para. 1.1).

It is nevertheless notable that the auto-election approach remains unchanged – despite explicit calls for reform from major developed countries and the proclaimed willingness of a (small) number of developing country members to not make use of the status in the future anymore²³. Emerging economies are thus able to continuously claim their status as developing country members of the WTO.

Instead, the polarised and unresolved reform debates about the SDT principle have, second, facilitated fragmentation as an outcome: since granting special rights to all developing countries (including emerging countries) as a group has become too costly, we find that newly negotiated differential treatment provisions increasingly focus on narrower, more clearly defined sub-groups among developing country members. This trend is most notably the case regarding differential treatment in

²³ Singapore, Brazil, Republic of Korea, Costa Rica, and Chinese Taipei declared not to use the status in future negotiations (as of May 2021). The concrete implications of these declarations remain unclear.

favour of the group of LDCs. We find an *increase in LDC-only SDT*, which implies that if differential treatment provisions are contained in WTO decisions and agreements, they are increasingly limited to the narrow developing country sub-group of LDCs: while such 'LDC-only' legislation made up only 15% of documents with SDT in the first time period, by the 2010s this subset of provisions accounted for more than 60% of all SDT-inclusive publications (see figure 2 above). In the last 10 years LDCs have thus become the primary beneficiaries of new differential treatment provisions and this trend accelerates dramatically in the 2010s. In contrast to the category of developing country members, membership in the LDC group does not follow the principle of auto-election but derives from a set of clearly defined United Nations (UN)-authorised criteria.²⁴

The shift towards LDCs also implies a significant shrinking of the range of beneficiaries of differential treatment and thus has significant distributional consequences. While developing countries' share of aggregate exports among WTO members was only around 20% when the WTO was created, it has in the meantime more than doubled (to more than 40%) (see figure 3). Granting SDT to all WTO members that self-declare as developing country members has thus become increasingly costly. This partly explains the reluctance of developed country members to maintain the status quo of granting SDT to all (self-declared) developing country members. As emphasised by a WTO official in Geneva in an interview,

China, India, Brazil, but also now more advanced economies like South Korea and Singapore, they have been treated as developing countries ever since and developed members, they are less willing to recognize the need for S&D [SDT] by these countries. And that is also the main reason why the negotiations on S&D, they have stalled over the last years, because there is no differentiation among developing countries in these negotiations on S&D and in all negotiations, the developed members are not willing to give the

²⁴ These criteria are a gross national income below USD 1,025 per capita, low levels of human assets as defined by the Human Assets Index and high economic vulnerability, measured by the Economic Vulnerability Index. There are currently only 46 countries that qualify as LDCs.

same S&D to all developing countries if its significant S&D
(Interview 1, 28th October 2019).

The reluctance of emerging economies to graduate from the developing country status has thus in part facilitated the shift towards LDCs-only SDT, as it renders granting SDT to all self-declared developing country members too costly or 'significant'.

Conversely, the graduation criteria built into the LDC status ensure that the group remains marginal over time – at around 1 % of aggregate exports of WTO members (see figure 3). This makes it much less costly – and contested – to grant SDT. This was echoed in the following statement by the same WTO official, who claimed that 'LDCs, ...in terms of world trade they account for less than ... about 1% of world exports, so it's relatively easy for other members to make concessions to the LDCs' (Interview 1, 28th October 2019). Another trade expert similarly claimed that the focus on LDCs 'is also a strategy, an acceptance by the richer WTO members to not allow SDT for anyone else than LDCs', adding that 'developed countries are less willing to grant SDT to countries other than LDCs, because LDCs are not a threat anyway to them' (Interview 2, 28th October 2019).

While differential treatment for narrower sub-groups can in principle complement differential treatment for developing countries as a group, in this case the shift towards LDCs increasingly contributes to a crowding out of the latter. In this sense, we witness the (gradual) unmaking of the North-South distinction in the world trade regime: WTO negotiations lead to fewer and fewer agreements and decisions that contain equity-based differentiation for developing countries as a group.

Figure 3. Share of Least Developed Country and developing country exports in total exports of World Trade Organization members.



While the shift towards LDCs excludes emerging economies such as Brazil, India and China from access to special rights, it also excludes the majority of smaller developing countries from SDT. While roughly two-thirds of the 164 WTO members self-declare as developing country members, only 46 of them qualify as LDCs. The shift towards LDCs thus significantly reduces the number of developing countries that have access to newly negotiated special rights, as it does not only exclude emerging countries (as foreseen in the option of graduation).

The trend towards fragmentation of the beneficiaries of equity-based differentiation is also apparent beyond the group of LDCs. WTO members have also increasingly institutionalised a flurry of other sub-groups that compete with the group of developing countries and LDCs for access to the flexibilities entailed by SDT. These groups include the Article XII members – comprising countries that have recently joined the WTO – Small and Vulnerable Economies (SVEs) and Low-Income Countries in Transition. Similar to LDCs, these alternative sub-groupings rely on a definition approach towards differentiation, which – with the exception of the Article XII group – consists of clear-cut criteria for graduation. While none of these groups has been formally recognised as a sub-category of WTO members so far, they effectively

compete with the group of developing countries for differential treatment. The rise of these competing sub-groups arguably further contributes to the unmaking of the North-South distinction as a central ordering principle in the multilateral trade regime. Not only do they compete alongside the developing country members for special rights, but they increasingly crowd out differential treatment for developing countries as a group (see figure 2, above).

The trend of granting SDT towards narrower, and potentially competing, sub-categories of developing countries both reflects and reiterates increasing divisions among the group of developing countries. As emphasised by a Geneva-based trade expert, the sense of solidarity that prevailed in the 1960s and 1970s among developing countries has decreased, given that 'that common identity is much weaker today' (Interview 5, 29th October 2019). Increasingly, developing countries see emerging economies such as China or India not only as leaders of developing country coalitions, but also as competitors for SDT (compare Weinhardt 2020, 405). Moreover, the trend towards granting SDT to narrower developing country sub-groups also reflects a certain pragmatism given the politicised deadlock of the Doha Development round negotiations. As emphasised by a trade expert in Geneva,

It is very difficult to come up with solutions which are agreeable to all countries. So that's why I think that ... the trend has been to address those specific problems in a more practical approach If you have a problem in terms of agriculture, so let's address this in terms of transition periods only for SVEs So, it's practical.
(Interview 3, 29th October 2019)

Lastly, there are some legal developments at the margins that indicate the parallel emergence of more *individualised approaches* as a basis for differentiation. The Trade Facilitation Agreement (TFA 2014) stands out in this respect because it has developed a novel approach towards differentiation that signifies the most radical departure from the North-South distinction. The TFA has developed a fine-tuned format of categorising differentiation provisions that introduces a list approach that distinguishes not only at the country but also at the sectorial level, and makes

differentiation voluntary. It differs from fragmentation because all (self-declared) developing countries – rather than merely narrower sub-groups – can equally claim access to the flexibilities it foresees. It stands for an individualised approach because developing country members can voluntarily self-designate the extent to which they want to make use of what kinds of flexibilities²⁵, enabling them to decide on the necessity for – and kind of – differential treatment with regards to implementation. What this scheme effectively does is to move beyond the generalisation of developing countries as a homogenous bloc and towards a more individualised form of differentiation.

However, it is notable that this individualised approach has so far not been broadened to other areas of the WTO regime. This can partly be explained with the rather unusual constellation of interests regarding SDT in this case. Despite the contested nature of the effectiveness of SDT, the general rationale behind developing country claims to special rights remains the assumption that countries at different stages of economic development do not benefit from trade liberalisation measures in the same way. More specifically, countries that are currently at a disadvantaged structural position are expected to benefit from protectionist measures as they integrate into global markets. Longer transition periods to implement WTO obligations – or permanent exemptions from these obligations – are meant to guarantee the policy space necessary to improve a country's competitiveness before opening up. Yet in the case of the TFA agreement, this common rationale does not apply in a straightforward way: developing countries have little to gain from exemptions from the TFA's obligations. This is because the agreement is meant to reduce trade costs that stem, for instance, from burdensome border procedures at ports that slow down the import of goods and do not serve a developmental purpose. In principle, the TFA should thus be beneficial to all

²⁵ Differentiation is between clauses that they are able to implement immediately after the TFA's entry into force (Category A), those that they will implement after a transitional period (Category B) and those that can only be implemented after both technical assistance and a transitional period (Category C).

countries.²⁶ As a trade representative based in Geneva stated: ‘all countries recognise that improving their customs procedures is beneficial for them’ (Interview 1, 28th October 2019). The potential gains from the TFA for all countries explain in turn why WTO members agreed to an individualised SDT approach that allowed developing countries to self-designate whether or not they need transition periods and financial aid to implement the agreement. The expectation was that developing countries would face few incentives to make use of exemptions to delay the envisaged trade facilitation measures, as long as implementation costs could be covered.²⁷

It is questionable, however, in how far this rationale can be extended to other areas of negotiations in the WTO, in which exemptions or implementation flexibilities are considered as important tools to maintain policy space. For instance, in agricultural negotiations, China and India defend their special rights as developing countries (Hopewell 2021) and continue to perceive the flexibilities they hold when providing agricultural subsidies as beneficial given the important role that the sector plays for domestic employment and food security. An individualised TFA approach towards SDT that requires larger developing country members to self-designate areas in which they voluntarily give up special rights is thus unlikely to succeed here. A trade representative in Geneva claimed along these lines that ‘if you speak about reducing market access barriers, so your own tariffs, your own subsidies, there self-designation is more difficult.’ (Interview 1, 28th October 2019).

To sum up, the predominant trend has been – given the absence of graduation or widespread individualisation – the rise of fragmentation of differential treatment for developing countries. In particular, differential treatment is increasingly granted to the narrow-sub group of LDCs, as compared to the entire group of developing

²⁶ Note that this does not imply that gains from the TFA will be distributed equally. Developed countries that have a higher share of world exports are likely to benefit more compared to most developing countries (Wilkinson et al., 1039).

²⁷ China and Brazil, for instance, indeed implemented 94,5% and 95,8% of the TFA’s obligations immediately (Category A), without making use of the possibility of longer transition periods or financial aid. For an overview of the current state of play of the implementation of the TFA, see www.ftadatabase.org.

countries – that continues to include emerging economies. Inadvertently, this contributes to the unmaking of the North-South distinction as a central ordering principle of global trade politics, since special rights are increasingly tied to the narrow sub-group of LDCs rather than to the developed/developing country categories. This unmaking has significant distributional consequences because in addition to emerging countries, a large number of WTO developing country members are excluded from newly negotiated special rights that are reserved for the marginal group of LDCs only.

Conclusion

This article has started from the proclaimed tension between the North-South distinction and the rise of new powers in the Global South (see Farias 2019; Alami and Dixon 2020). Against this backdrop, we have traced the evolution of the WTO's central principle of Special and Differential Treatment (SDT) for 'developing' as opposed to 'developed' countries in the WTO era across two time periods (1995-2008; 2009-2019). This principle is an important example of what we refer to as equity-based differentiation in world politics – a phenomenon largely overlooked by International Relations scholars so far. In the WTO, the North-South distinction as a basis for differentiation came increasingly under pressure with the rise of new powers such as China, India or Brazil. Established powers began to see them as competitors and sought to restrict their access to special rights as developing country members.

The novel conceptual framework we developed then helped us to capture how differential treatment for developing countries has been adapted in light of these global power shifts. We foresaw three ideal-typical pathways for adaptation: graduation of emerging countries from developing to developed country status; the individualisation of special rights within the developing country group; or the fragmentation of differential treatment, where special rights are no longer reserved for 'developing countries' in general, but instead specific sub-groups compete for access over them. We find that in the case of the WTO, the evolution of differential treatment for developing countries is characterised by increasing fragmentation, especially in the last decade. These changes become manifest at the legal level: not only does differential treatment become less central to WTO decisions, but it increasingly focuses on competing sub-groups, in particular the group of LDCs. Conversely, emerging countries have resisted graduation, and individualisation occurred only at the margins. This suggests an unmaking of the North-South distinction in the world trade regime in the sense that competing, more differentiated sub-groups of developing countries more successfully claim differential treatment on grounds of being 'disadvantaged'.

This shift away from equity-based differentiation for all developing countries towards a focus on LDCs-only as 'disadvantaged' regime members has substantial distributional consequences. Not only does it exclude emerging countries from these newly negotiated special rights, but other non-emerging developing countries that have outgrown the LDC category are also not covered anymore. The unmaking of the North-South distinction thus goes hand in hand with a weakening of equity-based differentiation in the world trade regime. It not only matters who the terms 'developed' and 'developing' country refer to (Eckl and Weber 2007), but also whether or not alternative distinctions between disadvantaged and advantaged countries come to shape our understanding of world (trade) politics.

Taken together, these findings shed new light on the implications of the rise of Brazil, India and China for global governance in general, and for the trade regime in particular. Instead of focussing on the implications of their rise for the *liberal* international order (Ikenberry 2018; Mearsheimer 2019), we shed light on more subtle, less studied ways in which it affects the differentiated nature of global order: the rise of Brazil, India, China and other emerging economies has contributed to the unmaking of the North-South distinction as central to WTO politics. In its place, we find a scenario of fragmentation, with a focus on narrower sub-groups of developing countries, such as the LDCs, gaining in importance. This echoes the findings in other strands of the literature that a 'multiplex' world order is emerging (Acharya 2017), with multiple and partially overlapping differentiation principles competing with each other. It also illustrates how the developing country status has become politicised, as who holds it is a question not only of social prestige (Paul, Larson and Wohlforth 2014), but also material benefits. Lastly, our assessment that fragmentation prevails challenges the dominant view in the trade literature that overemphasises the shift towards individualisation that we have seen in the TFA (compare Pauwelyn 2013).

The conflict over the status of emerging countries in the WTO has not only undermined the normative underpinnings of SDT, but may also indicate new fissures in global trade diplomacy in the future, as larger developing economies are beginning to face the issue of choosing sides: in the case of Singapore and South

Korea, promises in September and October 2019 to refrain from future use of the developing country status have acted as responses to the US-led critique of the current practice of auto-election (Chung and Roo 2019; Ministry of Trade and Industry Singapore 2019). Brazil has also followed suit: similar statements of intent regarding future disuse of the developing country status have consequently been leveraged for US support for Brazilian OECD membership from 2019 onwards (Mano 2019). However, since these promises only concern *future* WTO negotiations, existing benefits under SDT remain seemingly untouched. Nonetheless, increasing divisions that cut across the heterogeneous group of developing country WTO members suggest that coalition building as a strategy to push for the inclusion of development concerns has become more complex. Complementary strategies, such as the forging of narratives around poverty (Narlikar 2020) or the emphasis on regional economic integration may become even more relevant in the future.

Beyond the case of the WTO, our findings also suggest that it will be important to pay more attention to changes of the central ordering principles used to differentiate between groups of states in global governance. Further research is needed to assess how the evolution of the North-South distinction in world politics plays out in the context of other global regimes.

Reference List

- Acharya, A. (2017). 'After Liberal Hegemony: The Advent of a Multiplex World Order'. *Ethics and International Affairs* 31:3, 271-285.
- Alami, I. and Dixon, A.D. (2020). 'The Strange Geographies of the 'New' State Capitalism'. *Political Geography* 82, 1-12.
- Albert, M., Buzan, B. and Zürn, M. (2013). *Bringing Sociology to International Relations: World Politics as Differentiation Theory*. Cambridge: Cambridge University Press.
- Biola, C. and Kornprobst, M. (2010). *Arguing Global Governance: Agency, Lifeworld and Shared Reasoning*. New York: Routledge.
- Bukovansky, M., Clark, I., Eckersley, R., Price, R., Reus-Smit, C. and Wheeler, N.J. (2012). *Special Responsibilities: Global Problems and American Power*. Cambridge: Cambridge University Press.
- Christensen, T.J. (2015). *The China Challenge: Shaping the Choices of a Rising Power*. New York: W.W. Norton and Company.
- Chung, J. and Roh, J. (2019). 'South Korea to Give Up Developing Country Status in WTO Talks'. *Reuters Business News*, 25th October 2019. Available Online: <https://www.reuters.com/article/us-southkorea-trade-wto/south-korea-to-give-up-developing-country-status-in-wto-talks-idUSKBN1X401W>
- Daßler, B., Kruck, A. and Zangl, B. (2019). 'Interactions Between Hard and Soft Power: The Institutional Adaptation of International Intellectual Property Protection to Global Power Shifts'. *European Journal of International Relations* 25:2, 588-612.
- Donnelly, J. (2012). 'The Elements of the Structures of International Systems'. *International Organization* 66:4, 609-643.
- Easterly, W. (2001). 'The Lost Decades: Developing Countries' Stagnation in Spite of Policy Reform 1980-1998'. *Journal of Economic Growth* 6:2, 135-157.
- Eckl, J. and Weber, R. (2007). 'North-South? Pitfalls of dividing the world by words', *Third World Quarterly*, 28:1, 3-23.
- Escobar, A. (2011). *Encountering Development: The Making and Unmaking of the Third World*. Princeton: Princeton University Press.

- European Commission (2018). *WTO Modernisation – Introduction to future EU proposals – Concept Note*. Brussels: European Commission. Available Online: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf
- Farias, D.B.L. (2019). 'Outlook for the 'Developing Country' Category: A Paradox of Demise and Continuity'. *Third World Quarterly*. 40:4, 668-687.
- Fehl, C. and Freistein, K. (2020). 'Organising Global Stratification: How International Organisations (Re)Produce Inequalities in International Society'. *Global Society*, 34:3, 285-303.
- Hopewell, K. (2021). 'Heroes of the developing world? Emerging Powers in WTO agriculture negotiations and dispute settlement'. *The Journal of Peasant Studies* 49:3, 561-584.
- Hurrell, A. (2007). *On Global Order: Power, Values, and the Constitution of International Society*. Oxford: Oxford University Press.
- Ikenberry, G. J. (2018). 'The end of liberal international order?' *International Affairs*, 94:1, 7-23.
- Lake, D. A. (2009). 'Hobbesian Hierarchy: The Political Economy of Political Organization'. *Annual Review of Political Science* 12, 263-283.
- Lamp, N. (2017). 'The 'Development' Discourse in Multilateral Trade Lawmaking', *World Trade Review* 16:3, 475-500.
- Lighthizer, R. (2017) *Opening Plenary Statement of United States Trade Representative Robert Lighthizer at the WTO Ministerial Conference* [online transcript]. Available Online: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr>
- Mano, A. (2019). 'Brazil's new status would not affect prior ag commitments: WTO chief'. *Reuters Business News*. 20th March 2019. Available Online: <https://www.reuters.com/article/us-brazil-trade/brazils-new-status-would-not-affect-prior-ag-commitments-wto-chief-idUSKCN1R12NW>
- Mearsheimer, J. J. (2019). 'Bound to Fail: The Rise and Fall of the Liberal International Order'. *International Security*. 43:4, 7-50.
- Ministry of Trade and Industry Singapore (2019). *Singapore reaffirms commitment to work with like-minded partners to strengthen the World Trade Organization*. Singapore: Ministry of Trade and Industry Singapore. Available Online:

<https://www.mti.gov.sg/-/media/MTI/Newsroom/Press-Releases/2019/09/SDT-press-release.pdf>

- Narlikar, A. (2020). *Poverty Narratives and Power Paradoxes in International Trade Negotiations and Beyond*. Cambridge: Cambridge University Press.
- Nölke, A., ten Brink, T., Claar, S., and May, C. (2015). 'Domestic Structures, Foreign Economic Policies and Global Economic Order: Implications from the Rise of Large Emerging Economies', *European Journal of International Relations* 21:3, 538-567.
- Paul, T. V., Larson, D. W., and Wohlforth, W. C. (2014). *Status in World Politics*. Cambridge: Cambridge University Press.
- Pauwelyn, J. (2013). 'The End of Differential Treatment for Developing Countries? Lessons from the Trade and Climate Change Regimes', *Review of European, Comparative & International Environmental Law*, 22:1, 29-41.
- Pieterse, J. N. (2011). 'Global Rebalancing: Crisis and the East–South Turn'. *Development and Change* 42:1, 22-48.
- Pu, X. (2017). 'Controversial Identity of a Rising China.' *The Chinese Journal of International Politics* 10:2, 131-149.
- Rajamani, L. (2006). *Differential Treatment in International Environmental Law*. Oxford: Oxford University Press.
- Rajamani, L. (2008). 'From Berlin to Bali and beyond: killing Kyoto softly?' *International and Comparative Law Quarterly* 57:4, 909-939.
- Sidaway, J. D. (2012). 'Geographies of Development: New Maps, New Visions?' *The Professional Geographer* 64:1, 49-62.
- Stephen, M D. (2014). 'Rising Powers, Global Capitalism and Liberal Global Governance: A Historical Materialist Account of the BRICs Challenge', *European Journal of International Relations* 20:4, 912-938.
- Viola, L.A. (2020). *The Closure of the International System: How Institutions Create Political Equalities and Hierarchies*. Cambridge: Cambridge University Press.
- Weinhardt, C. (2020). 'Emerging Powers in the World Trading System: Contestation of the Developing Country Status and the Reproduction of Inequalities'. *Global Society* 34:3, 388-408.

- Weinhardt, C., and ten Brink, T. (2020). 'Varieties of contestation: China's Rise and the Liberal Trade Order: [Contribution to Forum: China's Rise in a Liberal World Order in Transition]'. *Review of International Political Economy* 27:2, 258-280.
- Wilkinson, R., Hannah, E., and Scott, J. (2014). 'The WTO in Bali: What MC9 means for the Doha Development Agenda and why it matters'. *Third World Quarterly* 35:6, 1032-1050.
- WTO (2001). *Doha WTO Ministerial Declaration*. WT/MIN(01)/DEC/1. Available Online:
https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm
- WTO (2019a). *An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance*. WT/GC/W/757. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W757.pdf>
- WTO (2019b). *The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development and Ensure Inclusiveness*. WT/GC/W/765/Rev.2. Available Online:
https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=251955&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True
- WTO (2019c). *Draft General Council Decision: Procedures to Strengthen the Negotiating Function of the WTO*. WT/GC/W/764. Available Online:
https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?CatalogueIdList=251580
- WTO (2019d). *Statement on Special and Differential Treatment to Promote Development*. WT/GC/202. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/202R1.pdf>
- WTO (2020). *Statement As Delivered by Ambassador Dennis Shea. WTO General Council Meeting*. Available Online:

<https://geneva.usmission.gov/2020/10/13/statement-by-ambassador-shea-at-the-wto-item-6/>

WTO webpage (2020). 'Who are the developing countries in the WTO?' Available

Online: https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm

Zarakol, A. (2017). *Hierarchies in World Politics*. Cambridge: Cambridge University Press.

Chapter Three

‘Privileges’ of the Weak: Emerging Powers’ Pursuit of Special Rights for Developing Countries²⁸

The economic rise of Brazil, India and China has engendered significant power shifts on the world stage. International Relations (IR) scholars have in turn often debated the implications of these shifts for established global governance frameworks and the *liberal* international order (Ikenberry 2018; Mearsheimer 2019; Lake et al. 2021). Power shift theory points out that established powers are themselves partly responsible for the extent to which existing institutions of global order are accepted or rejected by emerging powers. This raises a simple question: do established powers allow for institutional adaptation that is favourable to Brazil, India, China and others in the light of their greater economic and political might, or do they defend the status quo that is, in turn, favourable to them (Zangl et al. 2016)? China’s creation of the Asian Infrastructure Investment Bank (AIIB) is a prominent example of how the slow pace of institutional adaptation in a Western-led organisation, in this case the World Bank, has shaped the institutional landscape of global governance in a multipolar era. In distinction from existing research, the primary interest of this paper is not whether established powers give up their institutional privileges in response to global power shifts, but whether *emerging* powers do so as they rise. While scholars recently started to recognise that both emerging *and* established powers may challenge the status quo (Kruck and Zangl 2020), the latter aspect remains understudied.

Why should established powers challenge the institutional privileges of emerging powers? The common assumption is that the existing global order serves the interests of established powers (Lavenex et al. 2021, 452) and that this may lead to challenges from emerging powers. What is often overlooked, however, is that

²⁸ This chapter was co-authored with Clara Weinhardt and will be published as Schöfer, T. and Weinhardt, C. (2022). ‘Developing Country Status at the WTO: Brazil, India and China’s Divergent Strategies.’ *International Affairs* 98:6.

international institutions grant not only their most powerful members institutional privileges – such as more extensive voting rights – but also rely on differentiation that seeks to address the disadvantaged position of ‘weaker’ regime members – mostly understood as ‘developing countries’. Along these lines, Fehl and Freistein (2020, 16) note that international organisations often ‘grant[...] disadvantaged categories of members’ privileged access to resources’. In the world trade regime, for instance, newly independent countries were concerned that equal rules for unequal partners did not bring about equality of trading opportunities. As a result, several differential treatment provisions were institutionalised that grant developing country members exemptions and flexibilities regarding liberalization commitments. Similarly, the environmental regime in the 1970s and 1980s established the principle of Common But Differentiated Responsibilities among its members. Moreover, emerging powers such as Brazil, India and China have historically been part of the developing world. This raises the question of whether emerging powers give up these institutional privileges reserved for developing countries²⁹ as they rise up economically.

Against this background, this paper seeks to unpack changes in the strategies that Brazil, India and China (the BICs) have adopted on special rights for developing countries in the World Trade Organization (WTO). One of the WTO’s core principles is the norm of Special and Differential Treatment (SDT) for members that are classified as ‘developing’ as opposed to ‘developed’ members. This norm was introduced in the world trade regime in the 1960s to counterbalance demands for trade liberalization with the special needs of developing countries, given their disadvantageous position in the world economy. It has, however, become a subject of heated debate in recent years whether emerging powers should still be allowed to

²⁹ Note that we conceptualize institutional privileges for developing countries as norms that a) differentiate between a group of states that is understood to be in a more advantageous position than the other group; and b) that stipulate that those states perceived to be in a less advantageous position are given more extensive rights; and/or those perceived to be in a more advantageous position are given more extensive obligations. We refer to the former as beneficiaries of differential treatment, while the latter count as contributors to differential treatment. In the case of (newly) established powers, giving up privileges would thus entail a shift from the status of beneficiaries to contributors.

claim special rights for developing country members. In particular, the United States (US) has proposed to introduce clear-cut criteria that define developing country members in a way that would exclude emerging powers and other larger developing country members (WTO 2019a). Conversely, China, India and others defend the status quo that allows all WTO members to self-declare the status they hold (WTO 2019b). Nevertheless, scholarly research on these debates and the strategies that emerging powers have adopted remains scarce (for exceptions see Farias 2019; Weinhardt 2020; Weinhardt and Schöfer 2021). The particular institutionalization of the WTO's differential treatment norm – reliant on a strict bifurcation of the WTO membership into developed and developing countries – moreover sharpens distinctions between established and emerging powers.³⁰

Conceptually, the paper builds on the expectations of recent power shift theory that focuses on institutional adaptation (Zangl et al. 2016; Kurck and Zangl 2020), but reverses its prevalent expectation that emerging - rather than established - powers push for reforms. Moreover, instead of relegating normative factors to minor importance (Kruck and Zangl 2020, 11), we expect that 'soft' questions of status also shape the strategies of emerging powers. This is because giving up institutional privileges in this case is inextricably linked to questions of prestige and identity, based on (giving up) developing country status. Lastly, instead of taking a conflict of interest between emerging and established powers for granted, as power shift theory tends to do, we expect interest constellations to be more complex: not only can emerging powers assess the value of clinging on to special rights for developing countries differently, but they may also be interested in accommodating rather than resisting the reform demands of emerging powers (compare Lavenex et al. 2021). Taken together, this conceptual approach allows us to identify four different strategies that emerging powers could adopt in light of pressure to give up special rights reserved for 'weaker' regime members. These strategies represent different forms of accommodation or resistance.

³⁰ Outside the WTO, these distinctions are often blurred as emerging/established power status is complicated by varied economic trajectories, overlapping self-identities and conflicting status-signalling strategies (compare Pu 2019).

We find that no uniform strategic approach exists across emerging powers: while Brazil adopts a pragmatic approach of *accommodation* and is willing to refrain from using its developing country status in future negotiations, India and China fiercely defend their status as disadvantaged regime members. What this implies in negotiations in practice, however, also differs: while China follows a dual strategy of selective *accommodation and resistance* by letting go of special rights reserved for developing countries when it sees few economic benefits, India relies on *principled resistance* and defends exemptions from liberalization as a historically grown right of the developing world. This illustrates, first, that the implications of global power shifts for institutional adaptation are not uniform and depend on emerging powers' material incentives and identity-based status considerations. Second, a grey area exists in which emerging powers neither cling on to nor give up their institutional privileges. Instead, they may adopt strategies that fall in between accommodation and resistance as they gain in power.

Our findings contribute to the literature on rising powers and global governance in three main ways: first, they reverse the conceptual perspective of power shift theory that tends to assume that institutional adaptation is a result of established powers giving up institutional privileges. Instead, we focus on established powers as challengers of the status quo. We show how this leads to mixed, and at times ambiguous, incentives for emerging powers that are asked to give up the special rights they hold as developing countries. Second, we speak to the growing literature on differentiation and hierarchy in International Relations that emphasises that status considerations shape and structure interstate relations (Lake 2009; Bukovansky et al. 2012; Albert et al. 2013; Zarakol 2017). Lastly, we shed new light on the implications of global power shifts for principles of global order that matter for the Global South – rather than for the West. Moreover, our findings are relevant for policy-makers engaged in reform debates on SDT at the WTO.

In the following, the paper reviews the existing literature before empirically examining whether – and when – the BICs have been reluctant to give up their institutional privileges as developing country members of the WTO. It then maps out the broader implications of the findings in the conclusion.

Emerging Powers and Power Shift Theory

The impact of emerging powers on global governance has become a central theme within IR scholarship. A major problem in this research is the question of whether – and how – the liberal international order is going to change in the light of the power shift to Brazil, India, China and other non-Western powers. The core issue here is whether or not emerging powers will challenge the status quo of these institutions, accept existing institutional set-ups, or create their own parallel institutions.

Scholars that focus on the adjustment of international institutions to global power shifts are, in particular, interested in assessing when and how challengers of the status quo are successful in their demands for reform. They note variation in outcomes (Zangl et al. 2016; Daßler et al. 2019; Lavenex et al. 2021): emerging powers have, for instance, not been successful in challenging the practice of nominating exclusively European or American nationals for the positions of president or director of the World Bank or the International Monetary Fund (IMF). However, global power shifts have led to an ad hoc adaptation in both institutions (Güven, 2017), such as the introduction of a more even-handed surveillance practice in the IMF (Zangl et al. 2016). At the same time, emerging powers are not inherently revisionist, and benefit from many established rules in global economic governance (Lavenex et al. 2021). Explanations of this variance focus primarily on divergent constellations of interest and power (Kruck and Zangl 2020), or issue-specific variables (Lavenex et al. 2021).

While these strands of power shift theory have made an important contribution to better understanding when and why we see institutional adaptation in terms of procedural or substantive membership privileges, two blank spots remain: first, the default assumption is that emerging powers challenge the institutional privileges that established powers hold. Even if scholars more recently recognise that established powers may also act as challengers (Kruck and Zangl 2020), the empirical case studies focus primarily on their role as defenders of the status quo (Viola 2020; Stephen and Stephen 2020; Lipsky 2020; Binder and Heupel 2020; Fioretos 2020 – for an exception see Thompson 2020). As a result, there is a lack of systematic

assessment of the strategies that emerging powers can opt for as they face pressure to give up special rights reserved for disadvantaged regime members.

Second, there is rationalist bias when it comes to explaining the strategies that challengers and defenders of the status quo adopt in a given issue-area. The adaptation of international institutions is understood as the result of strategic interaction. More precisely, institutional versions of power shift theory argue that functional interests and bargaining power largely explain the effects of global power shifts on international institutions (Zangl et al. 2016; Kruck and Zangl 2020; Lavenex et al. 2021). However, whether or not emerging powers give up their institutional privileges as they rise up is inherently linked to questions of status (and identity) that do not easily fit within a rational actor model. Acknowledging this also allows for more variation across 'challengers' or 'defenders' of the status quo. Different historical trajectories, and different identity conceptions or belief systems, may lead to variation across emerging (or established) powers' assessment of the costs of the institutional status quo. There is thus arguably a normative dimension to institutional adaptation, as it matters whether or not clinging on to institutional privileges is (or is not) seen as desirable for states with a given identity, and thus, status in international politics.

Privileges of the Weak and Global Power Shifts: A Conceptual Framework

We propose to combine the insights of power shift theory on institutional adaptation and constructivist perspectives on the social dimension of status ascriptions to analyse how and when rising powers may (or may not) adapt the institutional privileges endorsed in special rights for the developing world. We expect that in the case of the privileges of the ‘weak’, i.e. special rights for developing countries, emerging powers face contradictory incentives in light of pressures from established powers. This is because they need to balance changing material incentives associated with these privileges with less tangible, and often ambiguous, status considerations.

Scholars that examine institutional adjustments in light of global power shifts emphasise that constellations of interests and power shape whether or not defenders of the status quo are willing to give up the institutional privileges they hold. A common assumption is that giving up institutionally entrenched privileges is costly for established powers (Lavenex et al. 2021, 448). They thus only agree to reforms when ‘they cannot ... count on challengers’ continued acceptance of the status quo’ (Kruck and Zangl 2020, 12). Conversely, if institutional privileges of emerging powers are at stake, the constellation of interests is less straightforward. This is because the benefits associated with special rights for ‘weaker’ regime members – commonly referred to as developing countries – do not necessarily stay the same as emerging powers rise.

Clinging on to special rights for developing countries is not inherently beneficial for emerging powers. These special rights commonly come in the form of exemptions and flexibilities that allow developing countries to implement fewer regime obligations. Oftentimes, the logic behind these assumptions is the premise that developing countries have either less capacity – thus rendering it too burdensome or costly to implement equal obligations – or that some catching-up in economic development is necessary before regime obligations can be taken on fully. For instance, in the climate regime developing country members were completely exempted from making mitigation commitments in the Kyoto Protocol. Developed countries in turn accepted taking on mitigation obligations because of ‘their wealth

and capacity for response measures' (Rajamani, 2006, 76).³¹ Emerging powers are, however, characterised by rapid economic growth and a more competitive position in global markets as compared to non-emerging developing countries. They may thus lose interest in defending special rights for developing countries across the board as they gain in wealth and capacity. Whether this is the case depends on the specific political economy dynamics at stake. On the one hand, emerging economies may benefit from taking on greater regime obligations in line with their increased capacity. On the other hand, continued reliance on exemptions could be seen as an advantage vis-à-vis established powers – or simply reflect (protectionist) domestic demands (compare Lavenex 2021, 456).

Moreover, identity-related considerations also affect the incentives for defending institutional privileges reserved for developing countries. Here, emerging powers again face contradictory incentives. On the one hand, a common assumption in the literature on status is that states with a lower social status strive for 'higher or distinctive positive status in the international hierarchy' (Parlar Dal and Dipama 2019, 7; see also Paul et al. 2014). Giving up the status as a developing country could thus be associated with gains in prestige (compare Khong 2019). On the other hand, the benefits associated with 'developing country' status may create incentives to maintain this lower social rank. This has largely been overlooked in the existing literature, since many (constructivist-leaning) scholars tend to neglect the material side of status (Viola 2020, 19). As Narlikar (2020) shows, frequent, successful use of poverty narratives to legitimize controversial negotiation positions has brought identity and status issues centre stage in international trade politics. Lastly, in the case of developing country status, path dependencies and historical legacies dampen pressures to associate lower social rank with lower prestige. Emerging powers' historically grown political identity as part of the wider 'developing' world or 'Global

³¹ Similarly, exemptions for developing countries in the global trade regime are based on the assumption that equal liberalization commitments are not feasible for developing countries that find themselves in a structurally disadvantaged position in the global economy.

South’ (Bishop and Zhang 2020) could simply outlive new economic realities.³² Maintaining a shared developing country identity could also be a strategic asset for other negotiations, as it forges South-South ties. In sum, it remains an open empirical question whether emerging powers seek to defend institutional privileges reserved for developing country members as they gain in power.

Given these mixed and at times ambiguous incentives, we expect that emerging powers do not necessarily cling on to ‘privileges’ for the weak as they rise up, and that individual countries may adopt divergent strategies. To capture the tension that exists between changing material interests and status considerations associated with these special rights, we distinguish between a country’s willingness to a) give up its status as a developing country, and b) to give up the privileges that this status comes with in practice. Doing so allows us to paint a more nuanced picture of the strategies that emerging powers could adopt (see table 1).

Table 1 – Strategies of emerging powers under pressure to give up special rights reserved for developing countries.

	Change in status	No change in status
Change in practices	Full accommodation	De-facto accommodation
No change in practices	De-facto resistance	Principled resistance

In essence, emerging economies’ strategies may vary in between resistance and accommodation in the light of established powers’ demands to give up special rights reserved for (disadvantaged) developing country regime members. *Full accommodation* is the result of accepting a status change and giving up special rights

³² Bishop and Zhang (2020, 7) for instance claim that China is ‘caught between a pervasive self-perception as a ‘developing’ country that co-exists in a degree of tension with the reality that the country is rapidly becoming, through a profound structural transformation, a ‘developed’ one’.

in practice. *De-facto accommodation* occurs if a country in practice accepts that it needs to take on greater – or equal – obligations, but defends its status as a developing country. Conversely, *principled resistance* is a strategy in which an emerging power neither accepts a status change, nor adjusts its practices. Lastly, *de-facto resistance* occurs if a change in status seems acceptable, but the country remains unwilling to give up institutional privileges reserved for developing countries in practice. The actual strategies chosen may also combine different elements of these ideal-typical depictions and cut across them. This is because both changes in practices and, to some extent, changes in status can be gradual.³³ For instance, it could well be that an emerging power defends its developing country status as an expression of South-South solidarity, but adjusts its practices because exemptions are not seen as beneficial anymore. Given such contradictory incentives, we expect that strategies may reflect this ambiguity.

In our empirical analysis, we conduct case studies of the three BIC states individually to analyse the potentially divergent strategies they have chosen as emerging powers have more generally come under pressure to give up access to special rights reserved for developing countries. In each of the case studies, we examine both changes in the status that the BICs hold within a regime as reflected in discourses and law, as well as changes in practices in ongoing WTO negotiation rounds. Our analysis rests on a wide source base that centres on the time span from the mid-2000s until 2020,³⁴ with a particular focus on the years since 2017 when reform of developing country status took centre stage in WTO debates. It includes submissions and statements made in key WTO fora,³⁵ primary sources that document negotiation positions adopted in the Doha Development Round, as well as four interviews conducted in June-September 2021 with senior trade officials from Brazil and India

³³ Note that changes in status are less likely to be gradual. They could, however, in principle be gradual in the sense that the legal and social recognition of a status could diverge. For instance, a country could continue to defend its status as a developing country even if its legal status has changed.

³⁴ The mid-2000s were taken as a starting point given that since then it has been common to refer to Brazil, India and China as ‘emerging powers’.

³⁵ Apart from WTO Ministerial Statements we also consider debates taking place in issue-specific WTO bodies such as the TRIPS Council or the Committee on Agriculture.

involved in WTO negotiations in Geneva.³⁶ These complementary types of sources allow us to reconstruct the strategies that the BICs employ to marry their rise with an established system of special rights for disadvantaged WTO members. In doing so, we contextualise changes in status against changes in the practices of emerging powers in the ongoing Doha Development Round negotiations.

³⁶ Interviewees included current and former trade officials from both countries involved in WTO negotiations. Note that for the case study on China, we rely more heavily on other primary sources.

Do the BICs 'give up' as they 'rise up' at the WTO?

In this section, we delineate the different approaches to special rights for developing countries that the BIC states have displayed since the 2000s. Using the four ideal typical strategies outlined above, we can unpack changes over time and across negotiation areas that cumulatively constitute a more fine-grained analysis of the experiences and potential drivers of accommodation and resistance. We find that the three BIC states differ greatly in their handling of 'giving up' as they 'rise up'. While India on the one hand displays a firm and principled resistance against changes in status or in practice, Brazil's changing position in international trade politics has led it to pursue a strategy of accommodation aimed at overcoming negotiation deadlock. China in turn combines these two approaches, selectively employing resistance *and* accommodation strategies on an issue-specific basis.

Brazil

Amongst the BIC states, Brazil has adopted the most pragmatic approach to its special rights as a developing country member. This is reflected in a fluid set of negotiation positions and coalition dynamics, primarily aimed at overcoming deadlock in the WTO. A selective non-use of SDT rights and a declaration not to use its status in future run in parallel to support for SDT in new forms of legislation, which signals a strategy best depicted as a pragmatic form of *accommodation*.

Brazil's status as a developing country at the WTO has proven most difficult to square with its emergence as a major agricultural exporter since the 1980s. This becomes most evident in the variety of coalitions it has participated in – and/or led – since the early 2000s. At the beginning of the millennium, the Brazilian delegation continued to co-sponsor statements with the Cairns Group, a set of agricultural exporters made up both of developed and developing countries. The main negotiation priority for this mixed grouping in turn comprises trade liberalization in agriculture via the lowering of tariffs and subsidies on agricultural goods. The potential for a mixed set of liberalization-minded actors to overcome divides on a contentious trade issue help to explain Brazil's membership of this group 'between'

industrialised and developing countries.³⁷ By 2003 however, Brazil made greater use of its status as a developing country by co-founding the G20. This group of developing countries sought to rebalance international trade via the expansion of SDT rights provided in the 1995 Agreement on Agriculture. The primary G20 proposal at the Cancún Ministerial Conference consequently envisaged a broad mix of differential treatment tools, including differentiated domestic support allowances, implementation timeframes and subsidy exemptions (WTO, 2003a). Notably, Brazil did not follow China and India to join the G33, a contemporary developing country coalition that pursued the more narrow aim of introducing a Special Safeguard Mechanism (SSM) that would allow developing countries to protect their markets from sudden import surges. This was explained by one former negotiator as follows:

[It is] one thing to not be openly offensive trying to conquer markets in developing countries (...) Something else is to provide them with free range tools which would make trade totally unpredictable.³⁸

Brazil's endeavours to find pragmatic, compromise solutions to the agricultural impasse consequently allowed it to switch from adhering primarily to the liberalization-oriented Cairns Group to becoming a leader of a diverse developing country coalition, promoting the expansion of SDT rights. At the same time, the primarily protectionist end goals of the G33 conflicted with this approach.

By the mid-2010s, Brazilian attempts to move forward on agricultural trade law in turn resulted in new negotiation constellations. Not only had the G20 – and thus Brazil's leadership of it – disappeared from the scene, but so too had Brazilian coalition-building efforts with other developing countries. Instead, 2017 witnessed the submission of a joint proposal on reforming domestic support caps by Brazil and the European Union (WTO, 2017a). The fact that this proposal contained differentiated caps for developing countries underlines the fluid approach to

³⁷ Compare Brazil's support of the Cairns Group as a platform for compromise and trade liberalization (WTO 2003c, para. 10).

³⁸ Interview with former trade delegate, 20th July 2021.

compromise coalitions that characterizes Brazil's engagement with developing country rights.

A pragmatic approach to WTO reform – and to the rights of developing countries – is further reflected in the minimalist approach Brazil has taken towards the Trade Facilitation Agreement (TFA). The TFA itself represents a novel treatment of differentiation at the WTO: instead of broadly dividing the membership into two groups of (self-declared) developing and developed countries, the TFA allows states to earmark certain obligations as immediately implementable (Category A), implementable after a transition period (Category B) and implementable after a transition period and some technical assistance (Category C). While the latter two categories resemble SDT rights in other agreements, it is of note that upon signing the TFA Brazil classified 95.8% of TFA requirements as Category A. This decision to not make use of flexibilities in turn indicates recognition of differences within the developing country group, and the acknowledgement that Brazil is ready to give up institutional 'privileges' reserved for weaker members.

Brazil's delicate balancing act between achieving a broad-based consensus and securing developing country interests further comes to the fore in other *new* legislative areas: in 2018, the Brazilian delegation submitted a draft text on investment facilitation, with the aim of kick-starting discussions towards a multilateral framework (WTO 2018). This initiative, in an area that has traditionally been considered an issue for industrialised countries,³⁹ underlines the continued Brazilian attempts to achieve movement in WTO negotiations. Moreover, the approach to SDT in the draft text accentuates both recognition of the growing variation amongst members of the developing country bloc and an emphasis on integrating developing countries into a common multilateral corpus of trade law. On the one hand, exemptions from implementation are reserved solely for the marginal group of Least Developed Countries (LDCs), although these are still encouraged to implement as much of the agreement as possible (WTO 2018, Art. 15). On the other,

³⁹ Along with competition, government procurement and trade facilitation, investment rules are commonly referred to as one of the 'Singapore Issues', a set of negotiation issues that have proved controversial with developing countries in the past.

developing countries as a whole are provided SDT primarily via longer transition schedules compared to industrialised economies (WTO 2018, Art. 16). The provisional transition schedules are supplemented by a commitment by developing country signatories to 'strive for early implementation of provisions' (WTO 2018, Art. 16.4). Here, the capacity of certain developing countries to proceed with implementation at a faster pace suggests how Brazil copes with its emerging economy position by creating SDT rights that are *de jure* uniform for the whole group of developing countries but can differ in practice due to selective use. This is further reflected in the Brazilian proposal's treatment of technical assistance. While developed countries are recommended to provide assistance to developing ones, it is of note that 'developing Members in a position to do so' are also called upon to be contributors to smaller economies (WTO 2018, Art. 17).

Brazil's fluid position between different groups of WTO members is further borne out by the fact that it remains one of the few developing countries to be negotiating accession to the Government Procurement Agreement (GPA). Along with the TFA, the GPA represents one of the few new legislative initiatives to have gained greater support in the past decade. That said, its scope remains limited to that of a plurilateral agreement, as large portions of the WTO membership – primarily developing countries – have not supported the creation of a common regulatory framework on this 'new' issue. Brazil's initial justification for its observer status to the GPA – which was followed by a declaration of intent to accede in 2020 (WTO 2020) – was given as 'a broader desire and goal of Brazilian society to modernize its economy and improve the management of public resources'. This efficiency-driven narrative differs from the interest-based protectionism of other developing countries (see below).

The simultaneous promotion of integrative legislation and special rights for smaller economies also comes to the fore in Brazil's relationship with the TRIPS Agreement. As Dos Santos Tarragô (2015, 254-55) notes, the initial negotiation process of the WTO's intellectual property agreement witnessed the piecemeal acceptance of higher IP protections by Brazil from a previous position of staunch opposition. This move towards accepting intellectual property regulation as part of the WTO

Agreements in turn stemmed from the notion that it was ‘a price to pay in order to have a strengthened multilateral trading system and some satisfaction for its main export interests’ (Ibid.). As a consequence, despite adhering to the TRIPS Agreement, Brazil ‘as a developing country, has been struggling to balance its interest in protecting technology mostly developed abroad with its interest in fostering local technology while at the same time assuring that social policies are implemented’ (Kunisawa 2015, 179). Misgivings about the plausibility of marrying TRIPS enforcement with economic and social development in turn help to explain the support that the Brazilian WTO delegation has given to requests for transition schedule extensions – even indefinite ones – for LDCs (see for example WTO 2013a, para. 11.20).

Brazil’s movement between different positions and its selective incorporation of SDT rights into its trade agenda are perhaps best borne out by the Brazilian government’s 2019 announcement that it would forego the use of its developing country status to claim SDT in ongoing negotiations. Crucially, this would have no impact on the existing flexibilities granted to Brazil via its SDT rights in previous agreements. Instead, Brazil promised not to make use of its developing country status in future legislation. One of the reasons given for this is that Brazil does not perceive it as beneficial anymore to make use of SDT – especially if other emerging powers are also allowed to use it. As one Brazilian trade delegate emphasised:

When we shifted our position in terms of SDT, and we decided that we did not want to pursue this anymore, we were not abdicating our self-designation as a developing country. As much as we would like to or we would love to self-designate us as a developed country, that is the goal, but we are still a developing country. That is a fact. But at the same time, the instruments of flexibility associated with that status were not of use for us anymore. On the contrary, they were counterproductive for us. They were counterproductive because those that were using SDT were perhaps those that had the money to subsidise and the money to use for industry and

agriculture subsidisation, which should hurt us on the more systemic level of the global economy.⁴⁰

In line with the *accommodation* approach outlined above, the official government justification for the change in Brazil's status was given as follows: 'The variety of STD measures and the fact that some of them were only valid for a certain period proves that STD is dynamic and evolutionary' (Brazilian Foreign Ministry 2019). This statement underlines Brazil's understanding of special rights in the WTO as dynamic – as emerging powers climb up the ladder of development, they do not need access to SDT anymore. In the words of a former negotiator, SDT is similar to a hiking stick 'that you use to walk, so to help you whilst you are climbing'.⁴¹ This pragmatic perspective is based on the conviction that 'you have to approach this [SDT] as a flexibility, not as a principle or a political flag that you have to carry'.⁴² Brazil's status shift comes amidst polarized domestic debates regarding its position in world politics (compare Casarões and Farias, 2021).⁴³ A recent re-orientation of Brazilian foreign policy, away from emphasising South-South ties, consequently levies the Bolsonaro administration's new SDT policy against American support for Brazil's OECD membership (Rio Times 2019). Arguably, waning economic growth in Brazil in recent years contributes to this push for recognition as a major economy. Brazil has thus explicitly distanced itself from other developing countries – including India and China – that tend to portray SDT as an inalienable right (WTO 2019b). As put by a former trade delegate:

The other approach is to take SDT as a sort of symbol of development and a symbol of a fight against you name it! Against imperialism, against developed

⁴⁰ Interview with trade delegate, 30th August 2021.

⁴¹ Interview with trade delegate, 30th August 2021.

⁴² Interview with trade delegate, 30th August 2021.

⁴³ Brazilian foreign policy has historically been characterized by several competing visions, such as 'Americanism' vs. 'Globalism', different development models and varied approaches to economic interdependence (Milani, Pinheiro & Soares de Lima, 201). More recent changes under the Bolsonaro administration come atop these entrenched divisions.

countries ... It is a symbolic thing: a kind of enshrined principal that, no matter what, people will have to keep it.⁴⁴

Being increasingly open to giving up its access to SDT does not imply that Brazil is willing to give up its status as a developing country. Keeping this status does not however prevent Brazil from positioning itself as a responsible and consensus-oriented WTO member that seeks to facilitate negotiation outcomes, as illustrated by the following statement on Brazil's recent retooling of SDT use:

[T]his is the sort of middle-ground solution, that could pave the way for something. Because you manage here to somehow not get into this discussion on whether Brazil is a developing country, yes or no. (...) Somehow, what we managed to say: 'I am not going to give up my developing country status, let's not enter this discussion. What I'm ready to do is that I am not using this argument to fight for SDT.' (...) [I]f you somehow manage to separate the issue of development from being in a position to use this in a way to have special rules, then you might have a way out of the conundrum.⁴⁵

India

With regards to its special rights as a developing country, India has displayed the least flexibility of the three BIC states. Instead of coupling its economic rise to a more selective approach to SDT rights – let alone trying to renegotiate its status – India has remained steadfast in its opposition to legislative initiatives on new areas and its support for special rights for the developing country bloc as a whole. The chosen strategy can thus be best described as *principled resistance*.

While Brazilian approaches to agriculture highlighted a flexible, consensus-based approach to WTO politics, in the case of India agricultural reform highlights continuity in its promotion of SDT expansion and the maintenance of developing country coalitions. Together with Brazil, the Indian delegation co-founded the G20

⁴⁴ Interview with trade delegate, 30th August 2021.

⁴⁵ Interview with former trade delegate, 9th June 2021.

negotiation group in the early 2000s in order to counteract the perceived dominance of the EU and the US in agriculture talks. A former Indian trade delegate described the central role of India in this coalition as follows:

Any position that the G20 took was first negotiated with Brazil and India and then expanded to a group of 5, which is India, Brazil, China, South Africa, and Argentina. Then it was brought forward and put into a full G20 house. So that is how it operated.⁴⁶

The broad set of negotiation priorities pursued by this group is in turn juxtaposed by the narrower objectives of the G33. This latter grouping sought to introduce a list of special products and a special safeguard mechanism (SSM), which could be used to control domestic market access in the event of import surges. India's strong support of these new SDT tools in turn fits well with its general approach to agricultural reform, which placed the emphasis on developed countries taking 'five steps forward in the removal of trade-distorting subsidies' before developing countries took 'one step forward in the area of market access' (WTO 2003b, para. 8). Correcting historical and contemporary imbalances in international trade consequently provides a cornerstone of India's stance in negotiations. This has the dual effects of placing the impetus for trade reform on industrialised countries and limiting Indian enthusiasm for the expansion of the WTO's legislative frontier to new issue areas. In parallel, India's economic rise is not accompanied by deviation away from its early 2000s position as a developing country promoting SDT use.

The stalling of the WTO's legislative engine in the late 2000s can be partially explained by this entrenched position. In 2008, WTO negotiations broke down in response to disagreements between the EU, the US, Brazil, India and China over market opening in agriculture and industrial goods. In essence, the US and other major industrialized countries in the Global North became increasingly unwilling to grant exemptions from tariff cuts on industrial goods to 'emerging' developing country members – even though the criticism was often voiced in implicit terms. The

⁴⁶ Trade Delegate Interview, 14th June 2021.

US Chamber of Commerce for instance claimed that ‘India and China are emerging powers, but with great power comes great responsibility’ (Economic Times 2008), to indicate that exemptions from market opening commitments based on their developing country status were no longer considered legitimate – which rising powers in turn contested (for example IBSA 2007). As a result, negotiations broke down primarily because of disagreement between the US and India (supported partly by China) over a Special Safeguard Mechanism for developing countries in agriculture.

In the late 2010s we can observe the same general approach to trade reform as outlined above. Throughout the past decade, the G33 has consequently submitted a variety of proposals calling for the establishment of new SDT tools for developing countries in the field of agriculture. Moreover, and in parallel to an EU-Brazil reform proposal that sought to cap domestic support *in general*, India and China submitted their own proposal at the Buenos Aires Ministerial in 2017, targeting developed countries specifically. This alternative submission focused on reforming the 1995 Aggregate Measure of Support (AMS) rules, which provided domestic support entitlements to a specified list of countries – 90% of which were industrialised economies. Moreover, correcting this historical imbalance was clearly labelled as a ‘pre-requisite for consideration of other reforms in domestic support negotiations’ (WTO 2017b, para. 21). Coupled with a clear singling out of subsidies in the US, the EU and Canada (WTO 2017b, paras. 4-20), the text submitted by the Indian delegation – together with China – accentuates the continued defensive stance that India has maintained on agricultural reform.

Resistance to new policy initiatives can further be seen in India’s engagement with the expansion of the Information Technology Agreement (ITA). Initiated by major industrialised economies, the proposed expansion of the agreement in the mid-2010s sought to increase the product scope of its 1990s predecessor and to cover non-tariff barriers. In a 2014 statement, the Indian Ministry of Commerce and Industry approached this issue with the cautious distrust outlined above: ‘India’s experience with the ITA has been most discouraging, which almost wiped out the IT industry from India. The real gainer from that agreement has been China, which

raised its global market share from 2% to 14% between 2000-2011' (Indian Ministry of Industry and Commerce, 2015a). The decision to not participate in the ITA expansion in turn rested on protectionist, infant industry narratives: '[T]his is the time for us to incubate our industry rather than expose it to undue pressures of competition' (Ibid.). This strong rejection of expanding regulations on new issues mirrors an Indian reluctance to join early 2000s initiatives on government procurement. Such talks, which were the predecessors of discussions on the GPA, are marked by the insistence of the Indian delegation that 'procurement was an important tool used by governmental authorities in developing countries to pursue their social and development objectives' (WTO, 1999, para. 9). This in turn required developing countries to retain flexibility on procurement (Ibid.) and/or for Members to have the freedom to indicate exceptions to common procurement rules with respect to development objectives (WTO, 2000, para. 23). Avoiding the expansion of commitments, particularly in negotiations on new issue areas, consequently forms a common theme in India's rise since the 1990s. In direct comparison with Brazil and China, India has also not adopted a clear approach of selective non-use of SDT rights. Compared to the other BIC states, India has made greater use of the transition scheduling afforded under the Trade Facilitation Agreement, classifying 27.7% of commitments as Category B.

While India does not practice the more selective *accommodation* that we find for Brazil, it has become a provider of technical assistance to other developing countries. The Hong Kong Ministerial Declaration (WTO 2005, para. 47) called upon 'developing-country Members declaring themselves in a position to do so' to also grant preferential market access to LDCs. Since then, emerging powers have followed-up on these calls: India was the first developing country to extend duty free quota free access to all LDCs in 2008 (Indian Ministry of Industry and Commerce 2015b). Indian support of LDCs however also translates into the maintenance or expansion of their SDT rights. This is particularly notable in the TRIPS Council. Akin to Brazil, India has consistently supported initiatives by LDCs to extend their TRIPS transition schedule, or even attempts to render extensions permanent, thereby exempting LDCs from TRIPS implementation altogether (see for example WTO

2013b, para. 75). This support in turn fits in well with Indian statements over the past twenty years that have questioned the utility of full TRIPS implementation for the pursuit of development goals.⁴⁷ Moreover, India has been the only BIC state to co-sponsor a waiver from certain provisions of the TRIPS Agreement in order to stem the effects of the COVID-19 health crisis (WTO 2021). In doing so, the Indian delegation has sided with the African Group, the LDC Group and a flurry of medium- and smaller-sized economies to promote derogations from an existing corpus of intellectual property law. As it has risen, India has consequently held onto its position of safeguarding the policy space of developing countries.

Perhaps the clearest example of India's entrenched position of *principled resistance* over the past two decades comes in its response to attempts at reforming differential treatment. In 2019, a 45-page American proposal from 2019 explicitly called for a more differentiated WTO. This marks the high point of the SDT principle's contestation (WTO 2019a). The proposal suggests moving away from *auto-election* to a *definitions-based approach* in order to delimit the group of beneficiaries in line with specific economic criteria. This constitutes a notable shift in discourses, since such a proposed reform would end the special rights of the BICs and other 'emerging' developing country members in the world trade regime. According to the proposed criteria, many middle-income countries in the Global South would lose their developing country status altogether. The proposal was accompanied by similar calls from other industrialised countries.⁴⁸ Such proposals, in turn, reinforced Indian resistance to reform because they were seen as an attempt to undermine South-South ties. As a former Indian trade negotiator pointed out: 'One political thing is

⁴⁷ See for example India's statement in WTO (1998): 'Excessive protection of IPRs may end [a] virtuous cycle of knowledge transmission and regeneration in the developing world.'

⁴⁸ A 2021 G7 Trade Ministers' Communiqué claims that '[r]estoring the credibility of the WTO as a negotiating forum requires a new approach to SDT [... including] greater differentiation in the measures provided based on specific, identified needs. Against this background, we call on advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations' (Global Affairs Canada 2021). A 2018 EU concept paper on WTO modernization in turn contains a section on '[p]roposals for a new approach to flexibilities in the context of development objectives' that complains about 'an antiquated approach to flexibilities which allows over 2/3 of the membership including the world's largest and most dynamic economies to claim special treatment' (European Commission 2018).

that from the US perspective or from the Quad [US, EU, Canada and Japan] perspective, they would like to break the unity of the developing country group.⁴⁹ India's defence of the developing country status is thus, unlike in the Brazilian case, closely linked to political solidarity with the developing world and a commitment to joint bargaining coalitions. The former negotiator further pointed to the geopolitical dimension of these reform proposals:

Now, obviously, the first target is China. But they cannot single out China, so for the main reason that they cannot single out one country, they have to come up with some criteria. And the kind of criteria they are coming up with is also hitting India and Brazil and others.⁵⁰

Moreover, the Indian strategy of principled resistance reflects an understanding of SDT as inalienable right, rather than a dynamic and flexible principle. In response to the US memorandum on SDT reform, a group of 52 developing countries⁵¹ – including India and China – submitted a joint statement at the WTO General Council that rejected the US proposal (WTO 2019c). Instead of the evolutionary and dynamic approach associated with graduation, they advocate for SDT as a special right that developing countries can apply as they wish:

As a fundamental right granted to all developing Members, each developing Member shall, based upon its own particular situation, make the decision by itself on whether, when, where and how to use S&DT, and to what extent as well. (Ibid., para. 6.2) (emphasis added).

The view of SDT as an inalienable right, rather than a more flexible negotiation issue, also comes across in a recent response to the US proposal on developing country status. India, China, South Africa and Venezuela strongly opposed these reform

⁴⁹ Trade Delegate Interview, 14th June 2021.

⁵⁰ Trade Delegate Interview, 14th June 2021.

⁵¹ These countries comprised the African Group, the Plurinational State of Bolivia, Cambodia, China, Cuba, India, Lao People's Democratic Republic, Oman, Pakistan and the Bolivian Republic of Venezuela.

suggestions and tabled a counter-statement on ‘The continued relevance of Special and Differential Treatment in favour of developing Members to promote development and ensure inclusiveness’ (WTO 2019b). They defended not only their own claims to SDT, but also the concept of differentiation in favour of developing countries as a fundamental, yet hitherto neglected, right in WTO law more generally: ‘The current S&DT provisions in the WTO agreements were established through negotiations and compromises and were not gifts granted by developed Members’ (Ibid.).

India’s position at the head of these vocally defensive groups completes its stable position of *principled resistance* on SDT and developing country status over the past twenty years. Debates about India’s self-image as an emerging great power form the backdrop to this trend: a piecemeal shift in self-conceptualisations has allowed India to exhibit status seeking behaviour on the world stage (Basrur and Sullivan de Estrada 2017) – although it falls short of the fervent status seeking of, say, China (compare Deng 2008). While India has risen, it has remained reluctant to actively engage with the expansion of the WTO’s legislative frontier to new issue areas, has pushed for trade reform – primarily in agriculture – to target industrialised countries and their trade distortions, and has attempted to safeguard SDT rights, both for the marginal group of LDCs and for the developing country group as a whole.

China

The People’s Republic of China (PRC) has coupled its unprecedented levels of economic growth with a cautious defence of Special and Differential Treatment over the past quarter century. In this case, the greatest rise amongst the BICs has been fused with a strong adherence to *existing* flexibilities and a selective, pragmatic approach to differential treatment in *new* pieces of legislation. China has thus chosen a selective dual strategy of *resistance and accommodation*.

While China has consistently claimed developing country status since joining the WTO in 2001, it de facto accepted less differential treatment compared to other developing countries in its accession commitments. During its accession negotiations in the 1990s, China explicitly sought to join with the status of a developing country member, given its low per capita income and remaining developmental challenges.

This demand was summarised by the head of the Chinese delegation at a working group meeting in 2001:

As we have emphasized consistently at various occasions in the past, although great progress has been made on China's economic development in the past two decades, we still firmly believe that China is a developing country. The position we have taken to accede to the WTO as a developing country is not only a reflection of the actual economic level of China at the present stage, but also our political choice. It has been one of the basic principles we stick to in the negotiations of the past 15 years (WTO 2001).

However, this demand became one of the key planks of contention in its accession negotiations, given that developing country status is tied to less extensive liberalisation obligations compared to developed country members. The United States (US), in particular, argued that the sheer size of China as a global trader dictated that it enter the WTO without developing country status (Bhala 2000, 1489), and thus without access to SDT.⁵² Conversely, the European Union (EU) and Japan were more willing to recognise the developmental challenges of China.⁵³ In 1996, the EU tried to ease political tensions and to defuse at least the rhetoric over China's status as a developing country. It dropped the firm reference to developing country status and began to talk in terms of a case-by-case, or sectoral, approach to China's accession. This shift was preceded by a decision to phase out China's preferential trade status under the EU's GSP beginning in 1997 (Eglin 1997, 494-7).

China then accepted the compromise. It gave up its demand for comprehensive developing country status, and agreed to negotiate transition periods only for industrial sectors genuinely in need of SDT – i.e. those with serious adjustment

⁵² The Peterson Institute for International Economics at the time summarized the US position as follows: 'The United States has argued, however, that significant parts of China are sufficiently developed that it would be folly to permit China the additional leeway granted developing countries' (Noland 1995).

⁵³ At the time, China was also amongst the developing countries that benefited from the EU's preferential market access scheme, the Generalised System of Preferences (Eglin 1997, 508).

difficulties (Bhala 2000, 1489; Englin 1997, 494). China thus negotiated ‘developing country’ exemptions in some areas, but had to take on more extensive obligations on issues such as the protection of intellectual property rights, phasing out industrial subsidies, transparency and safeguards compared to other developing countries that joined at different times (Bhala 2000, 1487; Kanungo 2011, 309).⁵⁴ Conversely, Brazil and India’s liberalization commitments as set out in the Uruguay Round agreements are in line with those of other developing country members.⁵⁵

While China’s Accession Protocol thus does not define its membership status, China’s self-declared developing country status was in effect only applied selectively. This indicates that when considering *practices*, there was considerable leeway in interpreting the special rights granted to self-declared beneficiaries of SDT. In areas in which China considered itself to be competitive enough, for instance, it agreed to accept more extensive obligations compared to other developing countries. This was reiterated by the head of the Chinese delegation in 2001, stating that ‘where China has already had the capability to implement the obligations as all WTO Members, we deem not necessary for China to enjoy preferential treatments to the developing countries as provided for in the relevant WTO agreements’ (WTO 2001). Nonetheless, China joined as a beneficiary (rather than contributor) to SDT – even if to a lesser extent compared to other developing country members.

This flexibility in practices did not however preclude the Chinese delegation from insisting on China being, in principal, a developing country. In an early 2000s case on US steel safeguards (WTO 2002), China for instance argued in favour of SDT treatment as a developing country member and contested the US’ reliance on criteria stemming from the Generalized System of Preferences (a preferential market access scheme) to determine its status. While US-Chinese frictions centred on a US

⁵⁴ China for instance surrendered the developing country right for a transition period in regard to agricultural subsidies (Bhala 2000, 1495).

⁵⁵ This can be seen on the issue of agricultural subsidies, where all developing country members – including Brazil and India – received an allowance to special subsidies, the so-called Art. 6.2. ‘SDT Box’ subsidies. India accounts for the vast majority of the world’s measures notified under the ‘SDT Box’ (Brink and Orden 2020, 41). In contrast, China had to accept that it does not have access to the ‘SDT Box’ subsidies as part of its accession protocol.

attempt to articulate formal criteria for SDT application, the Appellate Body (AB) did not rule on this aspect of the dispute.⁵⁶

However, as China has grown economically it has also exhibited a more pragmatic approach to differential treatment in *new* pieces of trade legislation. With regards to the Trade Facilitation Agreement (TFA) China has only barely utilized the special rights provided to developing country members of the WTO. China classified 94,5% of the TFA as Category A and implemented them immediately. The remaining 5,5% were marked as belonging to Category B. It further didn't apply for any financial assistance (category C). This implies that in case of the recent TFA the PRC has only selectively made use of its SDT rights. Hu (2019, 9) even claims that: 'The developing member status appears irrelevant for [China] in implementing the [TFA's] provisions'.

The expansion of the ITA agreement – in which China plays a key role – also exemplifies how SDT is not centre-stage in negotiations on new legislation. The WTO (2017c, 62) reports that the negotiating parties explicitly 'decided not to include general provisions on special and differential treatment among participants or to allow for exceptions to the final product coverage.' However, we also find that negotiating parties of the ITA expansion *did* allow countries to mark certain product groups as particularly important to their domestic innovation and manufacturing sectors 'in exceptional circumstances for highly sensitive products' (Ibid.). According to Ernst (2018), this clause was mainly attributable to China's insistence, which in turn also made plenty of use of these exceptions. China has marked more products with final bound rates of duties greater than zero – and with longer transition periods – than any Quad country. This indicates that China negotiated more favourable terms for itself, but did not do so under the SDT principle.

⁵⁶ Note that the US had criticised the auto-election approach as part of this case, but only on the sidelines. In the AB case on US steel safeguards (WTO 2002, 632-633, para. 7,1870), the Chinese delegation contended before the Committee on Safeguards that 'it had been longstanding GATT practice that developing country status was self-elected'. The US consequently countered that 'China is not invariably treated as a developing country Member for purposes of the covered agreements. Thus, it cannot rely on a pattern of developing country treatment to support a claim for that status'. Yet, the case itself was not explicitly about the developing country status and possible reform.

Akin to India, China has also started to voluntarily act as a contributor to SDT in the past decade – but only for the narrow developing country sub-group of Least Developed Countries (LDCs). China, along with Turkey, the Republic of Korea and Chinese Taipei has launched substantial preferences schemes for LDCs (WTO 2014, 199), including the Least-Developed Countries and Accessions Programme (the ‘China Programme’) in 2014. As part of the programme, China finances activities related to LDC accession to the WTO, including increasing LDC participation in WTO meetings, the LDC’s Trade Policy Reviews and a series of workshops on South-South dialogue on LDCs and development.

Aside from this pragmatic, *accommodation* approach in new, plurilateral agreements, China did not shy away from claiming special rights as a developing country in sectors in which it pursues more protectionist policies domestically. This fits into a larger pattern of China promoting multiple, overlapping self-images in international politics (Pu, 2019). China’s multiple identities and its struggle for status on the world stage (see Deng, 2008) thus translates into a mixture of strategies at the level of WTO negotiations and domestic trade policy. This can be seen in particular in agricultural negotiations and negotiations on fisheries, where India and China have sought to maintain high levels of subsidies with reference to the development challenges they continue to face. In the 2010s, both countries fiercely insisted on being allowed higher subsidy levels compared to developed countries. They justify these exemptions as being necessary for development (compare Hopewell 2020, chapter 2 on China). China points out that agriculture is not only a vital sector for employment and domestic political concerns, but that it also remains less competitive compared to developed country markets. The PRC stresses that poverty remains concentrated in rural areas (Hopewell 2020, 72) and that agricultural production largely rests on small-scale farming rather than on highly industrialised agribusiness (Weinhardt and ten Brink 2020). Negotiations over domestic subsidies in agriculture thus remain inconclusive, especially because of the standoff between the US and China. Similarly, negotiations on fisheries subsidies remain complicated. According to Hopewell (2020, 95):

[T]he question of whether China should have access to SDT has become a fundamental issue of dispute in the negotiations, and the chief stumbling block to an agreement to discipline fisheries subsidies.

While China and India thus cling on to their special rights as beneficiaries of SDT, we find that it becomes increasingly difficult for them to execute them. This contrasts slightly with the 2000s, in which the US and other developed countries at least accepted that China received de facto differential treatment as a 'beneficiary light'. In sum, across different issue areas China consequently practices a dual strategy of *accommodation* and *resistance*.

Conclusion

This paper has examined whether emerging powers give up some of the institutional privileges they hold in the WTO as part of the group of developing countries as they rise up economically. These 'privileges' of the weak are enshrined in the principle of Special and Differential Treatment for developing countries in the world trade regime. Under SDT, developing country members receive various exemptions from liberalisation commitments or flexibilities with regard to their implementation. It has become a subject of contestation, however, in how far emerging countries should still be able to benefit from these privileges that are meant to be reserved for disadvantaged members of the world trade regime. Focusing on these special rights has allowed us to reverse the prevalent expectation of institutional accounts of power shift theory (Zangl et al. 2016), namely that established powers – rather than emerging ones – seek to cling on to institutional privileges in light of global power shifts.

We find that the three BIC states differ greatly with regard to their strategies on special rights for developing countries in the WTO, especially over the past decade. This variation reflects different levels of willingness to accommodate pressures from established powers to give up special rights for developing countries. On the one end of the spectrum, Brazil has adopted a flexible, consensus-based approach to overcoming deadlock in the WTO, which has allowed it to largely accommodate established powers demands. In particular, Brazil has become an active participant in new areas of trade legislation and displays recognition for differences within the developing country group via its reform proposals. This provides a diametric opposite to the entrenched position of India since the millennium, which has relied heavily on resisting established powers' demands for reform and promoting the maintenance and/or strengthening of SDT rights – both for LDCs and developing countries in general. The privileges of the weak in the WTO are thus seen as an inalienable right for the developing world, rather than a flexible principle that can be pragmatically retooled in search for compromise. Between these two positions, China has adopted a stance that combines elements of resistance and accommodation: it remains cautiously defensive on many issues where its policy

space or SDT rights could be limited whilst pursuing a policy of selective adaptation in areas where it does not perceive a material disadvantage.

This variation in strategies reflects the divergent material incentives that emerging powers' associate with special rights, as well as different identity-related perspectives on special rights for developing countries in the WTO. We find that in policy areas in which the BICs were willing to give up privileges, they held an interest in adopting a more liberal policy stance – for instance in the Trade Facilitation Agreement. Conversely, where domestic interests continue to be in favour of a more protectionist policy stance, in particular India and China remain unwilling to give up their institutional privileges. Moreover, while India defends its privileges as historically grown and inalienable rights for the developing world, Brazil tends to see these institutional privileges as a flexible negotiation issue among others. Here, normative pressure on the BICs to give up as they rise up is diminished by the ways in which the question of their status is entangled in a broader North-South conflict over the development orientation of the world trade regime. Whether or not emerging powers give in to established powers' pressures is thus more complex than the primarily rationalist perspectives of power shift theory on institutional adaptation suggest (Kruck and Zangl 2020). This is because status considerations – and their link to historically grown South-South ties – come to the forefront as emerging powers are asked to graduate from the 'developing' to the 'developed' country group.

Taken together, these findings shed new light on the implications of the rise of Brazil, India and China for global governance in general, and the trade regime in particular. Instead of focussing on the implications of their rise for the *liberal* international order (Ikenberry 2018), we uncover more subtle, less studied, ways in which it affects the differentiated nature of global order. The SDT principle comprises an illuminating example of attempts to institutionalise 'privileges' of the weak as a structuring principle of global politics. The rise of the BICs, and the related question of whether or not they should give up their privileges as developing country members of the WTO, reveals how their strategies of accommodation and resistance have contributed to the re-negotiation of this ordering principle. Three observations

stand out in this regard: first, the implications of global power shifts for institutional adaptation are not uniform. We find significant variation across Brazil, India and China – three key emerging powers in the world trade regime. Second, how international institutions adjust may be gradual, and not necessarily reflected in formal changes at the legal level (compare Roger 2020). While it may seem that emerging powers have successfully blocked reform attempts related to SDT in the WTO, gradual changes become apparent at the level of practices. Third, status considerations can work both ways. While Brazil's eagerness to present itself foremost as a responsible WTO member has facilitated a strategy of accommodation, India's understanding of its identity as firmly grounded in the developing world has increased resistance to reform.

In terms of global trade governance, our findings also hold key policy implications. The resistance of key emerging powers to giving up their status as developing countries indicates that the recent US proposal to introduce clear-cut criteria to define this status in the WTO (WTO 2019a) is unlikely to resolve the contested debate on differentiation. Reform proposals that rely on voluntary adaptation are more promising. However, they are also unlikely to fully resolve the conflict surrounding the status and rights of emerging powers, since some emerging powers continue to see SDT as an inalienable right. Ultimately, disagreement over how to reform the 'privileges' of the weak in light of global power shifts is entangled into a broader ideological and political conflict within the WTO over the extent to which exemptions from liberalisation measures help or hinder development. As a result, initiatives that address special rights for self-declared developing countries at the WTO are more likely to succeed if their authors take into consideration divergent views on the development-trade nexus.

Reference List

- Albert, M., Buzan, B., & Zürn, M. (2013). *Bringing Sociology to International Relations: World Politics as Differentiation Theory*. Cambridge: Cambridge University Press.
- Basrur, R. and Sullivan de Estrada, K. (2017). *Rising India: Status and Power*. Abingdon: Routledge.
- Bhala, R. (2000). 'Enter the Dragon: An Essay on China's WTO Accession Saga.' *American University International Law Review* 15:6, 1469-1538.
- Binder, M. and Heupel, M. (2020). 'Rising Powers, UN Security Council Reform, and the Failure of Rhetorical Coercion.' *Global Policy* 11, 93-103.
- Bishop, M.L. and Zhang, X. (2020). 'Why is China a Reluctant Leader of the World Trade Organization?' *New Political Economy* 25:5, 755-772.
- Brazilian Foreign Ministry (2019). 'Special and Differential Treatment and the WTO'. Available Online: <https://www.gov.br/mre/en/contact-us/press-area/press-releases/special-and-differential-treatment-and-the-wto>
- Brink, L. and Orden, D. (2020). *Taking Stock and Looking Forward on Domestic Support under the WTO Agreement on Agriculture*. International Agricultural Trade Research Consortium (IATRC). Available Online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3608481
- Bukovansky, M., Clark, I., Eckersley, R., Price, R., Reus-Smit, C., and Wheeler, N.J. (2012). *Special Responsibilities: Global Problems and American Power*. Cambridge: Cambridge University Press.
- Daßler, B., Kruck, A. and Zangl, B. (2019). 'Interactions Between Hard and Soft Power: The Institutional Adaptation of International Intellectual Property Protection to Global Power Shifts.' *European Journal of International Relations* 25:2, 588-612.
- Deng, Y. (2008). *China's Struggle for Status: The Realignment of International Relations*. Cambridge: Cambridge University Press.
- Dos Santos Tarragô, P. (2015) 'Negotiating for Brazil.' Watal, J. and Taubman, A. (eds.). *The Making of the TRIPS Agreement: Personal insights from the Uruguay Round negotiations*. Geneva: WTO Publications.

- Economic Times (2008). 'Rich, poor nations trade barbs after WTO talks collapse'. Available Online: <https://economictimes.indiatimes.com/rich-poor-nations-trade-barbs-after-wto-talks-collapse/articleshow/3306203.cms?from=mdr>
- Eglin, M. (1997). 'China's Entry into the WTO with a Little Help from the EU'. *International Affairs*, 7:3, 489-508.
- Ernst, D. (2018). 'The Information Technology Agreement, Manufacturing, and Innovation—China's and India's Contrasting Experiences.' Ernst, D. and Plummer, M.G. (eds.) *Megaregionalism 2.0: Trade and Innovation within Global Networks*, World Scientific Publishing, 361-388.
- European Commission (2018). 'WTO Modernisation – Introduction to Future EU Proposals – concept note'. Available Online: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf
- Farias, D.B.L. (2019). 'Outlook for the 'Developing Country' Category: A Paradox of Demise and Continuity.' *Third World Quarterly*. 40:4, 668-687
- Fehl, C. and Freistein, K. (2020). 'Organising Global Stratification: How International Organisations (Re) Produce Inequalities in International Society.' *Global Society* 34:3, 285-303.
- Fioretos, O. (2020). 'Rhetorical Appeals and Strategic Cooptation in the Rise and Fall of The New International Economic Order.' *Global Policy* 11, 73-82.
- Global Affairs Canada (2021). 'G7 Trade Ministers' Communiqué'. Available Online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/g7/documents/2021-06-03-trade-ministers-ministres-commerce.aspx?lang=eng
- Güven, A.B. (2017). 'Defending Supremacy: How the IMF and the World Bank Navigate the Challenge of Rising Powers.' *International Affairs* 93:5, 1149-1166.
- Hopewell, K. (2020). *Clash of Powers: US-China Rivalry in Global Trade Governance*. Cambridge: Cambridge University Press.
- Hu, W. (2019). 'China as a WTO Developing Member, is it a Problem?' *CEPS Policy Insights*. https://www.ceps.eu/download/publication/?id=25627&pdf=PI2019_16_WH_China-as-a-WTO-developing-member.pdf

- IBSA (2007). 'Tshwane IBSA Summit Declaration, 17 October 2007'. Available Online: <http://www.dirco.gov.za/docs/2007/ibsa1018.htm>
- Ikenberry, G.J. (2018). 'The End of Liberal International Order?.' *International Affairs* 94:1, 7-23.
- Indian Ministry of Industry and Commerce (2015a). 'India & World Trade Organization (WTO) – Other Issues – Information Technology Agreement'. Available Online: <http://164.100.117.46/PageContent.aspx?Id=64>
- Indian Ministry of Industry and Commerce (2015b). 'India's Duty Free Tariff Preference (DFTP) Scheme for Least Developed Countries'. Available Online: http://164.100.117.46/writereaddata/pdf_download/DFTP.pdf
- Kanungo, A.K. (2011). 'The Process of China's Accession to the World Trade Organization: Obstacles and Implications.' *International Studies* 48:3-4, 305-316.
- Khong, Y.F. (2019). 'Power as Prestige in World Politics.' *International Affairs* 95:1, 119-142.
- Kruck, A. and Zangl, B. (2020). 'The Adjustment of International Institutions to Global Power Shifts: A Framework for Analysis.' *Global Policy* 11, 5-16.
- Kunisawa, V.Y.M. (2015). *The TRIPS Agreement Implementation in Brazil*. Baden-Baden: Nomos.
- Lake, D.A. (2009). 'Hobbesian Hierarchy: The Political Economy of Political Organization.' *Annual Review of Political Science* 12, 263-283.
- Lake, D.A., Martin, L.L. and Risse, T. (2021). 'Challenges to the Liberal Order: Reflections on International Organization.' *International Organization* 75:2, 225-257.
- Lavenex, S., Serrano, O. and Büthe, T. (2021). 'Power Transitions and the Rise of the Regulatory State: Global Market Governance in Flux'. *Regulation and Governance* 15, 445-471.
- Lipsky, P.Y. (2020) 'How Do States Renegotiate International Institutions? Japan's Renegotiation Diplomacy Since World War II.' *Global Policy* 11, 17-27.
- Mearsheimer, J.J. (2019). 'Bound to Fail: The Rise and Fall of the Liberal International Order.' *International security* 43:4, 7-50.

- Milani, C.R.S., Pinheiro, L. and Soares de Lima, M.R. (2017). 'Brazil's Foreign Policy and the 'Graduation Dilemma'. *International Affairs* 93:3, 585-605.
- Narlikar, A. (2020). *Poverty Narratives and Power Paradoxes in International Trade Negotiations and Beyond*. Cambridge: Cambridge University Press.
- Noland, M. (1995). 'China and the International Economic System'. *Peterson Institute for International Economics Working Papers* 95-6. Available Online: <https://piie.com/publications/working-papers/china-and-international-economic-system>
- Paixão e Casarões, G.S. and Farias, D.B.L. (2021). 'Brazilian Foreign Policy under Jair Bolsonaro: Far-Right Populism and the Rejection of the Liberal International Order'. *Cambridge Review of International Affairs* online.
- Parlar Dal, E. and Dipama, S. (2019). 'G20 Rising Powers' Status Seeking through Social Creativity: The Case of South-South Development Cooperation.' *South African Journal of International Affairs* 26:4, 663-684.
- Paul, T.V., Welch Larson, D. and Wohlforth, W.C. (2014). *Status in World Politics*. Cambridge: Cambridge University Press.
- Pu, X. (2019). *Rebranding China: Contested Status Signaling in the Changing Global Order*. Stanford: Stanford University Press.
- Rajamani, L. (2006). *Differential Treatment in International Environmental Law*. Oxford: Oxford University Press.
- Rio Times (2019). 'Brazil Agrees to Surrender Special WTO Status for OECD Entry'. Available Online: <https://www.riotimesonline.com/brazil-news/rio-politics/brazil-agrees-to-surrender-special-wto-status-for-oecd-entry/>
- Roger, C.B. (2020) *The Origins of Informality: Why the Legal Foundations of Global Governance are Shifting, and Why it Matters*. Oxford: Oxford University Press.
- Stephen, M.D. and Stephen, K. (2020). 'The Integration of Emerging Powers into Club Institutions: China and the Arctic Council.' *Global Policy* 11, 51-60.
- Thompson, A. (2020). 'Emerging Powers and Differentiation in Global Climate Institutions.' *Global Policy* 11, 61-72.
- Viola, L.A. (2020). 'US Strategies of Institutional Adaptation in the Face of Hegemonic Decline.' *Global Policy* 11, 28-39.

- Weinhardt, C. (2020) 'Emerging Powers in the World Trading System: Contestation of the Developing Country Status and the Reproduction of Inequalities'. *Global Society*, 34:3, 388-408.
- Weinhardt, C. and Schöfer, T. (2021). 'Differential Treatment for Developing Countries at the WTO: The Unmaking of the North-South Distinction in a Multipolar World'. *Third World Quarterly* 43:1, 74-93.
- Weinhardt, C. and ten Brink, T. (2020). 'Varieties of Contestation: China's Rise and the Liberal Trade Order'. *Review of International Political Economy* 27:2, 258-280.
- WTO (1998). 'Communication from India'. WT/GC/W/114. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/w114.pdf&Open=True>
- WTO (1999). 'Report on the Meeting of 6th October 1999'. WT/WGTGP/M/9. Available Online: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=2066,86926,3052,3092,45382,67010,44249,8773,60302,41763&CurrentCatalogueIdIndex=9&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True
- WTO (2000). 'Report on the Meeting of 7th June 2000'. WT/WGTGP/M/10. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/WGTGP/M10.pdf>
- WTO (2001). 'Meeting of the Working Party on the accession of China'. Available Online: https://www.wto.org/english/news_e/news01_e/china_longstat_jul01_e.htm
- WTO (2002). 'United States – Definitive Safeguard Measures on Imports of Certain Steel Products. WT/DS248/R. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/248R-09.pdf&Open=True>
- WTO (2003a). 'Agriculture Framework Proposal'. WT/MIN(03)/W/6. Available Online:

<https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2Fmin03%2Fw6.doc&>

WTO (2003b). 'India'.. WT/MIN(03)/ST/7. Available Online:

https://www.wto.org/english/thewto_e/minist_e/min03_e/statements_e/st7.doc

WTO (2003c). 'Summary Report on the Sixteenth Meeting of the Committee on Agriculture Special Session held on 24 January 2003'. TN/AG/R/6. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/AG/R6.pdf&Open=True>

WTO (2005). 'Ministerial Declaration'. WT/MIN(05)/DEC. Available Online:

https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm

WTO (2013a). 'Minutes of Meeting'. IP/C/M/72. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M72.pdf>

WTO (2013b). 'Minutes of Meeting'. IP/C/M/74. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M74.pdf&Open=True>

WTO (2014). 'World Trade Report 2014. Trade and Development: Recent Trends and the Role of the WTO'. . Available Online:

https://www.wto.org/english/res_e/booksp_e/world_trade_report14_e.pdf

WTO (2017a). 'Proposal on Domestic Support, Public Stockholding for Food Security Purposes and Cotton'. JOB/AG/99. Available Online:

[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Language=ENGLISH&SourcePage=FE_B_009&Context=Script&DataSource=Cat&Query=\(%40Symbol%3D\(G%2FAG%2F*+OR+TN%2FAG*+OR+JOB*\)\)+AND+%40Title%3DAgricultur*+AND+%22food+security%22+AND+\(stockholding+OR+%22work+program%22\)\)&DisplayContext=popup&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Language=ENGLISH&SourcePage=FE_B_009&Context=Script&DataSource=Cat&Query=(%40Symbol%3D(G%2FAG%2F*+OR+TN%2FAG*+OR+JOB*))+AND+%40Title%3DAgricultur*+AND+%22food+security%22+AND+(stockholding+OR+%22work+program%22))&DisplayContext=popup&languageUIChanged=true#)

WTO (2017b). 'Elimination of AMS to Reduce Distortions in Global Agricultural Trade'. JOB/AG/102. Available Online:

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=237728&CurrentCatalogueIdIndex=0&

[FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://www.wto.org/english/res_e/booksp_e/ita20years_2017_full_e.pdf)

WTO (2017c). '20 Years of the Information Technology Agreement Boosting Trade, Innovation and Digital Connectivity'. . Available Online:

https://www.wto.org/english/res_e/booksp_e/ita20years_2017_full_e.pdf.

WTO (2018). 'Structured Discussions on Investment Facilitation'. JOB/GC/169.

Available Online: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=241891&Current

WTO (2019a). 'An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance'. WT/GC/W/757. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W757.pdf>

WTO (2019b). 'The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development and Ensure Inclusiveness'.. WT/GC/W/765/Rev.2. Available Online:

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=251955&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

WTO (2019c). 'Statement on Special and Differential Treatment to Promote Development'. WT/GC/202. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/202R1.pdf>

WTO (2020). 'Application for Accession of Brazil to the Agreement on Government Procurement'. GPA/152. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/PLURI/GPA/152.pdf>

WTO (2021). 'Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19'. IP/C/W/669/Rev.1. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True>

Zangl, B., Heußner, F., Kruck, A. and Lanzendörfer, X. (2016). 'Imperfect Adaptation: How the WTO and the IMF Adjust to Shifting Power Distributions among their Members.' *The Review of International Organizations* 11:2, 171-196.

Zarakol, A. (2017) *Hierarchies in World Politics*. Cambridge: Cambridge University Press.

Chapter Four

Identity at the WTO: How China Defends its Developing Country Status

The People's Republic of China (PRC) identifies as the world's 'largest developing country' (WTO 2018b). This identity holds particular salience in the World Trade Organization (WTO), where self-declared developing countries can access special trading rights, collectively referred to as Special and Differential Treatment (SDT). The fact that access to SDT rests on self-declaration has in turn placed the binary North-South distinction and developing country status centre-stage at the WTO. The US trade delegation, in particular, has problematized a seemingly outdated bifurcation of the WTO membership into developed and developing states:

We also must include new voices, find new approaches to problems, and move past the old paradigms we have been using for the last 25 years. We need to look beyond simple dichotomies like liberalization vs. protectionism or developed vs. developing. Let's create shared solutions that increase economic security (USTR 2021).

For the most part, differential treatment at the WTO takes the form of exemptions from core treaty obligations, more generous implementation schedules and access to technical assistance. These derogations from a standard set of trade rules are available to any WTO member that self-identifies as a developing country. The strong economic growth posted by emerging economies such as Brazil, China and India since the WTO's establishment in 1995 have in turn made a broad, one-size-fits-all form of SDT more controversial. The dynamic growth of China in particular has often resulted in the need for Chinese policy-makers to promote different images of China to different audiences, e.g. as a great power or a developing country (Yang 2021; Pu 2019).

A closer look at recent US-led contestation of differential treatment – and the practice of self-declaration – reveals the position that China assumes as the prime target of US critiques. In this paper, I examine how China has defended its status as a

developing country in response to such contestation. Methodologically – and in line with recent work on poverty narratives in WTO trade negotiations (Narlikar 2020) – I employ narrative analysis to delineate different categories of arguments – and corresponding self-images – that constitute China’s status defence. Using statements and communications submitted to the WTO by the Chinese trade delegation since 2017, I show how – in this forum – the PRC adopts multiple, sometimes contradictory sets of arguments to justify its self-labelling as a developing nation.

China’s defensive arguments fall into four categories. Firstly, the Chinese delegation has both marshalled socio-economic indicators that purport to underline its continued developmental challenges and has – paradoxically – sought to discredit attempts to ‘objectively’ demarcate developing country status with fixed criteria. Secondly, securing the existing system of special rights forms part of larger Chinese calls for a defence of multilateralism. This is supplemented, thirdly, by arguments that SDT actually promotes integration into the world economy and is required to counteract historical and contemporary imbalances in global trade. A fourth and final set of arguments comprises China’s self-promotion as a model member of the WTO. Notably, this entails the recognition that while China’s *use* of SDT should be rethought, its *right* to these special provisions should not be altered. Out of these sets of arguments, four promoted images of China emerge – an objectively classifiable developing country, a defender of a multilateral system at risk, a victim of historical and contemporary inequities, and a strong member cognizant of its responsibilities in international politics.

These findings go beyond established research on China’s status in the international system. Firstly, recent scholarship on China’s image promotion remains too broad-brush to account for the mixture of identity narratives that comprise PRC foreign policy in practice (Yang 2021). Models of status signalling that rely on a specific image being promoted to a specific audience thus require updating (Pu 2019). Instead, this article delineates overlapping narratives on a specific policy issue in a specific international forum. Uncovering this mixture of self-images contributes, second, to our understanding of China’s position in the WTO and the international system more broadly. On the one hand, Chinese efforts to maintain the existing

system of special rights counter portrayals of the PRC as a spoiler of the international order (compare Kim 2020). On the other, the difficulties China encounters when marrying its economic development with its developing country identity underline the lack of a coherent, overarching Chinese strategic narrative (on Chinese narratives see also Zeng 2017; Ogden 2020). This in turn calls into question scholarship on China's conclusive status as a revisionist or status quo power in international politics (Malkin 2019; Wu 2018; Yang 2020; Nordin & Weissmann 2018).

The following section provides an overview of debates concerning China's developing country status and international identity in recent years. In particular, this article's contribution to scholarship on China's engagement with international order, Chinese status signalling and the role of the PRC in WTO politics is outlined. Thereafter, empirical sections delineate narratives on classifying developing countries, the defence of multilateralism, the logic of differentiation and China as a model WTO member. A conclusion ties together the key findings of the article and shows how in the case of the WTO multiple images overlap. This calls into question accounts that seek a greater coherence in Chinese strategic narratives.

China's Status as a Global Power

The rise of China presents a fundamental challenge both for Chinese officials tasked with articulating new directions in PRC foreign policy and for analysts of (liberal) international order. At its core, this challenge rests on contention over the status of China as a global power and the responsibilities that subsequently accrue to it in international politics (compare Bukovansky et al. 2012). Moreover, the retreat of the United States under Trump from its position as chief underwriter of liberal order has contributed to a crisis of multilateralism that adds particular salience to questions of China's position in global politics (Stokes 2018; Trubowitz and Harris 2019; Nye Jr, 2019; Parmar 2018).

Conflicting ideas over actors' responsibility in international relations can be observed with regards to the rights of developing countries in international climate and trade politics. The climate regime's norm of Common But Differentiated Responsibilities (CBDR) and the WTO's SDT norm centre on the idea that global rules concerning climate change mitigation and trade regulation should allow for implementation flexibilities and access to technical assistance for developing states. In the trade case, however, membership of the developing country category is based on self-declaration: instead of a fixed set of criteria to determine developing country status, WTO members are labelled as developing if they self-identify as such. China's rise since the millennium, and its continued insistence on being a developing country in the WTO, thus come into conflict with ideas about responsibility in international relations (see Weinhardt and Schöfer 2021). While the PRC has shown itself ready to take on more responsibilities in other forums – such as the G20 (Zhang 2016) – at the WTO its self-defined developing country status seems ill-fitting to other major players.

Status signalling in Chinese foreign policy

Pu (2018) argues that status signalling is a primary concern for Chinese policy-makers, both with regards to domestic and international audiences. On some issues, this results in assertive attempts to establish China's status as a great power. On others, a contradicting position is assumed and the PRC is portrayed as a developing country. Whilst the PRC promotes its developing country status when 'shirking

responsibilities and seeking solidarity and followers', in international institutions it identifies as an emerging power to seek privileges (Pu 2019, 101-102). Pu's status signalling model suggests that this strategy can be pursued for three reasons: the avoidance of responsibilities, the countering of perceptions of the PRC as a threat, and solidarity with other developing countries.

Focusing on global governance reform, Yang (2021) adopts a similar approach. He analyses narrative changes during the Xi era (2013-) as part of a new emphasis on 'discourse power' in Chinese diplomacy. Drawing on Social Identity Theory, Yang argues that in different regimes of international politics – climate change, human rights and internet governance – China employs different strategic narratives and that this variation is in turn linked to its interests and level of support for the underlying norms in each issue area. This 'multi-pronged narrative strategy' (Yang 2021, 305) thus accounts for variation across issues, but finds coherent narratives in each regime area. Nevertheless, I argue that these models of Chinese status signalling are too broad-brush, making the assumption that in a specific forum and on a specific issue a single narrative or image of China is promoted. However, as shown below with the case of the WTO, in practice Chinese foreign policy is less clear-cut.

China's defensive stance towards redefinitions or reappraisals of its status by *other* actors can be explained with the help of a historical lens. Labelled by Yong Deng as the 'most status-conscious country in the world', the Chinese state is a fervent status seeker, as it perceives status to be automatically connected to its core national interests (Deng, 2008; Khong 2019, 139). Yan Xuetong (2001) in turn points to the loss of status China experienced in the 19th and 20th century as an enduring factor in shaping Chinese foreign policy. Regaining this lost ground and restoring China to a fair position, or as Renshon (2017) puts it, its 'rightful place', is consequently a primary concern for PRC policy-makers. Khong (2019) argues that these historical legacies drive Chinese foreign policy to such a degree that US-China geopolitical rivalry can best be understood as a competition over prestige. Indeed, in her scholarship on the legacies of Versailles in China, Rosemary Foot (2019) has shown how narratives of victimhood linger on in Chinese politics and help to influence or

even distort PRC approaches to international relations. A historically unequal position in international society has thus moulded a Chinese view of global politics, which has remained resilient to significant changes in the PRC's economic and political weight on the world stage.

At the same time, the Chinese state's attempts to build its international status as a great power is linked to the political legitimacy of the Chinese Communist Party (Zeng and Breslin 2016). Indeed, one could similarly argue that China's ties with developing countries – labelled South-South cooperation – are another vital source of party legitimacy. Hu (2019) argues that China's claim to be a developing country in the WTO derives from this championing of South-South cooperation as a strategic priority for Chinese diplomacy. China's self-ascribed status as a developing country – i.e. a 'weaker' actor – must consequently be viewed against this backdrop, as status critiques by other actors sit uneasily with a renewed Chinese appreciation for historical victimhood and path-dependent diplomatic identities.

China and the international system

Academics and foreign policy practitioners have often debated China's *future* role as a spoiler or supporter of an international status quo (Schweller and Pu 2011; De Graaff and Van Apeldoorn 2018; Womack 2016; Wu 2018) – or even as an alternative hegemon. US retraction under the Trump administration in turn shifted the focus to defining China's *current* position (Layne 2018; Liu 2020; Nordin and Weissmann 2018; Yang 2020). Recent research on Chinese foreign policy thus often uses its findings to evaluate China's challenge to – or contestation of – (liberal) international order (compare Malkin 2019; Lee, Heritage and Mao 2020). This scholarship is varied and includes work on China's push for normative change in a hierarchical – and liberal – international order (Zhang 2016), as well as more direct analyses of China's potential for Great Power status in the international system (Larson 2015; Zeng and Breslin 2016). As Jones (2019) points out, however, debates on Chinese engagement with international institutions build on the application of a false dichotomy that seeks to conclusively portray China either as a status quo or a revisionist power. At their core, these analyses fall short in their ability to examine PRC foreign policy due to their broad-brush nature. While scholars on both sides of

this artificial divide can consequently marshal evidence in their favour, the base assumption of a unifying coherence to China's strategic narratives allows them to broaden their findings to evidence for China's role as a challenger or a supporter of the international status quo. As argued below however, the interplay of Chinese strategic narratives often results in a more blurry approach to international relations.

Ertl and Merkle (2019, 10) highlight that China's self-promotion as a developing country takes place at the intersection of its strategic interest in the advantages accompanying certain statuses in international institutions and the recognition that it primarily benefits from membership in a multilateral system at risk. While the PRC consequently sees it as important to signal to other developing countries that it 'continues to be on their side', its increasing geostrategic ambitions have made industrialised countries more wary of its status projection. At the same time, the need for China to assume a greater share of responsibilities in multilateral bodies has become a topic of debate. Noting the increased role of the PRC in the International Monetary Fund, World Bank, multilateral development banking and international climate politics, Dollar (2020) sets these trends in parallel to a continued Chinese insistence on clinging on to developing country status:

While China is an active player in global economic institutions, it has been careful to define itself as a developing country and to avoid taking the responsibilities of rich countries.

Unequal international treatment in turn comprises a major theme of Zeng, Xiao and Breslin's (2015) review of political science debates within the PRC. Not only do scholars like Shi Yinhong (Zeng et al. 2015, 246) stress a no-compromise, defensive attitude towards core state interests, but the issue of China's supposedly unfair treatment is also stressed. As one scholar analysed by Zeng et al. (2015, 249) notes: 'some countries usually categorize China as a weak developing country when discussing China's rights and interests but consider China a developed major power when discussing China's responsibility.' US hegemonic interests thus allegedly seek to 'discredit and distort western public opinion about developing countries such as China.' The need to marry such defensive positions on the PRC's developing country identity with the geo-economic reality of China's rise subsequently entails a major

strategy dilemma for PRC policy-makers. Pu and Wang (2018, 1035) argue that precisely the speed, rather than the scope or direction of China's rise, make the articulation of new foreign policy a daunting challenge, particularly as it continues to associate superpower status with negative connotations. Instead, cooperation with actors that reaffirm China's status as a developing country is welcomed, as evidenced by Sino-Indian solidarity on PRC developing country status (Pu 2017, 163). Gao Feng, a Chinese Ministry of Commerce official, perhaps best summarizes the difficulties associated with a defensive stance:

China is the largest developing country in the world. We do not shy away from our international responsibilities and are willing to assume obligations in the WTO that are compatible with our own economic development level and capabilities (...) At the same time, we will work with other developing members to firmly uphold our fundamental rights and to voice our common voice and safeguard our development interests (South China Morning Post 2019).

China and the WTO

China's status in world politics also holds significant implications for ongoing negotiations at the WTO. Weinhardt (2020) finds that China's use of this status is based both on its identity as part of the 'Global South' and its strategic interest in gaining privileges with this lower status. Resistance against the creation of an 'emerging economy' group in the WTO and rejection of the critical label 'advanced developing country' in turn accompanies these dual drivers. Indeed, zooming in on the WTO context, Gao (2011) argues that there is a disconnect between China's *political* position and its *economic* interests. This makes it unlikely for the PRC to simultaneously continue acting as a developing country in negotiation coalitions such as the G33 on agriculture and trade facilitation, while officially deviating from developing country status. The defensive attitude of the PRC in this regard can be partially explained by the strict accession protocol requirements it faced upon joining the WTO in 2001. As Gao (2011) puts it, the US and the EU were the main authors of these entry conditions and now 'want China to behave like a "normal" WTO Member, or even to go beyond what normal WTO Members would offer by

taking up “leadership responsibility”. Here again, the issue of status redefinition is fused with conflicting ideas about responsibility in international relations.

The problem of defining China’s status within the auspices of the WTO is further placed by many analysts at the heart of ongoing deadlock in the Doha Round of negotiations. Highlighting the juxtaposition of the PRC’s *‘economic identity’* – akin to that of industrialised countries – and its *‘political identity’* as part of the ‘Global South’, Bishop and Zhang (2020) accentuate that China’s self-identification has made Western countries suspicious of its actions – or lack thereof – in the WTO. This identity divide is further contradictory for Chinese policymakers themselves, as they are caught between narratives of responsibility towards other developing states and the economic fact that the PRC’s markets are primary competitors to these economies. This results in what Bishop and Zhang (2020) term China’s ‘reluctant leadership’ – the deliberate hesitancy by the PRC to engage more prominently in WTO affairs. Such a reserved approach simultaneously prevents China from pushing for liberalization of global markets in Geneva (Hopewell 2016, 146) and comes into direct conflict with expectations that a trader of its size should act ‘more responsibly’.

The stark economic development of China since WTO accession in 2001 further complicates the political question of its status as a developing country. As Li (2020) argues, the ‘global re-division of labour’ that China’s rise entails engenders challenges both for developed and developing countries. Hu (2019) stresses that developing country status and China’s post-accession position in WTO politics are not problematic *per se*; they do however complicate and slow down the negotiation of *future* legislation – particularly on fisheries subsidies and e-commerce. Moreover, Shaffer and Gao (2018, 20) show how both the United States and European Union have often put pressure on China to be ‘more responsible’ and depart from the position of other developing countries on new negotiation issues. Defining China’s status and the question of its continued access to special, developing country rights consequently form a political stumbling block in ongoing talks on WTO reform.

Indicator Fights: How to Measure Development

Contention over self-declaration as the applicatory framework for differential treatment has resulted in a search for alternative criteria to define developing country status. The supposedly ill-fitting bifurcation of WTO members into developing and developed states has been critiqued, using indicators designed to underline both the heterogeneity of the developing country group and the similarity of larger emerging economies to 'Global North' states. While the former questions the continued validity of a one-size-fits-all approach to differentiation, the latter seeks to disqualify certain larger states from the rights encompassed in Special and Differential Treatment altogether. The desire to exclude certain traders from the WTO's special rights regime comes to the fore most clearly in the case of China. As a result, debates over concrete development indicators characterise both efforts to strip China of its self-declared developing country status and its status defence as the world's 'largest developing country' (WTO 2018b; WTO 2018c; WTO 2019b).

Statistical disputes over China's economic prowess represent a core format of recent American critiques of the Chinese economy. In July 2018, a US Communication to the General Council entitled *China's Trade-Disruptive Economic Model* marshalled a long list of indicators to argue against China's developing country status (WTO 2018b). The PRC's economic outpacing of other traders was consequently highlighted using real GDP growth rates, the size of its foreign exchange reserves, and the high level of its goods exports. From a technological perspective, the number of supercomputers, high-speed trains, artificial intelligence ventures and solar panel producers in China was, in turn, used to discredit the notion that the PRC was underdeveloped in sectors that contribute to a 'digital divide' between the 'Global North' and 'Global South'. The alleged disconnect between China's economic trajectory and the socio-economic structures of other developing countries was further illustrated using miscellaneous indicators, ranging from the size of its automotive market, its level of meat consumption and the number of megacities in its territory, to statistics on its defence budget, oil imports and domestic art market. Cumulatively, these markers of economic success allowed the US trade delegation to tackle China's development status head-on:

(...) [T]he claim that it is a developing country on par with many others, and therefore exempt from contributing to progressive liberalization of global trade rules is simply not sustainable when measured against numerous indicators of China’s development and accumulation of wealth (WTO 2018b).

These initial misgivings concerning China’s self-labelling as a developing country were amplified in January 2019, when the United States submitted a 45-page communication to the WTO calling for reform of differentiation (WTO 2019a). At the outset, the communication stresses that the least-developed country group (LDCs) supposedly represents the only significant subset of the ‘Global South’, as its membership is based on UN-authored criteria – criteria that also allowed for the graduation of countries from LDC status. The larger bifurcation of WTO members into developed and developing countries – without formal entry and exit requirements – was in turn lamented:

Each is a seemingly static set, regardless of economic, social, trade, and other indicators (WTO 2019a).

The primary content of this document – entitled *An Undifferentiated WTO: Self-declared development status risks institutional irrelevance* – is a long list of socio-economic statistics, aimed at discrediting self-declaration as a relevant tool for overcoming developmental divides. While the official goal of the communication was to problematize self-declared differentiation in general by marshalling evidence of strong development in individual ‘Global South’ states, the stark singling-out of China in these indicators cannot be overlooked. The table below summarizes the indicator list, highlighting the focus on the PRC as a developmental counter-example:

Table 1. Mentions of China, India, Brazil, South Korea, Singapore and Total No. of Developing Country Mentions per Indicator in WT/GC/W/757 (WTO 2019a).

Indicator	China	India	Brazil	S. Korea	Singapore	Total
HDI	Yes	Yes	No	Yes	Yes	11
GDP	Yes	Yes	No	No	No	2

GNI per capita (ppp)	Yes	Yes	No	No	No	3
GNI per capita growth	No	No	No	Yes	Yes	13
GDP per capita	No	No	No	No	No	4
Labour Force in Agriculture	Yes	Yes	No	Yes	Yes	11
Share Global Agriculture Trade	Yes	Yes	No	No	No	2
Urbanization	Yes	No	No	Yes	No	12
Global Exports Share	Yes	Yes	No	Yes	No	6
Export Volume and Value	Yes	Yes	Yes	Yes	Yes	9
Top High-/Med-Tech Exporters	Yes	No	No	Yes	Yes	3
High-/Med-Tech Share in Manufacturing	Yes	Yes	No	No	No	9
ATP Exports	Yes	No	No	Yes	Yes	4
IP Royalties	Yes	No	No	Yes	Yes	3
Outward FDI	Yes	No	No	No	No	1
Inward FDI	Yes	No	No	No	No	1
Corporate Size	Yes	Yes	Yes	Yes	Yes	7
Supercomputer Technology	Yes	No	No	No	No	1
Space Technology	Yes	No	No	No	No	1
Military Expenditure	Yes	Yes	No	No	No	4

Naval Shipbuilding	Yes	No	No	No	No	1
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Clearly, a US ‘indicator push’ is primarily targeted at underlining the economic might of China compared both with other developing countries and industrialised economies: China is mentioned in almost every one of the above statistical categories, with five indicators dealing solely with developments in the PRC. Stylistically, China usually is the first country mentioned in the discussion of each indicator and receives more descriptive attention than other states in the same paragraph – these are often just listed.

‘Objectivizing’ the membership criteria of the developing country group by formulating development indicators and singling out states – most evidently China – that seem to have overstayed their welcome has in turn allowed Chinese counter-initiatives to emerge. A central plank of China’s defence of its developing country status consequently rests in the criticism of indicators chosen by the US to declassify it, and the parallel formulation of alternative indicators that stress the continued developmental challenges faced by the PRC. In a direct response to the US-authored indicator list, the Chinese delegation to the WTO thus questioned the validity of the communication’s methodology:

The paper selectively picks indicators which exaggerate the level of development of some developing Members and uses them to challenge the practice of self-declared development status at the WTO (WTO 2019b).

Cherry-picking statistical data, so the narrative, leads to the neglecting of key characteristics of the Chinese economy – or in general the economies of developing countries. In particular, per capita income and North-South gaps in sciences and technology, economic structure, regional balance, social administration and quality of development were listed as missing variables in determining a country’s membership of the developing country group. The US paper’s focus on economic aggregate data was further blamed for inaccurately reflecting the key characteristics of developing economies (Ibid.). Moreover, following co-sponsorship of a *Statement*

on *Special and Differential Treatment to Promote Development* in October 2019, the Chinese delegation stressed:

People have to face the reality that not a single selected indicator, or even a few, could determine the application scope of special and differential treatment, as development is such a complex issue (WTO 2019g).

Perhaps the strongest answer to a US-centred singling out of the Chinese economy as a statistical anomaly in the developing country group comes in the form of a February 2019 Communication by China, India, South Africa and Venezuela: in *The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development*, the signatory states decry '(...) recent attempts by some Members to selectively employ certain economic and trade data to deny the persistence of the divide between developing and developed members (...)'

(WTO 2019d). The potential for a selectively chosen group of indicators to paint a pre-conceived picture of global inequalities, however, also comes to the fore in a list of counter-statistics, designed to underline continued North-South divides. The table below summarizes this indicator list and its mentions of China as a measurable developing country:

Table 2. Mentions of China, India, Brazil, Indonesia, South Africa and Total No. of Developing Country Mentions per Indicator in WT/GC/W/765 (WTO 2019d).

Indicator	China	India	Brazil	Indonesia	S. Africa	Total
GDP per Capita	Yes	Yes	Yes	Yes	Yes	5
Share of World's Poor	Yes	Yes	No	No	No	10
Number of Undernourished	Yes	Yes	No	Yes	No	10
Agriculture Value Added per Worker	Yes	Yes	No	Yes	No	3
Domestic Support per Farmer	Yes	Yes	Yes	No	No	3

Total Rural Population	Yes	Yes	No	Yes	No	5
No. Of Farmers per Hectare	Yes	Yes	No	Yes	No	6
Share of Agriculture in Labour Force	Yes	Yes	No	Yes	No	8
IP Receipts	Yes	Yes	Yes	No	No	3
Energy Use per Capita	Yes	Yes	Yes	Yes	No	4
Commercial Banks per 100,000	Yes	Yes	Yes	Yes	No	4
No. Of R&D Researchers per 100,000	Yes	Yes	No	No	Yes	3
Company Efficiency	Yes	No	Yes	No	No	2
Bertelsmann Globalization Index	Yes	Yes	Yes	No	No	5

China – along with the other BIC states – is the main focus of the statistical defence piece. Stylistically, and in contrast to the US Communication cited above, the economies of Global North states – usually the Quad – are described, followed by juxtaposition with trends in developing countries.

Such manipulation of trade statistics in turn underlines difficulties in finding objective membership criteria for the developing country group. The implementation issues one encounters when trying to determine such group limits from the outside, i.e. on a non-self-declaratory basis, can be seen in the Chinese reaction to a later US proposal on shrinking the developing country group: the US trade delegation sought to limit special and differential treatment to countries that were not OECD or G20 members, did not belong to the World Bank’s ‘high income’ country category, or accounted for less than 0.5% of global merchandise trade (WTO 2019c). In a December 2019 reaction statement, the Chinese trade delegation

questioned the appropriateness of these restrictions. Using a constructed statistical counterexample, the Chinese ambassador to the WTO argued that the World Bank's high-income criteria did not match levels of development. It was argued that a small, yet economically underdeveloped country, such as Antigua and Barbuda, would be classified as high-income due to the presence of just a handful of billionaires. Similarly, states that heavily rely on a single commercial activity, like the export of crude oil, could be classified as high-income without a concurrent developed country economy. Regarding G20 membership, the Chinese delegation argued that the platform represented a political forum designed to deal with the Global Financial Crisis, comprising both developed and developing states, rather than an organization of industrialised economies (WTO 2019h).

During the October 2020 General Council Meeting, conflicts over what the US termed the 'automatic entitlement to blanket special and differential treatment' (WTO 2020a) came to a head, as the US mission to Geneva argued that the misuse of SDT by larger traders significantly contributed to the paralysis of the WTO. As a result, an initial focus on criticizing abstract larger traders was quickly replaced by direct confrontation with China, employing a variety of economic indicators. Statistics on the volume of Chinese global merchandise trade, the size of the PRC economy, and its per capita income, were put in relation to the combined economic performance of the LDC group – thereby underlining the vast differences in the developing country camp (Ibid.). In a similar move, the PRC's per capita income in 1995 – smaller than that of Pakistan or Kenya – was put in the context of its current level and compared to the size of the aforementioned economies (Ibid.). In response to this statistical push, the Chinese delegation introduced its statement by reaffirming that '(...) the debate on criteria to differentiate developing members is totally meaningless (...)' (WTO 2020b).

Contention over the use of indicators – and which selection would be appropriate – to measure development consequently allows China to defend its status as a developing country by portraying attempts to articulate group membership criteria as too narrowly focussed. At the same time however, China employs alternative

criteria to promote its image as an 'objective' developing economy. In the words of the Chinese trade delegate in Geneva:

(...) [S]ome artificially formulated standards cannot solve the numerous challenges and problems facing the developing members. (...) The right direction is to respect each country's right to self-declaration based on their own development situation and encourage them to make international contributions within their capabilities (WTO 2019h).

Defending Multilateralism: SDT and US Unilateralism

The preservation of China's status as a developing country at the WTO is closely linked to a larger Chinese narrative on defending multilateralism against a more unilateral American foreign policy. As the United States represents the primary critic of China's continued SDT use, frequent Chinese interventions on the disruptive behaviour of the US in the WTO, as well as appeals for the maintenance of established forms of trade governance, allow the PRC to delegitimize – or shift focus away from – American initiatives at reclassifying the developing country group. Defending multilateralism consequently entails countering the US' trade rhetoric and keeping the hitherto categorization of WTO members' rights and obligations protected from reform.

This mixture of a legal 'conservatism' regarding the unaltered functioning of WTO politics and a supposed defence of multilateralism gained strength from 2017 onwards as explicit US criticism of the Doha Round emerged. The Chinese delegation in Geneva consequently stressed that a confrontational mode of politics, based on blaming one another for the failings of the WTO should be avoided (WTO 2017). At the same time, the PRC trade delegate warned that '[w]e must respect the existing rules (...) if we abandon the existing rules, our move to set new rules will not go far. It will be like water without source, a tree without root' (Ibid.). Conflicts over the powers of the Appellate Body in turn allowed Chinese diplomats to portray the US as a spoiler of international trade law: the judicial arm of the WTO – often contrasted with its deadlocked legislative function – was deemed by the US government to systematically overreach into national jurisdictions. This resulted in the blocking of new appointments to the AB by the US, a process that by 2020 ensured that the WTO's 'trade court' no longer functioned. Honing in on this obstructionism added salience to Chinese calls for a defence of multilateralism against unreasonable proposals or policies emanating from the United States.

The 'unprecedented challenges' faced by WTO members consequently centred on 'respond[ing] to unilateralism and protectionism' (WTO 2018a). Furthermore, it was argued that 'what is most dangerous and devastating is that the US is systematically challenging these fundamental guiding principles by blocking the selection process of

the Appellate Body members, applying restrictive trade measures under Section 232 and threatening to impose tariff measures of 50 Billion USD of goods imports from China (...)’ (Ibid.). A necessary corollary of this criticism of the US was a Chinese call for joint counter-efforts designed to protect the existing system and its rules from US activism (Ibid.). Bifurcating trade politics into the conservation of the existing system – including rules on SDT and self-declaration – and US unilateral moves – seemingly against the proper functioning of the WTO – consequently secured China’s developing country status as part of a wider multilateralism in crisis. The need for a ‘safeguarding’ of multilateralism in turn rested on the notion that unrestrained unilateralism would damage economies worldwide, but particularly those of developing countries (Ibid.).

Both in submitted communications and in statements before the General Council, a strong Chinese support for the multilateral system is voiced, coupled with an opposition to unilateral/protectionist rhetoric (WTO 2018a; WTO 2018c; WTO 2019e; WTO 2019f; WTO 2019g; WTO 2019h). In several instances, the United States is directly called out in these documents and called upon to cease its blocking of the AB (WTO, 2018a; WTO 2019b; WTO 2019f; WTO 2019h). Following the US proposal for an ‘undifferentiated WTO’, the key position of SDT as part of a multilateral trading system that should be preserved, comes to the fore: as a Chinese statement from early 2019 underlined ‘[s]pecial and differential treatment is a key policy tool for addressing development divides and capacity constraints and therefore is indispensable for the multilateral trading system’ (WTO 2019b). The PRC trade delegation went on to stress that neither SDT nor self-declaration was to blame for the malfunctioning of the legislative arm of international trade law. Instead, ‘the unreasonable power structure of the multilateral trading system’ had stalled negotiations in the Doha Round (Ibid.). The Chinese trade delegate summarized the key distinction that SDT –and self-declaration – represented a core feature of trade multilateralism – as opposed to a derogation from it – as follows:

In the eyes of our US colleagues, special and differential treatment seems to be a loophole in the multilateral trading system. But to me, it is rather a

narrow path that developing Members have to take to keep up in a structurally biased system (Ibid.).

This placement of SDT at the centre of a multilateral order at risk was further expanded upon in a longer co-submission by China to the General Council:

Any attempt to dilute S&DT would be in conflict with the fundamental premise of equity and fairness that underpins an international treaty framework in a context of a Membership as diverse as that of the WTO. If the promise of taking everyone along is a desirable objective to be fulfilled and if inclusiveness has to be ensured then S&DT for all developing Members is the obvious solution (WTO 2019d).

China's developing country status and the hitherto applicatory framework for SDT is consequently embedded in a rhetoric of multilateralism promotion, centred on stressing threats to the established trading order, either in abstract or with direct reference to a more aggressive US trade policy. In the second half of 2019, this trend becomes most apparent: following the effective shutdown of the Appellate Body, the Chinese delegation was quick to claim that this development marked the 'most severe blow to multilateralism since its establishment' (WTO 2019h). Moreover, support for the AB was explicitly connected to support for multilateralism, thereby again attacking the US for its increased protectionism during the Trump administration. In fact, the conflict over the AB was portrayed as a fight of '1 versus 163', which had 'jeopardized the whole multilateral trading system' (Ibid.). In the same statement, China again stressed that it was not the role of the WTO to 'dictate any Member's model for development' but should rather be aimed at being as inclusive as possible (Ibid.).

Integrating SDT and self-declaration as a central and defining plank of the established multilateral system, whilst simultaneously stressing the 'unprecedented challenges' (WTO 2018a; WTO 2019e; WTO 2019f) that US foreign policy initiatives produced, consequently allow China to defend its developing country status by carving out a role for itself as a supposed defender of multilateralism. Or, as an October 2019 statement by the Chinese trade delegation accentuated:

For developing Members, special and differential treatment is no way a free lunch, nor is it a shield not to make any contributions to the multilateral trading system. Quite the opposite actually (WTO 2019g).

At the 2021 General Council meeting, the Chinese representative expanded this defence by placing SDT at the centre of WTO reform efforts aimed at ‘strengthening the multilateral character of the World Trade Organization’:

The rules-based multilateral trading system must be more inclusive, with development at its core, by providing sufficient flexibilities and strengthening technical assistance and capacity building for developing members to be effectively integrated into global trade. S&DT is an integral part of the multilateral trading system (WTO 2021).

The Logic of Differentiation: Defining the Purpose of SDT

Linked to the positioning of differential treatment at the centre of a PRC multilateralism push, China also defends its support for self-declaration by promoting an integrative core logic as the *raison d'être* of SDT. This effectively entails a rebranding of differentiation as a developmental tool designed to *increase* developing countries' participation in world trade, rather than the carving out of a special position at the margins – or even outside of – international trade governance. This latter interpretation of SDT use is often invoked by critics of existing differentiation schemes – notably the US – as derogations from a one-size-fits-all corpus of trade law are seen as fundamentally weakening the WTO's negotiating function and its core principle of equal treatment. Ornelas (2016) for instance claims that although SDT's formal goal is to foster export-led growth in developing countries, empirical and theoretical support for its efficacy remains lacking. Going against the dual pillars of the multilateral trading system – reciprocity and non-discrimination – special carve outs for developing countries are thus deemed to be stalling the efficiency of trade multilateralism. (Re-)defining the purpose and origins of SDT in turn allows China to counter such contention, particularly over larger traders' continued use of differential treatment.

Already prior to the US proposal on 'undifferentiating' the WTO, China promoted the idea that its own economic history since the 1990s underlined the critical importance of integrating into global value chains in order to spur development (WTO 2017). This, in turn, put the onus on the WTO to 'creat[e] a more favourable environment for the developing countries to engage in trade' (Ibid.). Indeed, when faced with critiques of its economic model in 2018, a PRC Communication stated that it 'vigorously support[s] the integration of developing members into the multilateral trading system' (WTO 2018c). With the emergence of explicit US critiques of self-declaration, this integrative emphasis was complemented by an SDT defence concerning differential treatment's historical origins and its necessity as a tool to combat unfair subsidies and protections in the industries of the 'Global North'. This latter justification for continued granting of SDT to a broad and varied group of developing countries rests on the notion of 'reverse SDT' – comprised of domestic

support in industrialised economies – requiring a counterweight of similar format for states in the ‘Global South’ (WTO 2019d).

The historical argument for SDT rests on the idea that differential treatment represents a negotiation outcome that was pursued by developing countries both as a counterbalance to previous exclusion and as a palliative for the otherwise negative impacts of negotiated commitments. As the Chinese trade delegation’s statement on the US’s *Undifferentiated WTO* proposal put it:

[SDT] is the result of the painful negotiations in which developing Members have paid a high price in exchange, and therefore an integral and indispensable part of the multilateral trade rules. To correct historic discrimination, from Enabling Clause to Agreement on Textiles and Clothing, developing Members fought hard to get special and differential treatment in the negotiations (WTO 2019b).

At the same time, flexibilities in favour of developed countries and trade distortive measures in the Global North should, so the narrative, be addressed via SDT. In *The Continued Relevance of Special and Differential Treatment*, China – along with India, South Africa and Venezuela – consequently derides US Blue Box exceptions on corn, wheat, cotton and rice in the revised Draft Agriculture Modalities Text as ‘Reversed S&DT’ (WTO 2019d). Indeed, developed country subsidies in agriculture would continue to be a plank of contention in Chinese statements on differential treatment (WTO 2019d; WTO 2019e; WTO 2019h). Exceptions for developed members in the Nairobi Decision on Export Subsidies were further highlighted, supplemented by the claim that ‘[s]uch reversed S&DT has led to the long-lasting imbalances in the multilateral trading system’ (WTO 2019d). The same document goes on to promote the integrative core logic of SDT in a section on the practice of self-declaration:

This practice has served to allow developing Members to gradually comply with GATT/WTO disciplines and to integrate themselves in the multilateral trading system with a negotiated degree of policy space. It is an instrument to render their economic integration more sustainable (Ibid.).

This use of policy space was in turn defended as a necessity for successful development, as evidenced by the early economic histories of industrialised countries (ibid.). Advancing the integration of developing countries into the multilateral trading system and global value chains was further used as a framing device for a vague Chinese reform proposal on SDT submitted as part of a larger communication on WTO reform in May 2019:

Due to the development gaps, the capacity constraint in particular, developing Members do need some specific arrangements to enable them to better integrate into the multilateral trade negotiations, make due adjustment at home, and gradually adapt to the changes of the multilateral trading system (WTO 2019g).

Redefining SDT in this way places China amongst the ranks of developing countries that are victims of historical and/or contemporary imbalances. The concurrent need for SDT to act as a compensatory tool further characterizes China's promotion of special mechanisms for developing countries during the COVID-19 health crisis:

SDT, in this context, should continue to enhance its role in facilitating developing members' integration into the multilateral system, and helping their economic recovery in the post-pandemic period as well (WTO 2021).

A Model Member?

A final strand of China's defence concerning its status as a developing country consists of its self-portrayal as a successful developer that has drastically reformed its economy and acts responsibly with regards to its differential rights and its role in global trade politics. This responsibility, in turn, serves to support the notion that self-declared developing countries should continue having access to SDT even when they become more industrialised, as these larger traders can then adapt their trade policy without being stripped of their rights by other members.

Self-promotion in this manner stems from the need to counter depictions of the PRC as a free rider of the international trading system. In General Council statements, China consequently stresses that it may have profited from WTO membership, but claims that it was the 'largest beneficiary' of the multilateral trading system were unfounded (WTO 2017). Coupled with this theme is an insistence that the unprecedented economic rise of China is mainly the product of the PRC's 'own hard work' and that China does not seek to replace any state's role in world trade politics (Ibid.). That being said, the increased economic prowess of the PRC was supplemented by the reaffirmation that China was 'ready to shoulder more responsibilities' (Ibid.).

The desire to push an image of the PRC as a responsible and rule-conforming member of the WTO is perhaps best encapsulated in a July 2018 Communication entitled *China and the World Trade Organization*. Over 14 pages the Chinese trade delegation outlines China's compliance with WTO obligations – particularly its accession commitments – and its domestic reforms in this regard. The reduction of import tariffs, the lowering of non-tariff barriers, the strengthening of the intellectual property regime and the opening up of China's services market are thus taken as examples of the PRC's serious commitment to reforming in accordance with WTO principles (WTO 2018c). China's full participation in the Trade Policy Review Mechanism and its contribution to the world economy via foreign and two-way investment are further used to underline this strong adherence to the expansion of the international trading system (Ibid.). This focus also makes up a large part of the Chinese reaction to the US' *Undifferentiated WTO* proposal: the reduction of the

average agricultural tariff to 15.7%, the immediate implementation of the TRIPS Agreement (and the fulfilment of other accession requirements) were mentioned in parallel to China's active participation in negotiations on an IT Agreement as evidence that China was not avoiding its WTO commitments (WTO 2019b). In parallel, strong economic growth and reform progress in the PRC were fused with an insistence on continued developmental challenges in China:

As Chinese, we're proud of our hard-won achievements. But at the same time, we have a clear understanding on China's basic reality and the country's development status in the course of history, i.e. our country is and will for a long period of time remain in the primary stage of socialism, and China is still the largest developing country in the world (Ibid.).

This balance between portrayals of China as a responsible implementer of WTO requirements – as well as an active negotiator – with an insistence on its status as a developing country can also be found in the PRC's 2019 General Council statements. In October 2019, the Chinese trade delegate consequently emphasised that while China had been trying its best to make more contributions to trade multilateralism, it had also been 'facing various challenges, difficulties and gaps in achieving a balanced and adequate development' (WTO 2019g). Full compliance with the decisions of the WTO's Dispute Settlement Body (DSB) and the *voluntary* lifting of restrictions on its economy were further used as arguments for China's responsible role in the multilateral trading system (WTO 2019h). China's successful accession to the WTO was also portrayed as a model for achieving economic development via the implementation of international trade obligations (Ibid.). At the same time, self-portrayals as a model WTO member sit uneasily with regular criticisms towards China regarding forced technology transfer and local content requirements (compare Sykes 2021).

A more recent development in China's self portrayal as a responsible and large – yet developing – member has been a focus on the PRC's limited use of SDT provisions and its voluntary rejection of differential treatment in negotiations on future agreements. In December 2019, the Chinese trade delegation thus accentuated that during its submission of its indicative draft schedule for negotiations on the Joint

Statement on E-Commerce, China did not claim any SDT. Despite SDT being an ‘integral part of domestic regulation negotiations and (...) vital to some other developing members’, in this case the PRC did not make use of these rights – including the standard transition period (Ibid.). This unilateral giving up of SDT fits well with the overall attempt to portray China as a developing country that lives up to its responsibilities as one of the more successful economies of the past twenty years. However, this responsible behaviour did not permit the erosion of self-declaration or SDT by other actors. The fundamental *right* to differential treatment continued to be pressed by China as a matter of principle:

In other WTO negotiations in the future, China will continue to deal with SDT in a pragmatic and responsible manner, without pursuing flexibility it does not need. But China will not give up its due institutional rights in advance (Ibid.).

In October 2020, the Chinese trade delegate further attempted to quantify China’s SDT use in order to promote an image of China as a responsible WTO player: of all 155 SDT-related articles in WTO legislation, China supposedly only had access to 14 provisions – the rest having been traded away as part of China’s accession negotiations. Moreover, only 8 of these provisions provided for substantial rights, as opposed to obligations to developed country members (WTO, 2020b). This minimal active access to SDT was in turn supplemented by the idea that ‘[e]ven in such circumstances, China always shows restraint in invoking S&DT provisions’ (Ibid.). The Chinese delegate further claimed that at least 105 of the aforementioned 155 provisions were too vague to operate, while half of the remaining 50 provisions were transition periods and technical assistance (Ibid.). SDT reform attempts should consequently focus on implementation of existing legislation rather than attempts to shrink the developing country group. The notion of – or even need for – larger developing countries to implement less SDT provisions thus becomes a matter for responsible WTO members to decide for themselves.

A strong self-portrayal as a model member of the WTO in turn allows China to cement its status as a developing country. This comes to the fore in a 2021

communication, dealing with the multilateral response to COVID-19 and the issue of responsibility in world politics:

China is willing to shoulder the responsibilities commensurate with our development level and ability. We are committed to our efforts in the WTO to assist other developing members' better integration into the multilateral trading system and better response to the Covid-19 pandemic (WTO 2021).

Conclusion

Amidst growing calls for WTO reform and the uncertain future of the multilateral trading system, debates over China's self-identification as a developing country have become increasingly prominent. Positioning China as either an emerging economy, a developing country, or a state that has graduated from the developing country group consequently entails major contention in world politics. In ongoing negotiations concerning, for instance, fisheries subsidies or e-commerce, the placement of China in a hierarchical international order has slowed down trade talks. For its part, the PRC has used four categories of arguments in recent years to defend its established practice of self-declaring as a developing country:

- 1) In order to counter US-centred narratives that China has *objectively* ceased to be a developing country, the PRC has criticized the adequacy of economic indicators – either as standalone markers or cumulatively – in measuring a country's level of development. In parallel however Chinese trade delegates have also marshalled alternative criteria, which purport to show the continued economic difficulties faced by China.
- 2) Portraying the special rights of developing countries – including China – as a central pillar of a multilateral system at risk further serves to divert attention towards existential threats to the WTO, chiefly in the form of US unilateralism. The need to safeguard and defend multilateralism against such obstruction in turn entails the safeguarding of the system *as is*, including SDT and the practice of self-declaration.
- 3) China's defence of its developing country status further involves a rethinking of the main purpose or core logic of SDT. The use of these special rights, so the narrative, could speed up countries' integration into the multilateral trading system, rather than carving out a special position for them on the margins or outside of international trade rules. Moreover, historical disparities between developing and developed countries and the supposed use of 'reverse SDT' by industrialised states are deemed unfair and in need of counter-balancing.

- 4) A final element of China's status defence consists of its self-portrayal as a model member of the international trading system. This is reflected, in particular, in its *voluntary* non-use of SDT provisions, as well as its implementation of accession requirements. The key concept here is that China, as a responsible actor, is willing to take on more obligations in future but will not trade away its *right* to SDT in the process. In a December 2021 statement China thus announced that it is open to foregoing many of its SDT benefits however would remain a developing country (Reuters 2021).

Delineating these different sets of arguments has allowed for an in-depth case study of the PRC's general identity dilemma in international relations. China's participation in SDT debates is characterized by not one, but multiple images – an objectively classifiable developing country, a defender of a multilateral system at risk, a victim of historical and contemporary inequalities, and a strong member that responsibly makes use of SDT without giving up its legal right to the entire corpus of differential treatment. Uncovering these images, this article moves beyond established conceptualizations of Chinese status signalling (Yang 2021, Pu 2019) by showing how on a specific issue and in a specific forum – SDT in the WTO – China has employed multiple sets of arguments and signalling strategies at the same time. Different types of signalling are consequently interwoven to provide a more complicated, blurry image of China's position in WTO politics.

These unclear, overlapping images in turn call attempts to conclusively characterize the PRC as either a preserver or spoiler of the international system into question (compare Kim 2020; Lee, Heritage and Mao 2020; Larson 2015; Zhang 2016). On the one hand, attempts to preserve an existing system of compensatory rights amidst global economic change run counter to a pure portrayal of China as a spoiler of the international system – particularly when fused to diplomatic narratives of a supposed Chinese defence of multilateralism. On the other hand, precisely this mixture of different arguments underlines the inaccuracy of scholarship that seeks to attribute an overarching, coherent narrative to PRC foreign policy. Understanding this multifaceted self-conception of China's status and responsibility in WTO affairs is

relevant both for those aiming to understand and overcome the geopolitical stalling of the Doha Development Round as well as those that seek to divine an incipient grand strategy in Chinese international relations.

Reference List

- Bishop, M.L. and Zhang X. (2020). 'Why is China a Reluctant Leader of the World Trade Organization?' *New Political Economy* 25:5, 755-772.
- Bukovansky, M., Clark, I., Eckersley, R., Price, R., Reus-Smit, C. and Wheeler, N.J. (2012). *Special Responsibilities: Global Problems and American Power*. Cambridge: Cambridge University Press.
- De Graaff, N. and Van Apeldoorn, B. (2018). 'US-China relations and the liberal world order: contending elites, colliding visions?' *International Affairs*, 94:1, 113-131.
- Dollar, D. (2020) 'Reluctant player: China's approach to international economic institutions', *Brookings*. Available Online: <https://www.brookings.edu/articles/reluctant-player-chinas-approach-to-international-economic-institutions/>
- Ertl V. and Merkle, D. (2019) 'China: A Developing Country as a Global Power?' *Konrad Adenauer Stiftung International Reports*, 17. Available Online: <https://www.kas.de/en/web/auslandsinformationen/artikel/detail/-/content/china-a-developing-country-as-a-global-power>
- Khong, F.Y. (2019). 'Power as prestige in world politics.' *International Affairs* 95:1, 119-142.
- Foot, R. (2019). 'Remembering the past to secure the present: Versailles legacies in a resurgent China.' *International Affairs* 95:1, 143-160.
- Gao, H. (2011). 'China's ascent in global trade governance: from rule taker to rule shaker and maybe rule maker?' Deere Birkbeck, C. (ed.). *Making Global Trade Governance Work for Development*. Cambridge: Cambridge University Press.
- Hopewell, K. (2016). *Breaking the WTO*. Stanford: Stanford University Press.
- Hu, W. (2019). 'China as a WTO developing member, is it a problem?' *CEPS Policy Insights*. Available Online: https://www.ceps.eu/download/publication/?id=25627&pdf=PI2019_16_WH_China-as-a-WTO-developing-member.pdf
- Jones, C. (2019). 'Contesting within order? China, socialisation and international practice.' *Cambridge Review of International Affairs* 33:1, 105-133.

- Kim, Y. (2020). 'Is China Spoiling the Rules-Based Liberal International Order? Examining China's Rising Institutional Power in a Multiplex World Through Competing Theories'. *Issues and Studies* 56:1.
- Larson, D. (2015). 'Will China be a New Type of Great Power?' *Chinese Journal of International Politics* 8:4, 323-348.
- Layne, C. (2018) 'The US-Chinese power shift and the end of the Pax Americana.' *International Affairs* 94:1, 89-111.
- Lee, P.K., Heritage, A. and Mao, Z. (2020). 'Contesting liberal internationalism: China's renegotiation of world order.' *Cambridge Review of International Affairs* 33:1, 52-60.
- Li, X. (2020). 'The rise of China and its impact on world economic stratification and re-stratification.' *Cambridge Review of International Affairs* 34:4, 530-550.
- Liu, F. (2020). 'The recalibration of Chinese assertiveness: China's response to the Indo-Pacific challenge.' *International Affairs*, 96:1, 9-27.
- Malkin, A. (2019). 'Challenging the liberal international order by chipping away at US Structural power: China's state-guided investment in technology and finance in Russia.' *Cambridge Review of International Affairs* 33:1, 81-104.
- Narlikar, A. (2020). *Poverty Narratives and Power Paradoxes in International Trade Negotiations and Beyond*. Cambridge: Cambridge University Press.
- Nordin, A.H.M. and Weissmann, M. (2018). 'Will Trump make China great again? The belt and road initiative and international order.' *International Affairs* 94:2, 231-249.
- Nye Jr., J.S. (2019). 'The rise and fall of American hegemony from Wilson to Trump.' *International Affairs* 95:1, 63-80.
- Ogden, C. (2020). 'The Role of Competing Narratives in China and the West's Response to Covid-19'. *British Journal of Chinese Studies* 10
- Ornelas, E. (2016). 'Special and Differential Treatment for Developing Countries.' *CESifo Working Paper Series* 5823.
- Parmar, I. (2018) 'The US-led liberal order: imperialism by another name?' *International Affairs* 94:1, 151-172.
- Pu X. (2019). *Rebranding China: Contested Status Signaling in the Changing Global Order*. Stanford: Stanford University Press.

- Pu, X. (2017). 'Ambivalent accommodation: status signalling of a rising India and China's response.' *International Affairs* 93:1, 147-163.
- Pu, X. and Wang, C. (2018). 'Rethinking China's rise: Chinese scholars debate strategic overstretch.' *International Affairs* 94:5, 1019-1035.
- Renshon, J. (2017). *Fighting for status: hierarchy and conflict in world politics*. Princeton: Princeton University Press.
- Reuters (2021). 'Exclusive: Envoy says China will forego many 'developing country' benefits at WTO'. *Reuters*. Available Online: <https://www.reuters.com/markets/commodities/exclusive-envoy-says-china-will-forego-many-developing-country-benefits-wto-2021-12-10/>
- Schweller R. and Pu, X. (2011). 'After unipolarity: China's visions of international order in an era of US decline.' *International Security* 36:1, 41-72.
- Shaffer, G. and Gao, H. (2018). 'China's Rise: How It Took on the U.S. at the WTO.' *University of Illinois Law Review* 2018:1. Available Online: <https://ssrn.com/abstract=2937965>.
- South China Morning Post (2019). 'China refuses to give up 'developing country' status at WTO despite US demands.' Available Online: <https://www.scmp.com/economy/china-economy/article/3004873/china-refuses-give-developing-country-status-wto-despite-us>
- Stokes, D. (2018) 'Trump, American hegemony and the future of the liberal international order.' *International Affairs* 94:1, 133-150.
- Sykes, A, (2021). 'The Law and Economics of "Forced" Technology Transfer and Its Implications for Trade and Investment Policy (and the U.S.-China Trade War).' *Journal of Legal Analysis* 13:1.
- Trubowitz, P. and Harris, P. (2019). 'The end of the American century? Slow erosion of the domestic sources of usable power.' *International Affairs* 95:3, 619-639.
- USTR (2021). *Ambassador Katherine Tai's Remarks As Prepared for Delivery on the World Trade Organization*. Available Online: <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/october/ambassador-katherine-tais-remarks-prepared-delivery-world-trade-organization>

- Weinhardt, C. (2020) 'Emerging Powers in the World Trading System: Contestation of the Developing Country Status and the Reproduction of Inequalities.' *Global Society* 34:3, 338-408.
- Weinhardt, C. and Schöfer, T. (2021). 'Differential treatment for developing countries in the WTO: the unmaking of the North-South distinction in a multipolar world.' *Third World Quarterly* 43:1, 74-93.
- Womack, B. (2016). 'Asymmetric parity: US-China relations in a multimodal world.' *International Affairs* 92:6, 1463-1480.
- WTO (2017). *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting, 19th May 2017* Available Online:
<http://wto.mofcom.gov.cn/article/meetingsandstatements/201705/20170502578887.shtml>
- WTO (2018a) *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting, 8th May 2018* Available Online:
<http://wto.mofcom.gov.cn/article/meetingsandstatements/201805/20180502741686.shtml>
- WTO (2018b). *China's Trade-Disruptive Economic Model (US Communication)*, WT/GC/W/745. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W745.pdf&Open=True>
- WTO (2018c). *China and the World Trade Organization (PRC Communication)*, WT/GC/W/749. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W749.pdf&Open=True>
- WTO (2019a). *An undifferentiated WTO: Self-declared development status risks institutional irrelevance (US Communication)*. WT/GC/W/757. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W757.pdf&Open=True>
- WTO (2019b). *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting on Communications of Development, 28th February 2019*. Available Online:

<http://wto.mofcom.gov.cn/article/meetingsandstatements/201903/20190302839144.shtml>

WTO (2019c). *Draft General Council Decision - Procedures to strengthen the negotiating function of the WTO*. WT/GC/W/764. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W764.pdf&Open=True>

WTO (2019d). *The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development (PRC; India; SA, Venezuela Communication)*, WT/GC/W/765/Rev.2. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W765R2.pdf&Open=True>

WTO (2019e). *China's Proposal on WTO Reform (PRC Communication)*, WT/GC/W/773. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W773.pdf&Open=True>

WTO (2019f) *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting 23rd July 2019*. Available Online: <http://wto.mofcom.gov.cn/article/meetingsandstatements/201908/20190802888260.shtml>

WTO (2019g). *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting, 15th October 2019*. Available Online: <http://wto.mofcom.gov.cn/article/meetingsandstatements/201910/20191002905004.shtml>

WTO (2019h). *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting 9th December 2019*. Available Online: <http://wto.mofcom.gov.cn/article/meetingsandstatements/201912/20191202921247.shtml>

WTO (2020a). *Statement by Ambassador Dennis Shea at the WTO General Council Meeting, 13th October 2020*. Available Online: <https://geneva.usmission.gov/2020/10/13/statement-by-ambassador-shea-at-the-wto-item-7/>

- WTO (2020b). *Statement by H.E. Ambassador Zhang Xiangchen at the General Council Meeting (Item 6 and 7), 13th October 2020*. Available Online: <http://wto.mofcom.gov.cn/article/meetingsandstatements/202010/20201003007644.shtml>
- WTO (2021). *Statement by H.E. Ambassador Mr. Li Chenggang at GC Meeting, 27th-28th November 2021*. Available Online: <http://wto.mofcom.gov.cn/article/meetingsandstatements/202107/20210703182243.shtml>
- Wu X. (2018). 'China in search of a liberal partnership international order.' *International Affairs* 94:5, 995-1018.
- Yan X. (2001). 'The rise of China in Chinese eyes.' *Journal of Contemporary China* 10:26, 33-39.
- Yang, X. (2020). 'The great Chinese surprise: the rupture with the United States is real and is happening.' *International Affairs* 96:2, 419-437.
- Yang, Y.E. (2021). 'China's Strategic Narratives in Global Governance Reform under Xi Jinping'. *Journal of Contemporary China* 30:128, 299-313.
- Yong, D. (2008). *China's struggle for status: the realignment of international relations*. Cambridge: Cambridge University Press.
- Zeng, J. (2017). 'Does Europe Matter? The Role of Europe in Chinese Narratives of 'One Belt One Road' and 'New Type of Great Power Relations'. *Journal of Common Market Studies* 55:5, 1162-1176.
- Zeng, J., Xiao, Y. and Breslin, S. (2015). 'Securing China's core interests: the state of the debate in China.' *International Affairs* 91:2, 245-266.
- Zeng, J. and Breslin, S. (2016). 'China's 'new type of Great Power relations': a G2 with Chinese characteristics?' *International Affairs* 92:4, 773-794.
- Zhang, Y. (2016). 'China and liberal hierarchies in international society: power and negotiation for normative change.' *International Affairs* 92:4, 795-816.

Chapter Five

From Southern Leader to Flexible Negotiator: New Directions in Brazilian Trade Policy⁵⁷

Brazil finds itself at a crossroads. Its status in international politics remains unclear, as its representatives and observers have variously positioned it as a middle power, an emerging economy, a member of the West, or a developing country (Burgess 2020; Esteves, Gabrielsen Jumbert and De Carvalho 2020; Carranza 2017; Milani, Pinheiro and De Lima 2017). Moreover, determining Brazil's position in global politics is complicated by the increased economic heterogeneity and political divergence of the Global South over the past decade (Weinhardt and Schöfer 2021).

Status uncertainty in turn holds major implications for Brazilian trade policy and for its role in ongoing World Trade Organization (WTO) negotiations. On the one hand, WTO members that self-declare as developing countries can access a catalogue of special legal rights. The exemptions and policy space entailed in this differential treatment – along with the practice of self-declaration – have recently become the focus of international contestation, thus placing the status of emerging economies under particular scrutiny in contemporary trade talks (Hopewell 2022). On the other hand, Brazil's status considerations also play a role in determining its negotiation strategy at the WTO, especially after more than two decades of deadlock in the Doha Development Round.

This article examines how Brazil's status and negotiation strategy at the WTO has changed over the past decade. Its empirical foundations draw on WTO negotiation documents, government statements, dispute settlement case law and a series of interviews conducted with Brazilian trade delegates in 2021 and early 2022.⁵⁸ This varied source material allows for an evaluation of three core questions. Firstly, who

⁵⁷ This chapter is currently under review at *World Trade Review* as Schöfer, T. 'From Southern Leader to Flexible Negotiator: New Directions in Brazilian Trade Policy'.

⁵⁸ In total, a set of eight interviews were conducted with (former) trade representatives at the WTO. Of these, five were (former) members of the Brazilian delegation.

does Brazil primarily side with at the WTO – and have these coalitional patterns departed from an established status quo? Secondly, who does the Brazilian delegation claim to represent: solely its own interests or those of a larger bloc of developing countries? Lastly, how does Brazil engage with a persistent and ongoing negotiation deadlock at the WTO?

In addressing these questions, I show that Brazil has fundamentally reconfigured its coalitional strategy. While in the early 2000s, Brazil's actions were based on leadership of a large and diverse group of developing countries, more recently it has developed a flexible approach that is far less reliant on North-South divides as structuring principles of its diplomacy. This becomes most evident in the disappearance of the Brazilian-led G20 from trade talks. Instead, Brazil has recently engaged in a set of joint proposals with the European Union. It has further joined several plurilateral initiatives, including draft texts on new legislative issues. These changes run parallel to a more heterogeneous list of dispute settlement targets when compared to the late 1990s and 2000s. Most notably, in the midst of ongoing contestation regarding the special rights of developing countries at the WTO, Brazil has signalled that it would refrain from using these rights in future and has remained absent from a Sino-Indian defence of the status quo.

These findings contribute to three strands of literature. In the debate about Brazil's status and role in international politics (De Sá Guimaraes 2020; De Carvalho 2020), it delineates how on trade issues Brazil has arrived at a very flexible self-conceptualisation on the world stage. In pursuit of trade liberalization in agriculture, the breaking of legislative deadlock consequently overshadows Brazilian status considerations at the WTO. This implies, second, that an established literature on Brazil's Southern leadership – and in general the leadership roles of emerging economies – requires more nuance (Doctor 2015; Efstathopoulos 2012). Lastly, the flexibilisation of Brazilian trade policy provides a counter-narrative to scholars that portray emerging economies – and Brazil in particular – as stuck in a 'graduation dilemma' (Margheritis 2017; Milani, Pinheiro and Soares de Lima 2017).

Below, an overview of Brazil's WTO leadership in the 2000s is followed by a literature review that outlines established debates on Brazil's negotiation strategy,

its status, its Southern leadership role, and its 'graduation dilemma'. Thereafter, the article examines Brazil's recent activities and new directions at the WTO by examining coalition-building, new legislative issues, dispute settlement practices, and Brazil's engagement with developing country status. A conclusion ties together these findings to delineate a significant recalibration of Brazil's negotiation strategy over the past decade. It finds that Brazil's leadership of the Global South has been eschewed for a pragmatic and flexible approach that primarily seeks to bring movement into entrenched WTO negotiations.

Positioning Brazil in International Politics

North-South divisions characterised the WTO in the 2000s (Narlikar and Wilkinson 2004; Narlikar and Tussie 2004; Baldwin 2006). In order to underline recent recalibrations of Brazil's negotiation strategy, this section starts by unpacking the leadership role that Brazil attained in the first decade of the WTO era (1995-) as the head of an influential developing country coalition. This diplomatic status quo in turn forms the basis of an established academic literature that stresses Brazil's pursuit of prestige and followership as key mediating factors of its material interests in WTO negotiations (Doctor 2015). Tracking the shifting position of Brazil in international trade negotiations thus holds relevance for three strands of literature. First, it speaks to recent scholarship on the role of Brazil in international politics and its attempts to straddle the divide between developing and industrialised economies. Secondly, this allows a re-evaluation of Brazil's leadership function at the WTO vis-à-vis the Global South. Delineating Brazil's status as a larger developing country and a coalition-builder I then, thirdly, re-examine the recent 'graduation dilemma' framework as an accurate explanatory tool for understanding allegedly contradictory behaviour in Brazilian foreign policy.

Brazil's 2000s Status Quo

At the outset of the 21st century, Brazil's trade priorities were closely aligned with the Australian-led Cairns Group, a mix of developed and developing countries that constituted strong agricultural exporters and primarily promoted trade liberalization (Taylor 2000). Reliance on this smaller coalition was pushed aside in 2003 when Brazil fundamentally redrew its coalitional strategy and co-founded the G20 group of developing countries. Comprising Brazil, China, India and a flurry of smaller Global South states, the G20 strategically placed the Brazilian delegation – as its main representative – at the table with the most influential WTO players, including the United States, the European Communities, Japan and Australia (Efstathopoulos 2012).

Several factors help to explain this shift. From an interests-based perspective, by the early 2000s Brazil – and other developing countries – continued to be disadvantaged by established negotiation practices, which centred on the European Communities

(EC) and the United States (US). In the 1990s, divisions between these two entities first had to be bridged via the Blair House Agreement (1992) before negotiations could be expanded to other traders for the completion of the 1995 Agreement on Agriculture (Preeg 2012, 129-131). This negotiation pattern persisted in the run-up to the 2003 Ministerial Conference in Cancún when a US-EC draft text on agriculture was tabled as a basis for negotiations. Overcoming this ex-post position in turn required a more central role for Brazil in international trade legislation. As Brazil's then-foreign minister Celso Amorim put it:

The G20 has produced a change in the dynamics of agricultural negotiations, which migrated from the Blair House model to the NG-5 model [US, EC, Australia, India and Brazil] as far as decision-making is concerned (Da Motta Veiga 2005, 117).

While Brazil also held export interests in developing country markets, its main priority at the WTO constituted the dismantling of heavy agricultural subsidy regimes, which in the early 2000s were primarily used in the Global North (Taylor 2007, 155-160). The particular framing of the WTO's 2001 round of negotiations – as the Doha Development Round – in turn imbued initiatives that claimed to integrate developing country interests with a greater legitimacy than previous negotiations (compare Maswood 2007). Against a backdrop of failed Ministerial Conferences in the late 1990s – including protests by civil society actors – and the desire for political unity in the aftermath of the September 11th attacks (Wilkinson 2006), the early 2000s thus provided an environment conducive to new coalition-building focused around development. Interests- and legitimacy-based drivers were further supplemented by domestic political change. The advent of the Lula administration (2003-10) entailed a change of foreign policy narratives, focussing on South-South cooperation as a bedrock of Brazil's role in international relations. Together, these imperatives allowed Brazil to abandon its established practice of participating in

mixed coalitions and to assume leadership of a large and influential group of developing countries.⁵⁹

The G20 thus emerged out of close coordination of the Brazilian and Indian WTO delegations and in response to a joint US-EC draft text on agriculture reform. Bringing together a large group of developing countries – including all three ‘BIC’ states – it primarily targeted trade distortions in industrialised economies while safeguarding existing special and differential treatment provisions for developing countries. This allowed the Brazilian trade delegation to pursue coalition-building at the expense of its interests in the Global South. As one trade delegate cited by Da Motta Veiga (2005, 112) noted:

Brazil had to reduce its ambition in market access issues in order to gather the support of India and China for its demands against developed countries’ domestic and export subsidies.

Moreover, in its promotion of special product lists and a special safeguard mechanism for developing countries,⁶⁰ the G20 sought to expand the policy space available to members of the Global South to protect their markets (WTO 2003). While these latter initiatives ran counter to Brazil’s interests in liberalized agricultural trade, the G20’s ability to block Global North initiatives and increase Brazil’s weight in trade negotiations help to account for Brazilian support of new protectionist mechanisms for developing countries. As one of the initial coordinators of the group stated:

We felt that very much of the legitimacy of the WTO rested on if not reaching out to the whole of the developing world, then at least you have to have China and India on board. Although Brazil was not the largest trading partner, we were relevant in agriculture (...) With that, and actually placing trust in our

⁵⁹ Note that disappointment with the Cairns Group’s reaction to the US-EC draft text further fuelled the search for alternative bargaining groups (Da Motta Veiga 2005, 112).

⁶⁰ Special product lists designate certain agricultural goods as particularly sensitive for developing countries, due to concerns regarding food or livelihood security. Developing countries push for policy space in determining appropriate tariffs for these products, separate from general, agreed-upon levels. A special safeguard mechanism allows (only) developing countries to raise tariffs in response to sudden import shocks.

capacity to operate diplomatically, we would put Brazil in the spotlight (...) I think what we had in mind was basically to sweep under the carpet our offensive interests in terms of the Indian and Chinese market (...) So, what we did was dampen our ambitions in terms of our requests for taxing farmers in India and China, and then basically starting on domestic subsidies (Brazilian trade delegate interview, 20th July 2021).

Following the 2003 breakdown of talks in Cancún, legislative progress at the WTO was clearly dependent on the inclusion of emerging economies – and their developing country coalitions – at the highest levels of decision-making. An established pattern of US-EC coordination was thus interrupted, yielding in 2005 to the ‘New Quad’ consisting of the US, the EC, India and Brazil. Different constellations of this group – supplemented by China, Australia and Japan – persisted until the full collapse of talks in 2008, again over the issue of agriculture and special safeguard mechanisms (Efstathopoulos 2012). Throughout this period, Brazil was included in high-level talks as a representative of the G20 while India could also claim to speak for the alternative G33 developing country group (Ibid.).

Brazilian trade policy in the 2000s consequently rested on a new and unprecedented degree of influence on the successful outcome of WTO negotiations. This influence in turn hinged on Brazil’s maintenance of a Southern leadership role and its coordination of a common developing country position at the WTO. The broader significance of Brazilian coalition-building in WTO agriculture negotiations was underlined by a leading Brazilian trade analyst in the mid-2000s:

It is worth noting that the shift in Brazil’s negotiations strategy was driven not only by the internal dynamics of the agricultural negotiations in the WTO, but also by a broader shift in the country’s foreign economic policies – especially in its trade negotiations strategy – towards a view where the North-South axis acquired a growing relevance. Brazil’s leadership in the setting of the G20 is perhaps the best example, at the multilateral level, of the country’s new ‘southern’ stance in trade negotiations (Da Motta Veiga 2005, 109-110).

Arguably, the inability of Brazil to bridge the varied positions in the G20 – and in particular to fuse its offensive interests with the defensive positions of countries like India – hindered this coalition from concluding new trade legislation. Instead, at the end of the 2000s negotiations were characterized by an entrenched deadlock.

Negotiation Strategy and Status

The uncertain status of Brazil as either a member of the West, a powerhouse of agricultural exports, or one of the world's most populous developing countries has underscored discussions of its role on the international stage. As Soares de Lima and Hirst (2006) note, the central aim of Brazilian foreign policy has consistently been to achieve international recognition of its supposedly 'natural' role in world politics. However, in doing so diplomatic narratives have historically had to incorporate different discursive elements to signal adherence to different groups. De Sá Guimaraes (2020) underlines how the aspiration of belonging to the West is fused to a hesitancy to deny Brazil its credentials as a developing country. Finding a middle ground between these two positions has marked Brazil's diplomatic history, as it has attempted to play an intermediary role between global or regional superpowers on the one hand and a counter-hegemonic group of developing countries on the other. This most clearly comes to the fore in its claims of belonging to 'another West', stemming from its positioning in Cold War geopolitical divides (Lafer 2000; De Sá Guimaraes 2020).

In the 21st century, uncertainty over Brazil's hybrid status in international politics is reflected in the strategic narratives of the Lula administration (2003-2010). Against the backdrop of its increasing economic prowess – particularly in agribusiness – Brazilian foreign policy in the 2000s re-emphasized Brazil's connections to developing countries. Aoki Inoue and Costa Vaz (2012) underline that in the field of official development assistance for instance, Brazil has become a 'Southern donor', a status that blends its developing country and industrialised economy credentials. Focussing on 'South-South' ties and avoiding hierarchical labels consequently form part of a Brazilian insistence on keeping its adherence to one of these two groups ill defined (Ibid.). Moreover, it is of note that during the Bolsonaro administration (2019-), attacks on the institutions of the liberal international order – akin to the

Trump administration's criticisms of multilateral governance frameworks – have not included overt targeting of the WTO (compare Casarões and Farias 2021). Attempts to align Brazil with the US have however resulted in new approaches to Brazil's special, developing country rights (see following section). De Carvalho (2020, 20-21) describes the outcome of Brazil's 'frustrated' quest for status as follows:

Brazil's quest was complicated by the fact that while identifying with the great powers (of the Global North), Brazil, nevertheless, refused to relinquish its position as one of the leading states among the Global South. And while it was through the latter that Brazil came into a position from which it could legitimately aspire to great power status, being recognized as a great power would have meant that Brazil had to give up this condition of 'hybridity'. By wishing to be a 'great power from the South', Brazil strengthened itself as the quintessential 'hybrid power', and therefore also condemned itself to hybridity and shattered dreams of great power status.

Brazil's status signalling in turn acts as a basis for its attempts to expand relations with developing countries whilst simultaneously promoting trade liberalization. Brazil's position as a 'rising power' thus does not go hand in hand with its emergence as a 'challenger' of an international status quo. Rather, as Kahler (2013) notes, the economic success of emerging economies rests on their cautious integration into the international economy. This, in turn, means that the main catalyst for change in international politics comes from a negotiated reshaping of existing rules between rising and established powers (Narlikar 2013), not a radical overhaul of the system's core tenets. In climate politics, such a strategy of straddling the gap between the Global North and the Global South has allowed Brazil to move towards the core of decision-makers whilst accentuating an ideology of Southern solidarity (Hurrell and Sengupta 2012).

In trade, Brazil's formation and leadership of the G20 in the early 2000s engendered a similar increase in influence (see above). However, Hopewell (2016) argues that Brazil's use of the North-South divide at the WTO is primarily strategic. Status ascriptions are thus mainly used to garner support for policies that promote the competitive position of the Brazilian agribusiness sector (Ibid.). It is precisely the

unclear nature of Brazil's position in world politics that forms the bedrock of its previous strength in 2000s trade talks. Elucidating how Brazil's position in trade negotiations has shifted since this point consequently promises to add a nuanced perspective on established Brazilian strategies that rely on the North-South distinction – and a Brazilian bridging role – as key structuring principles of Brazil's diplomacy.

Leadership of the Global South

While recent developments in Brazilian trade policy shed light on how Brazil navigates its intermediary status, this also holds implications for its bargaining power. Rising powers have the ability to influence or co-manage international institutions via coalition-building and cooperative leadership (Kahler 2013). In the case of Brazil, the construction and leadership of such coalitions has been the key theme of its trade diplomacy in the first decade of the 21st century. Burges (2013) delineates how since the 1990s Brazil's foreign ministry has attempted to compensate for hard power deficiencies by building alliances and promoting a discursive framework that places Brazil at the head of the Global South. Particularly during the Lula years, this leadership strategy allowed Brazil to slow down disadvantageous policy initiatives stemming both from the Global North and the Global South, by signalling Brazil's supposedly unique position between the two entities (Ibid.).

In trade, this diplomatic leadership takes two forms. On the one hand, Brazilian diplomats have stressed the promotion of a fairer and more economically balanced trading system along with greater inclusion of developing countries in key decision-making forums (Christensen 2013). On the other, Brazil has been the main architect of developing country coalitions in and outside of the WTO. The G20 negotiation bloc on agricultural issues and the IBSA forum designed to facilitate coordination amongst emerging economies stand out in particular. In the eyes of Brazil's foreign minister Amorim (in office from 2003 until 2010), such coalition building boosted prospects for engagement in global governance reform (Dauvergne and Farias 2012). As Hopewell (2017) argues, Brazilian-Indian leadership of the G20 characterized a 'tectonic shift' that defied expectations on the (continued) marginal status of

developing countries at the WTO. Instead, the quasi-veto power of this constellation catapulted both actors into the inner circle of trade legislation.

However, coordination in this fashion, with the aim of establishing the broadest consensus possible, necessarily entails trade-offs. On the one hand, a new Brazilian influence at the top levels of trade policy-making rests on the legitimacy of its claim to speak for a wide and economically diverse set of Southern actors. On the other, Brazil's highly competitive, export-oriented agribusiness sector makes the opening up of developing country markets and the promotion of trade liberalization in the Global North desirable outcomes for its trade negotiators. These priorities in turn come into conflict with more diverse, defensive attitudes permeating the group it is claiming to represent. Narlikar (2009) suggests that precisely this uneasy task of keeping together a varied coalition whilst pursuing national trade interests engendered deadlock in the Doha talks.

Drawing on ideas concerning the power of cooperative leadership and the ability for developing country coalitions to boost Brazil's negotiation legitimacy and bargaining power, Efstathopoulos (2012) goes even further, placing leadership at the heart of Brazilian and Indian trade policy. Brazilian leadership thus supposedly consists of three dimensions: namely, hesitance to engage in structural leadership; provision of leadership only when the preferences of followers overlap with Brazilian priorities; and, most significantly, the preservation of broad bases of followership as the key directive of external action (Ibid.). This primacy of support by a large and varied group of other developing countries consequently conditions the actions of Brazil and India as leaders of the Global South. Maintenance of their central position in trade negotiations has hitherto necessitated strategies that centre on the blocking of Global North initiatives to avoid losing legitimacy amidst the pursuit of larger reform packages (Ibid.).

The formation of large developing country coalitions at the WTO in the early 2000s has rightly been characterized by several academics as both a complete reorganization of international trade politics (Hurrell and Narlikar 2006) and as a significant power expansion for their leaders (Hopewell 2015). Depictions of leadership and the maintenance of followership as the primary drivers of Brazilian

trade policy (Doctor 2015), however, require updating. As Hopewell (2021) argues, while Brazilian diplomats have been quick to construct images of Brazil as a hero of the developing world – and this has (previously) resulted in greater prestige and bargaining power – the actions of Brazil and other emerging economies have often not helped the Global South more generally. Instead of leadership as an end in of itself, the narrow pursuit of trade interests, disproportionately in agriculture, allegedly characterizes Brazilian trade policy, with Global South leadership acting as a useful legitimacy tool (IDEAS Centre 2010; Hopewell 2021). This leads to a bifurcation of views. Some analysts place Southern leadership amongst the priorities of Brazilian foreign policy:

Although the vision of Brazil-as-developing-country and Brazil-as-champion-of-developing-nations has ebbed and flowed in importance over the years, it remains a key part of the current diplomatic lexicon (Dauvergne and Farias 2012, 908).

This contrasts with interests-based analyses that reserve a more marginal role for leadership in Brazilian international relations: '[A]lthough the identity of some actors may have changed, the same logic of power politics that has long characterized the WTO persists' (Hopewell 2021, 20). Beyond status considerations, this paper consequently provides a clearer picture of Brazilian coalition building. Whilst previously, leadership of the Global South formed a central plank of Brazil's diplomacy, I argue that the 2010s witnessed a change of strategy that resulted in a more flexible approach.

Stuck in a Graduation Dilemma?

One conceptualisation of recent changes in Brazilian foreign policy is provided by scholarship on the 'graduation dilemma'. Margheritis (2017) posits that a lack of consensus about how larger developing countries 'graduate' in turn makes their actions in international politics seem less coherent. Instead of following a linear path to higher status, the rise of Brazil is accompanied by more complicated policy-making, thus producing a blurry picture of Brazilian foreign policy (Ibid.). Unease with external expectations and status considerations thus brings Brazil into conflict with notions of responsibility in international relations (compare Bukovansky et al.

2012; Kenkel & Trote Martins 2016). Using human rights discussions and normative debates over the use of force, Harig and Kenkel (2017) delineate how Brazil's shift in the 2000s towards the centre of global governance went hand in hand with uncertainties over its role in shaping key international security norms.

The staggering and/or complicating effects of graduation are further stressed in research by Milani, Pinheiro and Soares de Lima (2017), which underlines the different and contradictory expectations for Brazil from other actors in the international system. In particular, Brazil is caught between discursively emphasising connections with the Global South and accentuating its ability to bridge North-South geopolitical divides. This in turn holds implications for its prioritisation of traditional alliances over new coalitions or vice versa (Ibid.). The complicating influence of graduation expectations, both external and internal, further comes atop a long history of divides in Brazil's foreign policy elites that pit 'Americanists' against 'Globalists' and promote different development models and ideas about national autonomy (Ibid.).

The confused picture that emerges of Brazilian foreign policy over the past decades is consequently portrayed as part of a larger phenomenon of rising powers ending up in a dilemma as they navigate their 'graduation'. In essence, it is unclear what path or which policies will allow them to legitimately rise. At the WTO, such dilemmas can in turn hold particular salience, as graduation from developing country status is fused to the increasingly contested granting of special rights to emerging economies (Weinhardt 2020). According to one Brazilian trade delegate cited by Hopewell (2017, 1395): 'The issue that continues to unite us is graduation, so we're still close allies.'

However, while graduation holds the potential to complicate the picture of Brazilian international relations, I argue that Brazilian trade policy is not fundamentally characterized by a graduation dilemma. Rather, Brazil has displayed a certain coherence in its attempts to break deadlock at the WTO. In pursuit of new multilateral rules – particularly on agriculture – this has engendered a more flexible attitude towards coalition building and an expanded purview of trade legislation. While Brazil continues trying to act as a broker in international trade negotiations,

the underlying direction of its initiatives do not betray the type of confused or disunited approach that would fit neatly into a 'graduation dilemma' framework. Recent developments in Brazilian trade politics further indicate that it has adopted a more flexible approach in the 2010s to its status as a developing country – or rather to its rights as a developing country – and has given up its strategy to achieve greater bargaining power via leadership of a broad coalition of developing countries.

Brazil's New Directions

International relations scholars have previously stressed maintenance of followership and the leadership of powerful coalitions as core tenets of Brazilian foreign policy. This section delineates the myriad ways in which Brazil's strategic positioning at the WTO has departed from such a 2000s status quo. New coalitional patterns characterize Brazil's recent WTO activities, accompanied by a turn towards plurilateralism and new issues, as well as changes in its dispute settlement practices. Most notably, Brazil has adopted a highly flexible approach to its developing country status and the special rights that this status yields. Cumulatively, these new directions in Brazil's trade policy comprise a pragmatic flexibility, detached from the North-South distinction that had previously been central to Brazilian diplomacy.

Coalition-Building

While in the 2000s, Brazilian trade diplomats aligned themselves with other developing countries in order to target distortions in the Global North, by the latter half of the 2010s these coalitional patterns had fundamentally changed. This most clearly comes to the fore in a series of joint legislative initiatives submitted to the WTO by Brazil and the European Union.

The first and most successful of these texts resulted in the 2015 Nairobi decision on export competition (WTO 2015a). Agriculture negotiations until this point had been structured along the three main 'pillars' of trade distortion, namely market access restrictions, domestic support regimes and support given specifically to exports. In 2015, WTO members effectively dismantled the third of these pillars by completely eliminating export subsidies. Moreover, while industrialised economies agreed to immediately dismantle their subsidy programs, implementation flexibilities for developing countries allowed them longer transition periods. Such consensus was in part achieved because by the time of the Nairobi Ministerial, only a handful of states were actively using export subsidies (South Centre 2016). Indeed, for the European Union, the regulation effectively rendered permanent the elimination of export subsidies it had achieved the previous year (Ibid.).

Despite this limited scope for changes in practice, the decision marks a significant step forward in WTO negotiations for two reasons. Following the collapse of trade

talks in the late 2000s, the adoption of substantive decisions on trade reform signalled the potential for paths out of negotiation deadlock. At the same time, the decision text drew on the last Doha agriculture draft modalities text (WTO 2008) and thus suggested that even on divisive agricultural issues, stalled negotiations could still provide results (South Centre 2016). For Brazil, the move towards such co-authorship in turn stemmed from an impasse in the G20, the primary negotiation coalition that it had established and led a decade earlier. As a contemporary Brazilian delegate noted:

But then we couldn't achieve with this group [G20] the objectives we had in terms of promoting agriculture trade liberalization. So, in a way we kind of became a hostage of the group, in terms of positions. (...) So, at that time we were approached, we, Brazil, Australia and Canada were approached by the EU for an informal discussion on what we can do (...) We basically started discussions on how we can tweak the Doha paper on Rev.4 on agriculture (...) and present it as a possible basis for discussion. So we did that. We revised the paper, which was almost agreed upon and we presented it as a joint paper for the Nairobi discussions to have a result on the export competition pillar. And we got it (Brazilian trade delegate interview, 10th January 2022).

This initial success took place outside the auspices of both the G20 developing country group and the Cairns Group. Moreover, it allowed for closer cooperation between Brazil and the European Union in further initiatives. The most ambitious of these has been the 2017 Brazil-EU joint proposal on domestic support (WTO 2017a). The regulation of subsidy regimes for agricultural products has proven to be one of the most divisive issues in international trade negotiations (Hopewell 2019) and has traditionally pitted heavy subsidizers like the European Union against more competitive exporters like Brazil. The joint proposal, however, tackles the issue head-on by introducing overall caps to domestic support. Moreover, the draft negotiation text tabled two alternative forms of cap: one that allowed developing countries to continue subsidizing their agricultural sectors at a higher relative rate than developed ones (WTO 2017a para 1A), and one that provided for longer timeframes for developing countries to reduce subsidies to a universal cap (WTO

2017a para 1B). In both instances, the actual cap level and the target years were left open as a basis for negotiation, while least developed countries (LDCs) were exempt from reductions.

Although this legislative initiative failed to translate into proper trade law, it nevertheless marks an important caesura for two reasons: first, the tabling of a draft text on domestic support indicated a level of proactive negotiation on agriculture that had been absent from the WTO in the first half of the 2010s. More importantly however, the Brazil-EU proposal contrasted heavily with a parallel proposal submitted to the WTO by China and India (WTO 2017b). The inclusion of floating caps and special and differential treatment in the Brazil-EU text had initially been designed as a palliative to gain support from these larger traders and other developing countries (Brazilian trade delegate interview, 10th January 2022). Not only did this fail to engender the desired consensus, but the Sino-Indian text proposed to eliminate subsidization flexibilities for a handful of (mainly developed) countries as a prerequisite for any further negotiations on domestic support (WTO 2018a para. 2). This effectively pitted Brazil's proposal against that of the other two 'BIC' countries, marking a caesura in its trade strategy. As one Brazilian trade delegate stated:

I think this was the first time that Brazil acted alone as Brazil at the WTO and not through a coalition. It is easy to minimize this now, but I think that this was really an inflection point, a psychological inflection point for Brazil. You will find generations of Brazilian diplomats and strategists who think that Brazil should both geopolitically or multilaterally in international organisations act through coalitions. The developing world is perhaps one of the largest of these coalitions somehow (...) I think that the EU-Brazil proposal is an inflection point exactly because you see a sort of new generation of thought in Brazil's foreign policy coming and predicated on perhaps more realistic elements - in the sense that we recognise the weight of Brazil in terms of agriculture, in the global economy, and we act based on that (Brazilian trade delegate interview, 30th August 2021).

A re-orientation of Brazilian trade policy – away from the G20 and large developing country coalitions – goes hand in hand with its attitude towards (and capacity for) leadership at the WTO. While in the early 2000s, the launching of the development-oriented Doha Round and the continued influence of the Washington Consensus allowed for the increased influence of emerging economies in re-balancing Northern-dominated trade negotiations, by the 2010s this had changed. Instead, recent years have been marked both by ongoing deadlock on key issues and the overshadowing of negotiations by larger US-Chinese geopolitical competition. In the words of a Brazilian diplomat:

It would be almost impossible to have China, India, US, EC and Brazil, day one agreeing on a mandate on anything. It's not going to happen. Because we don't have this sort of *air du temps*, sufficiently powerful to amalgamate everyone together. There is no Washington Consensus, so there is no strong pressure to put those five together. So, if we insist that oh, it's only multilateral, the fact is, it's nothing at all (...) It's a strong commitment to a multilateral outcome but at the same time making some...taking some flexible position in the understanding that there is not some sort of *air du temps* which would naturally make everything move forward. And at the same time we are waiting a little bit for China and the US to find a solution (Brazilian trade delegate, 10th January 2022).

The implications that this lacking normative context and fragmentation of emerging economy positions hold for Brazil's erstwhile role – as coordinator and leader of the Global South – are clear:

It's very easy to lead when you have everything in favour. When you have a nice mandate, China and India are not that big, agriculture is in the centre, Washington Consensus is around. So that's an easy leadership. It's not that difficult to lead and to make this happen. But if you cut 2001, 2003, 2005, you put 20 years, 15 years ahead and come now: there is not at all ground to lead. Lead on what grounds? How am I going to come to China and lead China, lead India, lead South Africa? Each one of them wants to go in another

direction. So there is no common ground to lead (Brazilian trade delegate, 10th January 2022).

More recently, Brazil and the European Union have continued their attempts to articulate joint proposals as potential platforms for the breaking of deadlock at the WTO. In the run-up to the 12th Ministerial Conference – to be held in June 2022 – moves to create a working group on WTO reform were however strongly opposed by other members, most notably India (Third World Network 2021).

New Legislative Areas

Brazil's move towards a more flexible coalition-building approach is mirrored by its engagement with new legislative initiatives at the WTO. While in the 2000s, developing countries opposed the so-called 'Singapore Issues' – trade facilitation, competition policy, investment regulation and government procurement (Evenett 2007) – in the 2010s, Brazil took part in, or co-authored, several legislative projects that constituted an expansion of the WTO's purview. The most notable shift was Brazil's decision to join the Revised Agreement on Government Procurement (GPA). The 2012 revision, which expands the scope of procurement regulated under its 1996 predecessor, is notable for two reasons. Firstly, it is a plurilateral agreement and thus has a much smaller set of parties than most WTO decisions. Secondly, this group of supporters consists primarily of industrialised economies. Historically, the liberalization of procurement contracts has primarily been of interest to developed countries, and so divisions over this issue have generally fallen along North-South lines (Evenett 2007).

Nevertheless, some developing countries have attained GPA observer status over the past two decades. Brazil became an observer in October 2017, ostensibly to aid the modernization of its economy and to better implement procurement provisions contained in regional trade agreements (WTO 2017c). This was followed in May 2020 by Brazil's official application for accession to the GPA (WTO 2020a), the first Latin American country to do so (WTO 2020b). Already during the preparatory stages of the accession process, observers noted that Brazil's accession would greatly diversify the list of parties (WTO 2020c). Brazil has in turn justified its accession by repeatedly

stressing its desire to integrate more deeply into the world economy (WTO 2021a; WTO 2020c).

A shift towards the plurilateral level is also evident in Brazil's recent support for joint initiatives concerning 'non-traditional' negotiation areas. At the December 2017 Buenos Aires Ministerial, Brazil was one of the initial co-sponsors of the Joint Ministerial Statement on Investment Facilitation for Development (WTO 2017d), which sought to start structured discussions on a multilateral investment facilitation agreement. A revised statement followed in 2019 and re-emphasised the need to properly integrate developing countries into international investment flows (WTO 2019a). Brazil's attempts to bridge divides and produce potential deadlock solutions are further underlined in its own investment facilitation proposals. In January 2018, Brazil submitted a Communication to the WTO General Council illustrating a potential structure for the negotiations envisaged in Buenos Aires (WTO 2018b). Notably, the Brazilian delegation sought to stress its integrative role in the discussions:

This submission is not meant to be a negotiating proposal, but rather (i) a platform (among others) to promote more focused and text-based discussions, as well as (ii) a response to the call made in the Joint Ministerial Statement with regard to the "importance of continuous outreach to WTO Members, especially developing and least developed Members" (WTO 2018b).

The pursuit of plurilateral negotiations on investment facilitation was in turn re-emphasized in July 2020, when Brazil submitted a new, complementary proposal (Ministério das Relações Exteriores 2020). The Brazilian delegation further co-sponsored a joint initiative on e-commerce, another new area of legislation (WTO 2019b). The significance of this Brazilian move to the plurilateral level to promote new legislative initiatives is borne out by its strong previous reliance on multilateral diplomacy. As one Brazilian trade delegate noted:

For us, because of agriculture, because of the kind of results that we need, I would say that Brazil is the most interested country in really advancing

multilateral negotiations. So this is, I think, the big point of departure where we're coming from. WTO negotiations for us is always number one: it has always been the big goblet that we need to get, this is the big prize (...) So this vantage point, I think this is in the DNA of every trade negotiator in Brazil (Brazilian trade representative, 10th January 2022).

Dispute Settlement

Changes in Brazil's coalition building and its shift to greater acceptance of plurilateral initiatives were further complimented by changes in its practices of dispute settlement. In the 2000s, one of the factors that helped to establish Brazil as a leader of the Global South – and paved the way for the creation of the G20 – was its success in taking on developed countries in international arbitration. 2002 thus witnessed the launching of two Brazilian cases against the European Union and the United States. While the former tackled trade distortions caused by heavy European subsidization of sugar exports (WTO 2002a), the latter sought to reduce US support for its domestic cotton producers (WTO 2002b). Brazil won both cases in 2005, thus marking the first time that a developing country had been successful in agricultural arbitration against an industrialised actor. This in turn allowed Brazil to 'construct a David-and-Goliath-like image of itself, as a hero of the developing world taking on the traditional powers' (Hopewell 2013; Hopewell 2021, 8). The legitimacy of Brazil's Southern leadership was – in the early 2000s – consequently derived from unprecedentedly successful legal targeting of subsidization practices in the Global North.

Indeed, in the late 1990s and 2000s, Brazilian dispute settlement overwhelmingly focused on distortions in developed countries (see figure 1 below). Over the past decade, however, this pattern has changed, with Brazil launching disputes against several developing countries. These include, for the first time, cases against China (WTO 2018c), India (WTO 2019c), South Africa (WTO 2012a) and Indonesia (WTO 2014a; WTO 2016). While in the first half of the 2010s, Brazil targeted the poultry sectors of South Africa and Indonesia (compare WTO 2012b; WTO 2014b; WTO 2015b), in the late 2010s, the Brazilian delegation launched complaints against Chinese and Indian sugar subsidies (compare WTO 2018d; WTO 2019d). Moreover,

the latter of these initiatives was co-led with Australia (WTO 2019c), the leader of the Cairns Group. While Brazil also continued to submit cases against the EU, the US and Canada, the more heterogeneous makeup of Brazil's dispute settlement targets in the 2010s is of particular note.⁶¹ This is summarized in the following pair of figures:

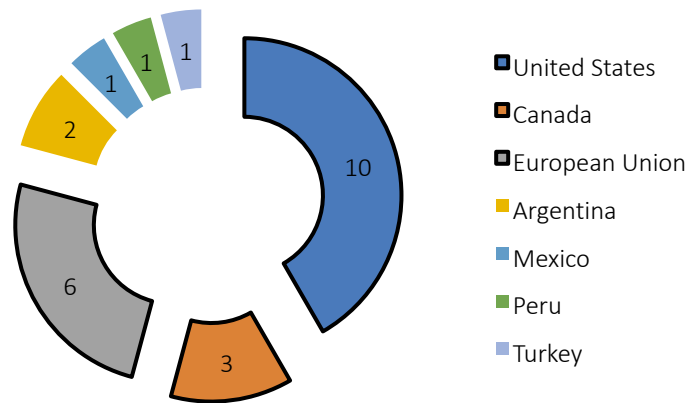


Figure 1. Targets of Dispute Settlement Cases Launched by Brazil 1995-2009 (Developed States Emphasized).

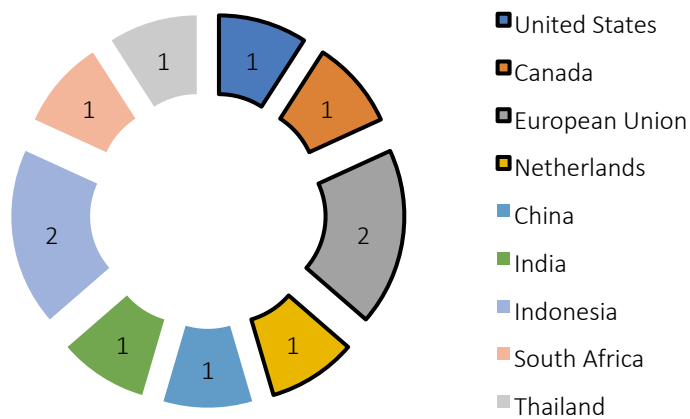


Figure 2. Targets of Dispute Settlement Cases Launched by Brazil 2010-2022 (Developed States Emphasized).

⁶¹ Patterns of similar magnitude cannot be observed in the dispute settlement practices of other emerging economies such as China, India, or Indonesia.

Clearly, Brazil's one-time focus on trade distortions in the Global North has made way for a more flexible approach that targets heavy subsidization regimes both in the Global North *and* the Global South. Whilst part of Brazil's positioning at the helm of the G20 had entailed the prioritization of offensive interests in industrialised economies – and thus the sidelining of interests in developing markets – recent years have seen a more universal legal targeting of subsidies. This dispute settlement strategy is in turn less reliant on North-South divisions as a structuring principle of Brazilian trade policy.

Developing Country Status

The strongest indicator that Brazil has recently left behind its use of North-South divides to gain bargaining power in WTO negotiations relates to its official status as a developing country. At the WTO, special and differential treatment (SDT) provisions are reserved for members that self-declare as developing countries. The subsequent ability of emerging economies to avail themselves of certain exemptions, implementation flexibilities and assistance mechanisms adds salience to Brazil's recent decision to forego such rights. On this contested issue, Brazil has come to an agreement with the United States that it would not make use of special trading rights granted to developing countries in future multilateral rules (Reuters 2019). The role of Brazil-US relations in this move is significant for two reasons: first, Brazil's voluntary rejection of developing country rights was explicitly leveraged against US support for Brazilian OECD membership (Agência Brasil 2019). This re-positions Brazil more explicitly amongst industrialised economies. In the words of Brazil's Foreign Minister Araújo:

It's about admitting our condition as a great country, thus bringing ourselves center stage when it comes to decision making at the WTO (Agência Brasil 2019).

Secondly, Brazil's reluctance to continue making full use of its developing country status takes place amidst contemporary, US-led contestation concerning the practice of self-declaring developing country status and amidst the unmaking of these special rights (Weinhardt and Schöfer 2021). In January 2019 – two months before Brazil's announcement that it would not use future SDT – the US delegation at the WTO

submitted a lengthy communication that promoted an ‘undifferentiated WTO’ and claimed that ‘self-declared development status risks institutional irrelevance’ (WTO 2019e). Over 45 pages, the text iterates through different socio-economic indicators and targets emerging economies, including Brazil, to underline that they are not on a par with the majority of developing countries. A month later, in February 2019, the US mission to the WTO even proposed a set of criteria – namely G20 membership, (planned) OECD membership, World Bank high income status and accounting for more than 0.5% of global merchandise trade – that would disqualify any WTO member from claims to developing country status (WTO 2019f). In the context of this unprecedentedly explicit contestation of developing country rights, Brazil’s implicit siding with the United States on the need for greater differentiation amongst WTO members marks a seismic shift for a country that formerly led the most powerful developing country coalition at the WTO.

In particular, Brazil has been notably absent from counter-initiatives designed to maintain the existing system of rights and the established practice of self-declaration. A 2019 joint statement on ‘the continued relevance of special and differential treatment for developing countries to promote development and ensure inclusiveness’ – in essence an alternative indicator list submitted in response to the US communication – was promoted by China, India, South Africa and a handful of other developing countries (WTO 2019g). Brazil did not feature amongst the supporters. The same can be said for a similar communication, in which a larger group of developing countries – including India, China and all African WTO members – reaffirmed the unconditional right to SDT, the right of self-designation, the need for existing provisions to be upheld and for SDT to be included in future legislation (WTO 2019h). Brazil’s conspicuous absence from these discussions, combined with its compromise on its own rights, accentuates the altered position it has attained in recent world trade politics. Not only does Brazil no longer lead influential developing country coalitions, but it also increasingly distances itself from North-South divides in order to attain a more flexible, intermediary role in trade negotiations.

Most recently, this avoidance of developed-developing country divisions comes to the fore in Brazil’s approach to an Indian-South African draft text proposing to waive

certain intellectual property provisions of the WTO's TRIPS Agreement in response to the Covid-19 pandemic (WTO 2020d). While a large group of developing countries, including all African countries, India, South Africa and Indonesia, have subsequently co-sponsored a 'Covid waiver' (WTO 2021b), Brazil is once again absent from the supporter list.

Conclusion

Comparing contemporary patterns of Brazilian diplomacy with a 2000s status quo, a clear picture emerges: Brazil has fundamentally shifted its position in international trade negotiations. It has done so seeking to overcome negotiation deadlock at the WTO and in line with its interests in liberalized agricultural trade. This article has delineated how Brazil's recent actions at the WTO stand in stark contrast to the position it had established at the outset of the Doha Development Round (2001-).

The early 2000s provided an environment conducive to a novel Brazilian leadership role at the WTO. Against the backdrop of several failed Ministerials in the 1990s and in the aftermath of the September 11th attacks, a consensus-building imperative permeated WTO politics (Wilkinson 2006). This in turn required the better integration of developing countries at the core levels of decision-making. In agriculture negotiations old patterns of US-EU coordination thus no longer bore fruit. Instead, the Doha Development Agenda and the continued influence of the Washington Consensus provided a normative context in which liberalization-oriented emerging economies such as Brazil could attain unprecedented influence. Moreover, Brazil's interests in the liberalization of agricultural trade primarily targeted trade distortions in the Global North during this period. This, in turn, allowed it to ignore its interests in developing country markets and to strengthen its self-portrayal as a leader of the Global South. Its representative function received a boost in the first half of the 2000s when Brazil became the first developing country to win WTO disputes against the US and the EU. Cumulatively, these interests-based and contextual factors allowed for the emergence of the powerful G20 group of developing countries with Brazil at the helm.

In recent years Brazil's trade policy strategy has been completely recalibrated away from the Southern leadership described above. Several factors are at play here: on the one hand, an early 2000s normative context that placed particular emphasis on international development has been superseded by a more confrontational tone at the WTO. Ongoing negotiations subsequently take place under the shadow of US-Chinese geopolitical competition and the inertia of a twenty five-year deadlock. On the other hand, Brazil's interests in achieving further liberalization in agricultural

trade run counter to this impasse in trade talks and so Brazilian trade delegates have engaged in multiple initiatives that hold the promise of advancing negotiations. With the emergence of large subsidization programmes in individual Global South states, the focus of Brazil's trade policy has also shifted. While previously it ignored interests in developing country markets to target trade distortions in the Global North, now its trade interests require a more universal trade strategy.

As the G20 has remained at an impasse for the past decade, unable to reconcile some of its members' defensive interests with the offensive position of Brazil – and others – this erstwhile influential group has disappeared from the scene. Instead, Brazil has taken the unprecedented step of acting independently of larger coalitions by submitting joint proposals on agricultural reform with the European Union. This strategy has shown some success, resulting in the phasing out of agricultural export subsidies in 2015. Other joint proposals have however not translated into legislation, and have pitted Brazil and the EU against China and India. Brazil's trade policy has also shifted to new areas of legislation. Initially wary of plurilateral policy-making and focusing on agriculture, Brazil has recently joined a flurry of joint initiatives that seek to expand the WTO's legislative frontier. In line with Brazil's new trade priorities, it has also adopted a larger range of targets in its dispute settlement. The heavy focus on Global North states in disputes launched by Brazil in the 1990s and 2000s, has been replaced by a more heterogeneous group of targets – including China, India and Indonesia – in recent years. The clearest rift between Brazil and other emerging economies has developed on the issue of special and differential treatment. Brazil has been notably absent from statements that defend the existing system of special rights for developing countries and the practice of self-declaration against US-led contestation. Rather, Brazil has signalled that it would stop making use of its developing country status in future trade legislation. In sum, these changes constitute a seismic shift in Brazilian trade strategy, moving away from Southern leadership towards a more flexible negotiation approach.

In terms of the questions raised at the outset, the image that emerges of Brazil's negotiation position at the WTO is clear. Having previously sided with other developing countries in its reform efforts, Brazil has moved away from strategies of

broad coalition-building. Even beyond formal coalitions, Brazil does not engage with developing countries as strongly as in the 2000s – as seen in debates over SDT. This encompasses a complete recalibration of negotiation strategy as Brazil no longer positions itself as a leader of the Global South. The Brazilian trade delegation consequently claims to represent merely the position of one country, rather than the combined stance of a large, Southern bloc of WTO members. Together, these changes in whom Brazil sides with and whom Brazil claims to represent encompass a new negotiation style. Brazilian engagement with ongoing negotiation deadlock is thus characterised by a move from distributive towards integrative bargaining. In effect, negotiation formats that pit different sides against one another make way for a pragmatic approach reliant on mutual problem-solving as a key frame of reference.

A newly flexible Brazilian trade strategy further holds implications for several strands of scholarship. In particular, it allows for a more nuanced appraisal of Brazil's status in international politics. Brazil's recent actions at the WTO do not betray the type of uncertainty that we would expect of a country that is stuck in a 'graduation dilemma' (Margheritis 2017; Milani, Pinheiro and Soares de Lima 2017). Instead, this article's findings are more in line with the primacy of agricultural liberalization often attributed to Brazilian trade policy (Hopewell 2016, 123). The pursuit of these interests subsumes status considerations as Brazil primarily aims to overcome negotiation deadlock. The strategy of gaining influence via a Southern leadership role has thus been cast aside in recent years. Scholarship that places the maintenance of a large and varied followership at the heart of Brazilian foreign policy consequently requires updating (Doctor 2015; Efstathopoulos 2012). While this primacy of leadership may have been accurate in the 2000s, by the 2010s such positioning has become nigh impossible due to diverging interests amongst developing countries and a waning normative legitimacy. The past decade has thus witnessed the emergence of a more independent Brazilian role in international trade politics. Brazil has effectively divorced itself from the North-South binary that structured both its trade strategy and WTO negotiations at the outset of the 21st century.

Reference List

- Agência Brasil (2019). 'Chancellor: Brazil placed as great country after new status at WTO.' *Agência Brasil International* 20 March 2019. Available Online: <https://agenciabrasil.ebc.com.br/en/internacional/noticia/2019-03/chancellor-brazil-placed-great-country-after-new-status-wto#:~:text=Brazilian%20Foreign%20Minister%20Ernesto%20Ara%C3%BAjo,a%20country%20forever%20under%20development.%E2%80%9D>
- Aoki Inoue, C.Y. and Costa Vaz, A. (2012). 'Brazil as 'Southern donor: beyond hierarchy and national interests in development cooperation?' *Cambridge Review of International Affairs* 25:4, 507-534.
- Baldwin, R.E. (2006). 'Failure of the WTO Ministerial Conference at Cancun: Reasons and Remedies'. *The World Economy* 29:6, 677-696.
- Bukovansky, M., Clark, I., Eckersley, R., Price, R., Reus-Smit, C. and Wheeler, N.J. (2012). *Special Responsibilities: Global Problems and American Power*. Cambridge: Cambridge University Press.
- Burges, S.W. (2020). *Brazil in the World: The international relations of a South American giant*. Manchester: Manchester University Press.
- Carranza, M.E. (2017). 'Rising Regional Powers and International Relations Theories: Comparing Brazil and India's Foreign Security Policies and Their Search for Great-Power Status'. *Foreign Policy Analysis* 13, 255-277.
- Casarões, G.S.P. and Farias, D.B.L. (2021). 'Brazilian foreign policy under Jair Bolsonaro: far-right populism and the rejection of the liberal international order'. *Cambridge Review of International Affairs*.
- Christensen, S.F. (2013). 'Brazil's Foreign Policy Priorities.' *Third World Quarterly* 34:2, 271-286.
- Da Carvalho, B. (2020). 'Brazil's (Frustrated) Quest for Higher Status'. Esteves, P., Gabrielsen Jumbert, M. and De Carvalho, B. (eds.) *Status and the Rise of Brazil*. Palgrave Macmillan.

- Da Motta Veiga, P. (2005). 'Brazil and the G20 group of developing countries'. Stoler, A.L., Low, P. and Gallagher, P. (eds.) *Managing the Challenges of WTO Participation: 45 Case Studies*. Cambridge: Cambridge University Press.
- Dauvergne, P. and Farias, D.B.L (2012). 'The Rise of Brazil as a Global Development Power'. *Third World Quarterly* 33:5, 903-917.
- De Sá Guimaraes, F. (2020). 'The uneasy 'well-placed' state: Brazil within Latin America and the West.' *Cambridge Review of International Affairs* 33:4, 603-619.
- Doctor, M. (2015). 'Brazil's Role in Institutions of Global Economic Governance: The WTO and G20'. *Global Society* 29:3, 286-300.
- Efstathopoulos, C. (2012). 'Leadership in the WTO: Brazil, India and the Doha development agenda'. *Cambridge Review of International Affairs* 25:2, 269-293.
- Esteves, P., Gabrielsen Jumbert, M. and De Carvalho, B. (2020). *Status and the Rise of Brazil*. Palgrave Macmillan.
- Evenett, S. J. (2007). 'Five hypotheses concerning the fate of the Singapore Issues in the Doha Round'. *Oxford Review of Economic Policy* 23:3, 392-414.
- Harig, C. and Kenkel, K.M. (2017). 'Are rising powers consistent or ambiguous foreign policy actors? Brazil, humanitarian intervention and the 'graduation dilemma''. *International Affairs* 93:3, 625-641.
- Hopewell, K. (2013). 'New Protagonists in Global Economic Governance: Brazilian Agribusiness at the WTO.' *New Political Economy* 18:4.
- Hopewell, K. (2015). 'Different Paths to Power: The Rise of Brazil, India and China at the WTO.' *Review of International Political Economy* 22:2, 311-338.
- Hopewell, K. (2016). *Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project*. Stanford: Stanford University Press.
- Hopewell, K. (2017). 'The BRICS – merely a fable? Emerging power alliances in global trade governance.' *International Affairs* 93:6, 1377-1396.

- Hopewell, K. (2019). 'US-China conflict in global trade governance: the new politics of agricultural subsidies at the WTO'. *Review of International Political Economy* 26:2, 207-231.
- Hopewell, K. (2021). 'Heroes of the developing world? Emerging powers in WTO agriculture negotiations and dispute settlement.' *The Journal of Peasant Studies* 49:3, 561-584.
- Hopewell, K. (2022). 'Emerging Powers, Leadership and South-South Solidarity: The Battle Over Special and Differential Treatment at the WTO'. *Global Policy*
- Hurrell, A. and Narlikar, A. (2006). 'A New Politics of Confrontation? Brazil and India in Multilateral Trade Negotiations'. *Global Society* 20:4, 2006.
- Hurrell, A. and Sengupta, S. (2012). 'Emerging powers, North-South relations and global climate politics.' *International Affairs* 88:3, 463-484.
- Kahler, M. (2013). 'Rising powers and global governance: negotiating change in a resilient status quo.' *International Affairs* 89:3, 711-729.
- Kenke, K.M. and Trote Martins, M. (2016). 'Emerging powers and the notion of "international responsibility": moral duty or shifting goalpost?' *Brazilian Political Science Review* 10:1.
- Lafer, C. (2000). 'Brazilian international identity and foreign policy: past, present, and future'. *Daedalus* 192:2. 207-238.
- Margheritis, A. (2017). 'Introduction The 'graduation dilemma' in foreign policy: Brazil at a watershed.' *International Affairs* 93:3, 581-584.
- Maswood, J. (2007). 'Developing countries and the G20 in the Doha round'. Crump, L. and Maswood, S.J. (eds.) *Developing Countries and Global Trade Negotiations*. Abingdon: Routledge.
- Milani, C.R.S., Pinheiro, L. and Soares de Lima, M.R. (2017). 'Brazil's foreign policy and the 'graduation dilemma'. *International Affairs* 93:3, 585-605.
- Ministério das Relações Exteriores (2020). 'Brazilian proposal for investment facilitation at the WTO.' *Press Release 74*. Available Online:

<https://www.gov.br/mre/en/contact-us/press-area/press-releases/brazilian-proposal-for-investment-facilitation-at-the-wto>

- Narlikar, A. (2013). 'Introduction: Negotiating the rise of new powers.' *International Affairs* 89:3, 561-576.
- Narlikar, A. and Tussie, D. (2004). 'The G20 at the Cancun Ministerial: Developing Countries and Their Evolving Coalitions in the WTO.' *The World Economy* 27:7, 947-966.
- Narlikar, A. and Vickers, B. (2009). *Leadership and Change in the Multilateral Trading System*. Boston: Republic of Letters Publishing.
- Narlikar, A. and Wilkinson, R. (2004). 'Collapse at the WTO: a Cancun post-mortem.' *Third World Quarterly* 25:3, 447-460.
- Preeg, E.H. (2012). 'The Uruguay Round Negotiations and the Creation of the WTO'. Narlikar, A., Daunton, M. and Stern, R.M. (eds.) *The Oxford Handbook on the World Trade Organization*. Oxford: Oxford University Press.
- Reuters (2019). 'Brazil's new status would not affect prior ag commitments: WTO chief' *Reuters Business News* 20th March 2019. Available Online: <https://www.reuters.com/article/us-brazil-trade-idUSKCN1R12NW>
- Soares de Lima, M.R. and Hirst, M. (2006). 'Brazil as an intermediate state and regional power: action, choice and responsibilities.' *International Affairs* 82:1. 21-40.
- South Centre (2016). *Assessing the WTO's Nairobi Package (MC10)*. Analytical Note SC/AN/TDP/2016/2. Available Online: https://www.southcentre.int/wp-content/uploads/2016/06/AN_MC10_2016_2_Nairobi-package_EN.pdf
- Taylor, I. (2000). 'The Cairns group and the Commonwealth bridge-building for international trade'. *The Round Table* 85:355, 375-386.
- Taylor, I. (2007). 'The periphery strikes back? The G20 at the WTO'. Lee, D. and Wilkinson, R. (eds.) *The WTO after Hong Kong*. Abingdon: Routledge.

- Third World Network (2021). 'Discussions on fundamental WTO reform fail to garner consensus'. *South-North Development Monitor* 9457.
- Weinhardt, C. and Schöfer, T. (2021). 'Differential treatment for developing countries at the WTO: the unmaking of the North-South distinction in a multipolar world.' *Third World Quarterly* 43:1, 74-93.
- Wilkinson, R. (2006). 'The WTO in Hong Kong: What it really means for the Doha Development Agenda'. *New Political Economy* 11:2, 291-304.
- WTO (2002a). *European Communities – Export Subsidies on Sugar*. WT/DS266. Summary Available Online:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds266_e.htm
- WTO (2002b). *United States – Subsidies on Upland Cotton*. WT/DS267. Summary Available Online:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm
- WTO (2003). *Agriculture – Framework Proposal*. WT/MIN(03)/W/6. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/MIN03/W6.pdf&Open=True>
- WTO (2008). *Revised Draft Modalities for Agriculture*. TN/AG/W/4/Rev. 4. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/AG/W4R4.pdf&Open=True>
- WTO (2012a). *South Africa – Anti-Dumping Duties on Frozen Meat of Fowls from Brazil* WT/DS439. Available Online:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds439_e.htm
- WTO (2012b). 'Brazil files dispute against South Africa on poultry meat.' *WTO Press Release* 21st June 2012. Available Online:
https://www.wto.org/english/news_e/news12_e/ds439rfc_21jun12_e.htm

- WTO (2014a). *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products*. WT/DS484. Summary Available Online:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds484_e.htm
- WTO (2014b). 'Brazil files dispute against Indonesia over import restrictions on chicken.' *WTO Press Release* 16th October 2014. Available Online:
https://www.wto.org/english/news_e/news14_e/ds484rfc_16oct14_e.htm#:~:text=DISPUTE%20SETTLEMENT-,Brazil%20files%20dispute%20against%20Indonesia%20over%20import%20restrictions%20on%20chicken,chicken%20meat%20and%20chicken%20products.
- WTO (2015a). *Export Competition – Ministerial Decision of 19 December 2015*. WT/MIN(15)/45. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN15/45.pdf&Open=True>
- WTO (2015b). 'WTO establishes panel in dispute between Brazil and Indonesia over chicken'. *WTO Press Release* 3rd December 2015. Available Online:
https://www.wto.org/english/news_e/news15_e/dsb_03dec15_e.htm
- WTO (2016). *Indonesia – Measures Concerning the Importation of Bovine Meat*. WT/DS506. Summary Available Online:
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds506_e.htm
- WTO (2017a). *Proposal on Domestic Support, Public Stockholding for Food Security Purposes and Cotton*. JOB/AG/99. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/99.pdf&Open=True>
- WTO (2017b). *Elimination of AMS to Reduce Distortions in Global Agricultural Trade*. JOB/AG/102. Available Online:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/102.pdf&Open=True>

WTO (2017c). 'Afghanistan, Brazil welcomed as observers to the WTO Government Procurement Agreement.' *WTO Press Release* 18th October 2017. Available Online:

https://www.wto.org/english/news_e/news17_e/gpro_20oct17_e.htm

WTO (2017d). *Joint Ministerial Statement on Investment*. WT/MIN(17)/59. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN17/59.pdf&Open=True>

WTO (2018a). *Elimination of AMS Beyond De Minimis to Reduce Distortions in Global Agricultural Trade – Some Incremental Steps*. JOB/AG/137. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/137.pdf&Open=True>

WTO (2018b). *Structured Discussions on Investment Facilitation – Communication from Brazil*. JOB/GC/169. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/GC/169.pdf&Open=True>

WTO (2018c). *China – Certain Measures Concerning Imports of Sugar*. WT/DS568. Summary Available Online:

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds568_e.htm

WTO (2018d). 'Brazil initiates WTO dispute complaint against Chinese measures on sugar imports.' *WTO Press Release* 22nd October 2018. Available Online:

https://www.wto.org/english/news_e/news18_e/ds568rfc_22oct18_e.htm

WTO (2019a). *Joint Ministerial Statement on Investment Facilitation for Development*. WT/L/1072/Rev.1. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/1072R1.pdf&Open=True>

WTO (2019b). *Joint Statement on Electronic Commerce*. WT/L/1056. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/1056.pdf&Open=True>

WTO (2019c). *India – Measures Concerning Sugar and Sugarcane*. WT/DS579.

Summary Available Online:

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds579_e.htm

WTO (2019d). 'Brazil, Australia initiate WTO dispute complaints against Indian sugar subsidies'. *WTO Press Release* 7th March 2019. Available Online:

https://www.wto.org/english/news_e/news19_e/ds579_580rfc_07mar19_e.htm

WTO (2019e). *An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance*. WT/GC/W/757. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W757.pdf&Open=True>

WTO (2019f). *Draft General Council Decision – Procedures to Strengthen the Negotiating Function of the WTO*. WT/GC/W/764. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W764.pdf&Open=True>

WTO (2019g). *The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development and Ensure Inclusiveness*. WT/GC/W/765/Rev. 2. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W765R2.pdf&Open=True>

WTO (2019h). *Statement on Special and Differential Treatment to Promote Development*. WT/GC/202/Rev.1. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/202R1.pdf&Open=True>

WTO (2020a). *Application for Accession of Brazil to the Agreement on Government Procurement*. GPA/152. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/PLURI/GPA/152.pdf&Open=True>

WTO (2020b). 'Brazil submits application to join government procurement pact.'

WTO Press Release 19th May 2020. Available Online:

https://www.wto.org/english/news_e/news20_e/gpro_19may20_e.htm

WTO (2020c). 'Brazil underlines bid to join government procurement pact, Côte d'Ivoire becomes observer.' *WTO Press Release* 21st July 2020. Available

Online:

https://www.wto.org/english/news_e/news20_e/gpro_21jul20_e.htm

WTO (2020d). *Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19*. IP/C/W/669. Available

Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True>

WTO (2021a). 'Talks kick off for Brazil's accession to government procurement pact.'

WTO Press Release 3rd March 2021. Available Online:

https://www.wto.org/english/news_e/news21_e/gpro_03mar21_e.htm

WTO (2021b). *Waiver from Certain Provisions of the TRIPS Agreement for the*

Prevention, Containment and Treatment of Covid-19. IP/C/W/669/Rev.1.

Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True>

Chapter Six

Conflicts over Special Rights: Southern Unity in Intellectual Property⁶²

Intellectual property rights (IPR) have often been an issue of North-South conflict in the World Trade Organization (WTO). Traditionally, the Global North seeks ‘maximal’ protection of patents and trademarks to increase the gains from the innovations they create while the Global South prefers ‘minimalist’ protection to allow for technology transfer, reliance on generic brands and lower prices (Morin et al. 2018). The structurally different positions that the Global South and the Global North hold in the international knowledge economy have underpinned these conflicting interests, with the majority of patents and trademarks originating in industrialized countries. This makes IPR prone to debates about whether and to what extent developing and developed country WTO members should hold differential rights and obligations to take account of development concerns. Recent demands to waive core provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in order to facilitate vaccine production in response to the COVID-19 pandemic echo these concerns.⁶³

However, the rise of Brazil, India and China (the BICs) holds the potential to change established conflict lines as they are caught between old ‘minimalist’ positions and new imperatives for ‘maximalist’ protection. As their position in the global knowledge economy is shifting, they may begin to increasingly side with the Global North. China became the top filer of international patents in 2019, surpassing the United States (WIPO 2020). India’s number of domestic patent applications has grown significantly and Brazil managed to establish itself as a competitive player in

⁶² This chapter is currently under review with *Oxford University Press* as Schöfer, T. ‘Conflicts over Transition Periods for Intellectual Property Rights’. Dingwerth, K., Weinhardt, C., Eckl, J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

⁶³ In March 2022 the US, EU, India and South Africa agreed upon a draft waiver text. In practice this would give all developing countries accounting for less than 10% of global Covid vaccine exports permission to manufacture vaccines for 3-5 years without consent from patent-holders (Shalal and Farge, 2022).

knowledge-intensives industries such as aerospace and automobiles (Morin et al. 2018, 266-267). The literature so far sees ‘mixed’ positions of the BICs on IPR, with a combination of ‘maximalist’ and ‘minimalist’ positions (Morin et al. 2018; Serrano 2016). These mixed positions thus elevate the rising BICs to a special position: if they side with other developing countries (unity of Southern coalitions), this could lead to *resilience*; conversely, if they side primarily with developed countries (disunity of Southern coalitions), we⁶⁴ expect that *unmaking* of special rights for developing countries becomes more likely. At the same time, we assume that the bargaining strength of these coalitions is mediated by the role of legitimacy concerns⁶⁵ and institutional opportunity structures (Alter and Meunier 2009; Gehring and Oberthür 2009; Morse and Keohane 2014; Raustiala and Victor 2004).

To trace the effect of the global power shift on the evolution of special rights, this chapter zooms in on existing provisions of special and differential treatment (SDT) in the TRIPS agreement. To assess changes over time, we focus on two conflict moments – one in the early 2000s and one in the early 2010s. Transition periods were chosen as cases of differential treatment in the WTO’s intellectual property regime, as they represent the primary format of SDT in the TRIPS Agreement. Only WTO developing country members and those members defined by the United Nations (UN) as Least Developed Countries (LDCs) are allowed to delay TRIPS implementation. However, this seemingly uncontroversial operationalization of the SDT norm has led to conflicts over three main issues: 1) The question of who should benefit - all developing countries or only LDCs?; 2) The adequate lengths of transition periods; and 3) Should it be possible to renew transition periods, and how should this be done?

We find that transition periods, over time, become restricted to LDCs: by the 2010s, the renegotiation of transition schedules focuses solely on the sub-group of LDCs as

⁶⁴ Note that although this is a single-authored chapter, its inclusion in a multi-authored monograph entailed the stylistic choice – throughout the book – to use the term ‘we’ when referring to the author(s) of individual chapters.

⁶⁵ These could include perceptions of fairness (Narlikar 2006) or other legitimacy concerns (Weinhardt 2020).

larger developing countries' transition periods elapse without successful extension. While LDCs attempted to extend these narrower rights, such demands were only partially successful and their rights remain largely unchanged as they are (re)negotiated over time. The *unmaking* of special rights for the group of developing countries thus goes hand in hand with *resilience* of these rights for the narrow sub-group of LDCs.

We show that high levels of Southern unity make the *resilience* of special rights for LDCs possible. Both in the 2000s and early 2010s, the BICs side with developing countries – or the LDC sub-group – in their demands to make differential treatment more substantive by expanding transition periods – either by making them automatic or permanent, or by negotiating an extension that was not foreseen in the original codification of the norm. In the second conflict, moreover, this support occurs despite the fact that the BICs lose their direct stake in transition schedule extensions. Unity amongst developing countries however only leads to a very limited norm expansion, as legitimacy concerns and institutional opportunity structures mediate the bargaining power of Southern coalitions: LDCs do not get the permanent exemptions they strive for. The developmental benefits of providing transition periods in intellectual property (IP) remain so contested that granting more extensive differential rights even for the economically marginal group of LDCs was not considered a legitimate demand. Regime complexity also contributed to entrenchment of this conflict along North-South lines.

These findings speak to the broader theme of the volume by zooming in on the conflict dynamics that shape the trend of fragmentation. In our trade overview chapter, we described a process of *resilience* of special rights – at the constitutional level – and a tripartite *unmaking* in day-to-day negotiations via processes of fragmentation, individualization and informalisation. In the field of IPRs, only the first of these unmaking processes takes place, as debates over differential rights narrow to concentrate solely on LDCs. Zooming in on the conflict dynamics that shape this *fragmentation* allows us to unpack the role of the BICs in shaping the evolution of differential treatment. Our findings show, first, that the effect of the global power shift on special rights can vary within different regime areas. In

agricultural negotiations, BICs interests increasingly diverge from those of other developing countries, which contributes to the *unmaking* of special rights. Conversely, with regard to negotiations on IPR transition periods, the BICs' continuous support for LDC demands is crucial for maintaining coalition unity. While they are unable to achieve significant norm expansion, their support for the LDC proposal arguably prevents further norm erosion. Second, we show that maintaining Southern coalition unity remains more feasible if the direct interests of the BICs are not at stake. In such situations, they tend to side with Southern coalitions, partly because of historical South-South ties and the contested relationship between IP protection and development. Third, and perhaps surprisingly, the reluctance of developed countries to extend the special rights of the economically marginalized group of LDCs illustrates that the effectiveness of differential treatment as such remains highly contested in the trade regime (regardless of the global power shift).

Lastly, this chapter contributes to the existing literature on intellectual property rights in the WTO by uncovering the conflict lines associated with transitional scheduling – an issue, that has largely been overlooked as uncontroversial (compare Moon 2011). In contrast to existing narratives that find that conflict lines on IPRs increasingly blur North-South lines (Morin et al. 2018), conflict lines remain stable on the issue of transition periods for LDCs.

The following section provides a brief historical and legal overview of the IP regime and introduces the issue of transition scheduling. Thereafter, the chapter examines conflict lines over transition periods in two time-periods (2001-2003; 2011-15). Lastly, the chapter assesses the factors that help explain the role of the BICs in these outcomes, with a focus on state interests and coalition-building, as well as the ways in which legitimacy concerns and institutional opportunity structures act as mediating factors of bargaining strength. In doing so, we focus on the role of the BICs in shaping the negotiation outcomes. Empirically, the chapter relies on eight

interviews with former trade negotiators,⁶⁶ minutes of TRIPS Council debates,⁶⁷ proposals submitted to the WTO and secondary literature.

⁶⁶ Interviews were conducted via telephone in October 2020.

⁶⁷ Statements were chosen that stemmed from the BIC and Quad group, however other actors that were particularly vocal in the debates, such as the delegates of Egypt, Switzerland, the African Group or the LDC Group were also included.

IP protection and development

Intellectual property rights play an important role in discussions on international development (Correa and Seuba 2019). The widening of the ‘knowledge gap’ between developing and industrialized countries and the simultaneous shift towards a global knowledge economy have added salience to these debates. Two interlinked questions emerge: on the one hand fears of an overregulated ‘thicket of patents’ engendering a needlessly litigious domestic market raise the issue of finding an appropriate level of IP protection to secure economic growth without stifling innovation (Baker, Jayadev and Stiglitz 2017). On the other hand, the need for developing countries to undergo ‘catch-up growth’ before being able to seriously compete with industries in industrialized economies problematizes a ‘one-size-fits-all’ approach to international IP regulation (Odagiri, Goto, Sunami and Nelson 2010).

How a strong domestic IP regime spills over into economic growth is a puzzle both for economic theorists and those studying the question empirically. Particularly as pertains to patents, IPRs contain the double promise of providing incentives for a sustained level of high innovation and limiting the use of existing knowledge.⁶⁸ Such a ‘removal of knowledge’ from a domestic or international commons in turn makes the ‘artificial scarcity’ (Hindley 1971) of IP problematic for economists who recognize the importance of education and knowledge dissemination to the development of poorer economies (Baker et al. 2017). Moreover, while some analysts find a strong empirical link between increased patent protection and levels of foreign direct investment and technology transfer to poorer states (Park & Lippoldt 2008; Robbins 2009), others argue that imbalances in the global knowledge economy demote IP protection in developing countries to a vehicle for the obtainment of rents by corporations from developed economies (Baker et al. 2017).

⁶⁸ Compare Arrow’s Information Paradox in Arrow (1962).

The 1995 TRIPS regime and North-South conflict lines

The intellectual property regime that emerged from the Uruguay Round was fundamentally different to international IP regulation pre-1995. While minimum IP standards on issues such as patents, copyright and trademarks had previously been administered across various fora – notably the World Intellectual Property Organization (WIPO), the Paris Convention and the Berne Convention – the TRIPS Agreement marked a more one-track approach within the auspices of the WTO. Envisioned as an international minimum level of IP protection, the provisions of TRIPS are far stronger than those of its predecessors. Moreover, TRIPS significantly expanded the areas of protection covered by international IP law, allowing previously neglected regulation on industrial designs, sound recordings or integrated circuits to be incorporated (Dreyfuss 2009). Importantly, TRIPS for the first time introduced solid enforcement mechanisms (Serrano 2016, 354). This move towards the WTO in the 1990s was in turn facilitated by industrialized country frustration with the lack of IPR progress and enforcement mechanisms in WIPO and the Convention on Biological Diversity (CBD). The US, the EU and Japan thus carried a push for a stronger – and broader – international IP regime that culminated in the articulation of an IP minimum in international trade law (Sell 2011).

The TRIPS Agreement represented a Global North initiative that met with resistance by developing countries (Groombridge 1999). Yet, this resistance did not prevent the conclusion of TRIPS. One hampering factor was that negotiations were characterized by a general lack of knowledge concerning the content and consequences of a trade-and-IP agreement amongst developing country delegates.⁶⁹ The legal sophistication of the proposed text submitted by Global North actors consequently could not be matched by an alternative proposal stemming from developing countries.⁷⁰ Instead,

⁶⁹ Former Trade Delegate Interview, 5th October 2020; Former Trade Delegate Interview, 6th October 2020; Former Trade Delegate Interview, 6th October 2020 (b).

⁷⁰ Former Trade Delegate Interview, 5th October 2020

the Indian delegation, with the support of other larger developing states, negotiated the inclusion of development-oriented clauses in the final agreement.⁷¹

The TRIPS Agreement is thus regarded as ‘a milestone in the concerted efforts by industrialised countries to strengthen IP protection for patents, copyrights, and trademarks’ (Serrano 2016, 345). Conversely, the terms of TRIPS for smaller economies have long been criticized, as it is often perceived as a bitter pill swallowed by developing countries in a 1990s trade-off for agreements on agriculture and textiles (Moschini 2003, 29-30). The dominance of industrialized countries as patent-holders at the time made intellectual property regulation an issue disproportionately favorable to the Quad negotiating group, comprising the United States, Canada, the European Union and Japan.

Attempts to increase IP protection standards are in turn often portrayed as welfare-enhancing liberalization (‘maximalist’ agenda); while low standards or the lack of harmonized standards (‘minimalist’ agenda) are regarded as obstacles to trade liberalization – a view, which many developing countries contest. The latter fear that stronger IP protection limits technology transfer and increases retail prices, which may prevent access to innovations.

To address some of the concerns of developing countries, TRIPS includes a number of SDT provisions, meant to offset their disadvantaged position in the knowledge economy. These provisions take the form of more generous transition schedules for developing countries and LDCs (TRIPS Arts. 65; 66.1), and as promises of technical assistance and technology transfer (TRIPS Arts. 66.1; 67). Further flexibility could in turn be achieved by exploiting wide discretion for implementation regarding the TRIPS Agreement’s clauses on compulsory licensing, government use of patents, parallel imports, protection of undisclosed data and ‘limited exceptions’ to the granting of exclusive rights (Musungu and Oh 2005). Careful formulation of domestic patent laws could consequently ensure conformity with TRIPS while simultaneously guaranteeing developing countries some limited policy space to achieve their

⁷¹ Former Trade Delegate Interview, 5th October 2020.

developmental goals. Note, however, that these latter TRIPS flexibilities are not explicitly framed in terms of differential treatment and can, theoretically, be employed by all WTO members.

There are three types of transition periods built into TRIPS for developing countries: while all WTO Members could avail themselves of a one-year grace period before full implementation of the TRIPS Agreement (Art. 65.1), this transitional period was extended to five years for developing countries (TRIPS Art. 65.2) (transition period 1995-2000). Notably, TRIPS includes a separate set of arrangements for Least-Developed Countries (LDCs). These poorest WTO Members are given 10 years to 'create a viable technological base' and to combat economic, financial and administrative constraints (TRIPS Art. 66.1) (transition period 1995-2005). If these vaguely defined conditions were not met, individual LDCs could submit requests for further extensions to the TRIPS Council – a right not explicitly granted to developing countries as a whole. Lastly, there is an additional transition period pertaining to 'areas of technology not so protectable in [developing country] territory' that shapes debates about access to medicines (TRIPS Art. 65.4). It provided an additional period of 5 years for countries that did not have any patent protection of pharmaceutical or agrochemicals at the entry of force of the Agreement in 1995.

Conflicts over Transition Schedules

The potential for IPRs to either hinder or promote economic development allowed transitional grace periods to become important conflict issues in the WTO discussions on IP. On the one hand, granting flexibility to developing countries was meant to allow countries to build up stronger capacities before liberalization via harmonized standards. On the other, the fairly brief five-year transition allotted to developing countries – and ten years for LDCs – allowed critics to suggest that this form of differential treatment was arbitrary and not development-oriented, but rather aimed at the rapid expansion of TRIPS coverage. This section delineates conflict lines at two crucial conflict moments in the early 2000s and the early 2010s, when previously negotiated transition periods for developing countries and LDCs were supposed to be phased out. Main conflict lines emerged over 1) who should benefit from extended transition periods (LDCs only or all developing countries); 2) how to determine the adequate length of a transition period; and 3) whether and how to allow for the renewal of transition periods.

We show that throughout both conflict moments, negotiating positions develop along North-South conflict lines. In the first conflict period, India and Brazil join forces with the African group and other developing countries to demand an extension of transition periods. However, we find that the inability to receive an extension for developing country members in the early 2000s – and subsequent *unmaking of special rights via fragmentation* – partly follows from the lack of coherence of Southern coalitions when faced with a relatively united Global North: the African group proposal – supported by Brazil and India – competed with a separate LDC proposal. By the time of the second conflict in the early 2010s, Southern unity had increased – with the BICs and other developing countries uniformly supporting the LDC proposal. However, unity of the Global North in opposition to LDC demands remained strong, which meant that BICs unity with Southern coalitions did not translate into major gains. In the end, transition schedules for LDCs were renewed, but their implementation-related rights were only marginally expanded. This constituted *resilience of special rights for LDCs* amidst heavy contestation.

The Conflict in the Early 2000s (2001-03)

The first conflict emerged in the late 1990s and early 2000s, when the transition periods originally granted to developing countries in TRIPS were set to expire. The conflict played out clearly along North-South lines, however the South was not unified internally: while Brazil and India sided with the African group, Global South positions were not well-coordinated and the LDCs submitted their own proposal. Ultimately, demands for an all-developing country transition period extension were unsuccessful in light of opposition from a more unified Global North. The finalization of relevant ministerial decisions by 2003, as well as the expiry of prior transition periods in turn allowed debates over transition schedules to fade away after this point. Only the proposals aimed at the LDCs managed to translate into legislation, resulting in the *resilience* of this sub-group's special rights.

As early as 1998, three years after WTO establishment, trade delegates from larger developing economies raised concerns regarding the implementation of differential treatment provisions in TRIPS. A first conflict issue that emerged was the question of the *adequate length of (existing) transition periods* for developing countries. In a November Communication the Indian delegation stressed that favorable treatment for developing countries had to be evaluated and that increases in transition periods offered a potential remedy to ongoing implementation issues (WTO 1998a). These general concerns were expanded upon in a statement from Egypt, which argued that the length of transitional periods was chosen 'haphazardly and with no objective basis or linkage to the level of development (...)' and that they were 'excessively optimistic regarding the pace at which institutional and human capacity can be built in developing countries (...)' (WTO 1998b).

Egypt further argued that while Arts. 65-66 consequently did provide some leeway for developing countries, 'many developing countries will still find great difficulties in implementing the TRIPS Agreement due to weak institutional structures, the absence of the required expertise and lack of resources, financial or otherwise' (WTO 1998b). Egyptian critiques of transition periods were in turn explicitly supported by India in a later communication, alongside criticisms of the

insufficiency of technical assistance in combatting implementation issues (WTO 1998c).

The preparatory talks for the 1999 Ministerial Conference were in turn marked by a unified Quad Group response to critiques of TRIPS transition schedules. The European Communities emphasized that derogations from existing TRIPS provisions were unwelcome: 'There should therefore be no question, in future negotiations, of lowering of standards or granting of further transitional periods' (WTO 1999a). A Japanese statement on IPR echoed this stance, accentuating that members should ensure the full implementation of TRIPS – rather than a renewal of transition periods (WTO 1999b).

With the commencement of the Doha Round in November 2001, the question of transition scheduling started to gain traction. A drive to clarify the relationship between the TRIPS Agreement and the protection of public health resulted in a Special Session of the TRIPS Council in June 2001, which allowed actors from both the Quad Group and the group of larger developing countries to discuss potential nuances to TRIPS implementation. Most notable is a proposal submitted by Brazil and co-sponsored by India, the African Group, Indonesia and 14 other developing country actors: Declaring that 'nothing in the TRIPS Agreement should prevent Members from taking measures to protect public health' (WTO 2001b), the proposal included provisions on transitional agreements, suggesting that the TRIPS Council could consider extending the transitional periods for developing countries (Art. 65.4) and LDCs (Art. 66.1) (WTO 2001b). A counter-proposal submitted by the European Communities in turn did not incorporate extensions, but underlined that 'in the view of the EC and their member States (...) special transitional arrangements and other provisions give these countries a sufficiently wide margin of discretion in implementing it.' (WTO 2001a).

By October 2001, the group around Brazil, India and the African Group concretized their demands in a new proposal, circulated both in the TRIPS Council and the General Council. The cautious extension proposal mentioned above was replaced by a strong declaration of further extensions that was justified both in terms of implementation and manufacturing capacities:

In view of the special needs and requirements of developing and least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, the transition period provided for their benefit under Articles 65.4 and 66.1 of the TRIPS Agreement shall be extended for another period of five (5) years from the expiration of the transition periods thereunder (...) without prejudice to further extensions (WTO 2001c).

By referring both to developing countries and LDCs, the developing country group also opened a second conflict line: who should be the *beneficiaries of differential treatment*? The proposal's strong focus on the delayed implementation of TRIPS for developing countries stood in stark contrast to the approach of developed country actors: in October 2001 the United States, Canada, Japan, Switzerland and Australia circulated a document that emphasized the status of the TRIPS Agreement as a necessary basis for international IPR. The needs of developing countries and LDCs are in turn solely addressed in a clause on the importance of technical assistance in helping these states implement their TRIPS obligations (WTO 2001d).

In a negotiated balance of these different positions (see Correa 2002) November 2001 witnessed the adoption of the Declaration on the TRIPS Agreement and Public Health. However, the transition schedule extensions mentioned above were not incorporated. Instead, only LDCs were granted an exemption from the implementation of the patent regulations in TRIPS Sections 5 and 7 until 2016 – and only with regards to pharmaceuticals. Original proposals for across-the-board extensions for developing countries were consequently replaced by LDC-only transition schedules on pharmaceutical products (WTO, 2001e).

The conflict over *who should benefit* from longer transition periods, and the resulting bifurcation of the developing country group into LDCs and non-LDCs, became even more apparent in the following two years. With the establishment of a Committee on Trade and Development (CTD) in 2001, the African Group re-energized its push for greater incorporation of SDT in existing WTO agreements. In a

2002 Joint Communication the Group consequently reaffirmed that ‘transition periods shall not be arbitrarily set or inadequate (...) developing and least-developed country members shall always have a right to extend transition periods provided that they shall notify the World Trade Organisation (...)’ (WTO 2002b). A revision of this document the same year contained agreement-specific proposals for SDT implementation. The document proposes ‘developing country Members shall be entitled to extensions beyond the additional 5 year period under Art. 65.4 relating to other areas of technology required to be protected under the TRIPS Agreement’ (WTO 2002c). Statements of support for the African Group proposal in turn came from India, Argentina and Malaysia (WTO 2003, paras. 218; 221; 223).

Southern unity of coalitions, however, was not as strong as it initially seemed. This is because at the same time, the LDC Group submitted its own proposal to the CTD. This step was notable in the sense that it clearly emphasized LDCs’ SDT needs – regardless of the concerns of other developing countries – pertaining to transition schedules. The proposal suggested an expansion of differential treatment regarding the procedures concerning renewal of existing transition periods in TRIPS, and thus added a third (only LDC-related) line of conflict to the negotiations: the proposed amendment was to automatically grant extensions to any LDCs who had not established a viable technological base by the end of their transition period (WTO 2002d). According to TRIPS Art. 66.1, LDC members have to officially request an extension before the TRIPS Council. This alternative proposal, however, sought to rule out the requirement of consent from TRIPS Council members and placed the burden of proof on those who opposed the extension. Support for the LDC proposal came from the delegations of Kenya, Egypt, Argentina and Cuba (WTO 2003, paras. 209; 210; 213) - but not from India or Brazil who supported the African group proposal.

Both proposals were simultaneously submitted to the TRIPS Council in May 2002 and faced uniform opposition from a united Global North. In response to the LDC request for automatic extensions, the US reiterated that the current Agreement was already flexible enough on LDC extensions, as exemplified by the 2001 decision on public health (WTO 2003, para. 204). The Canadian delegation mirrored this

approach in its dismissal of the LDC proposal, stating that Art. 66.1 was already sufficient as a mechanism for requesting extensions (WTO 2003, para. 206). Representatives from Switzerland and Japan joined in this hesitation to support the LDC text, arguing that ‘an open-ended extension of the transition period under Article 66.1 could lead to the loss of momentum to prepare the implementation within the prescribed period’ (WTO 2003, para. 212).

Quad Group actors adopted a similar opposition to transition period extensions for developing countries as a whole. The US accentuated that the existing transition period was a ‘more than adequate period of time for developing country Members to implement product patent protection for those areas of technology that were not protected when TRIPS came into force’ (WTO 2003, para. 215). A counter-proposal authored by the US and discussed at an informal meeting with the African Group (WTO 2003, para. 228) in turn failed to develop into proper TRIPS legislation. By 2004 a TRIPS Council Secretariat document summarizing progress on the two proposals made no reference to the transition extension for developing countries as a whole (WTO 2004). While the LDC proposal was not adopted as such, it is of note that in 2005 LDCs *collectively* received an extension until 2013 (WTO 2005).

In short, base differences between actors from the Quad Group on the one hand and Brazil, India and other developing countries on the other allowed transition periods to become a node of conflict in early 2000s IPR debates (for an overview, see figure 1). Opposing positions were ultimately built on different understandings of who should benefit from extended transition periods, how to determine their adequate length and what procedures should guide their potential renewals. The conflict ran strictly along North-South lines, with Brazil and India supporting the African Group proposal.

A division between developing countries and LDCs became apparent, however, when the LDCs submitted their own proposal on transition periods. This fragmentation of Southern coalitions arguably limited their chances of success, given the Global North remained relatively united in their opposition to both proposals. As a result, transition schedules for developing countries were not extended, and the support of India and Brazil for the African group proposal did not translate into

meaningful negotiation outcomes. This resulted in an *unmaking* of special rights for the developing country group. Instead, only LDCs were able to lock in further differential treatment, keeping their special rights *resilient*. Parallel attempts to reform the transition schedules in the TRIPS Agreement for developing countries and to go beyond the LDCs' *individualized* procedures for extension requests could thus only yield success for the latter initiative.

The Conflict in the Mid-2010s (2011-15)

Unable to secure an extension, by the 2010s non-LDC developing countries had to implement the TRIPS Agreement. It is of note that this did not however decrease the salience of the North-South conflict over the issue of transition schedules. Both with regards to pharmaceuticals and TRIPS enforcement in general, 2013-2015 witnessed considerable debate over the granting of further extensions to the LDC sub-group. Despite losing their direct stake in this debate, larger developing countries actively participated in these discussions, defending the special rights of LDCs. This stronger unity of Southern coalitions in the 2010s signals a continued divide between members of the Quad Group on the one hand and the BICs and smaller developing countries on the other over the developmental benefits of IP protection. Contention continued to centre on the adequate length of transition periods and the procedures for their renewal. By the 2015 Ministerial Conference, requests for LDC transition period extensions could claim success, albeit in a watered-down state compared with the original proposals. These extensions comprise the *resilience* of special rights for LDCs, made possible via Southern unity.

The general transition period granted to LDCs in 2005 had allowed these marginal economies a further eight years to build up a viable technological base (WTO 2005). The 2002 Declaration on Public Health was slightly more generous, with an extra 13.5 years given to LDCs in the pharmaceutical sector (WTO 2002a). With enforcement deadlines approaching in 2013 and 2016 respectively, LDCs thus launched proposals for further extensions in 2011. A November 2011 Elements Paper circulated by Bangladesh on behalf of the LDC Group stressed the continued relevance of extensions, as LDCs' conditions had not changed over the previous eight years. Recalling that industrialized countries had committed to providing enhanced technical assistance, the paper went on to stress the need for a further extension (WTO 2011).

In the TRIPS Council such an extension was further defended as a necessary tool in these countries' fight against the aftereffects of the Global Financial Crisis (WTO 2012a, para. 338). Already in this initial phase, without a draft text on the table, the Quad Group signalled their position: in November 2011, the US stated that while an

extension for LDCs was a ‘matter of great importance’, its support of the 2005 extension had been ‘premised on the importance of promoting IP protection and enforcement, particularly as a significant driver of the development goals of LDCs.’ From the outset, a ‘maximalist’ logic was consequently pursued by the US, implying that any derogations from TRIPS enforcement were to be limited and temporary in nature. The delegations of Japan, Canada, Australia and Switzerland joined in this consensus (WTO 2012b, paras. 8; 9; 10; 11).

Continued calls for greater technical assistance and transition flexibility culminated in November 2012 with an official extension request under Art. 66.1. Pointing to the high rates of poverty, low human capital and lacking infrastructure in their countries, LDCs questioned their ability to benefit from TRIPS implementation. A waiver was subsequently sought in order to secure the ‘policy space’ needed to access technology and educational resources that could aid in LDCs’ development. This marked a novelty when compared to previous extension requests, as it suggested making exemptions permanent:

In view of the impossibility of determining when individual LDCs will be able to overcome the constraints that prevent them from creating a viable technological base, the transition period should remain in force while the Member is considered a least developed country in the WTO (WTO 2012c).

Debates over the exemption of LDCs from TRIPS implementation came to a head in 2013. Members of the LDC Group used TRIPS Council Meetings to stress their lacking financial, educational and human capacity to implement TRIPS and promoted the concept of ‘policy space’ as a means of developing the tools necessary to overcome developmental challenges (compare WTO 2013b, paras. 11.12; 11.22; 11.30; 11.52). Angola for instance argued that ‘[t]he negotiated period in the last extension of seven and a half years was absolutely inadequate and of limited practical value to LDCs for dealing with development challenges and developing a viable and sound technological base. An indefinite duration would give LDCs certainty and predictability’ (WTO 2013b; para. 11.82).

Strong support for the LDC proposal came from the BICs. The Brazilian delegation anchored its backing of an unconditional LDC exemption in the importance of SDT more generally (WTO 2013b, para. 11.20). China also backed the LDC initiative, highlighting that these developing countries continued to face serious economic, financial and administrative constraints and that they were thus justified in requesting ‘maximum flexibility’ (WTO 2013b, para. 11.29). India also supported the LDC request, pointing to the marginal role of these economies in world trade, their vulnerability, and their limited infrastructure. The Indian delegation further honed in on the separate provisions for LDCs in the TRIPS Agreement, including a right to request individual extensions: the framers of the TRIPS Agreement thus ‘duly recognized their need for exemption from the obligations under the Agreement (...)’ (WTO 2013b, para. 11.38). The ability of LDCs to request individual extensions was thus reimaged as a recognition of the need for LDCs to remain exempt from TRIPS implementation. Support for the exemption-based proposal also came from South Africa (WTO 2013b, para. 11.33), the African Group (WTO 2013b, para. 11.19), the ACP Group (WTO 2013b, para. 11.26) and ASEAN (WTO 2013b, para. 11.34), illustrating greater Southern unity of coalitions than in the 2000s.

Developed states’ approaches to LDC transitions were markedly different: while the Canadian delegation was quick to welcome efforts by LDCs in implementing TRIPS and indicated its openness to addressing their difficulties, it hastened to add that any solution should help them better integrate into the international trading system. In terms of a permanent exemption the message was clear: ‘Canada therefore believed there was a need to find an appropriate timeframe to build upon the infrastructure and human capital in LDCs’ (WTO 2013b, para. 11.44). A similar approach was adopted by Australia, which supported an extension in principle but focused on the timeframe and parameters for extension rather than engaging with the request of an ‘unlimited’ transition period (WTO 2013b, para. 11.51). The United States in turn reiterated its conviction that a permanent waiver would not be beneficial for LDCs (WTO 2013b, paras. 11.64-66). Portrayals of IP protection and innovation as cornerstones of development also make up statements by the EU (WTO 2013b, paras. 11.69-76) and Japan (WTO 2013b, para. 11.34), and underline the uniform,

‘maximalist’ position that Quad Group nations took against the LDC proposal. The EU delegation further criticized the use of LDC status as a threshold as opposed to a distinct timeframe for the transition (WTO 2013b, para. 11.71). The Swiss delegation went so far as to remind Members that the LDC Group was not actually proposing a further extension, but indefinite non-application of TRIPS provisions (WTO 2013b, para. 207).

By 2013 the issue of granting a transition period extension to an economically marginal sub-group of developing countries had consequently been transformed into a North-South conflict over the implementation of TRIPS. The unconditional support LDCs received from the BICs in their push for an indefinite extension contrasts sharply with the focus on timeframes, hitherto LDC progress and defenses of IP protection that constitute developed country statements.

At a 2013 TRIPS Council meeting, the Indian delegation stressed that ‘any artificial deadline would not help in creating a sound and viable technological base (...)’ (New 2013). Despite this clear support for the original LDC proposal, unified opposition from developed country actors, led by the United States and the European Union, made the success of this initiative unlikely (Saez 2013). Instead, in June 2013 the TRIPS Council approved an eight-year collective extension for LDCs (WTO 2013a). Some analysts still saw this as a success, particularly as the decision did not include a ‘no-rollback’ clause as in 2005 (Syam 2014). Others however, took issue with this denial of permanent exemptions. At an October TRIPS Council Meeting on public health, India highlighted the North-South conflict lines over LDC demands:

We found strong resistance from the developed country Members to provide an indefinite extension till the LDCs graduated (...) the permanent exemption from the provisions of the TRIPS Agreement to all countries while they are classified as LDCs continues to be the most significant exception to ensure access to low-cost generic medicines in LDCs (...) (WTO 2013c, para. 75).

The conflict over TRIPS implementation in LDCs continued in March 2015, as LDCs pushed for a separate extension for pharmaceuticals. Quoting a UNAIDS report that

stressed the need for an extended transition, the LDC Group submitted a proposal that claimed it was 'imperative for LDCs to retain maximum policy space to enable them to confront their health burdens'. On pharmaceuticals LDCs again requested an extension for as long as a Member remained a LDC (WTO 2015d; WTO 2015a, paras. 497-503). Cognizant of the controversial nature of an indefinite extension, the representative of the LDC Group devoted an entire section of their June statement before the TRIPS Council to '[t]he issue of duration for as long as we are LDCs'. In it, the delegation declared 'it would be unconscionable for WTO Members to grant LDCs (...) a time limited transition period (...) ' as this would create an 'uncertain environment' for producers of affordable medicines. Here again, LDCs' ability to apply for individual extensions under Art. 66.1 was interpreted as a recognition of the constraints LDCs faced. The statement went on to claim that the socio-economic situation of LDCs had deteriorated and the health need in these nations had increased (WTO 2015b, para. 378-380). The LDC submission was in turn supported by Brazil (WTO 2015a, para. 508), India (WTO 2015a, paras. 510-511) and China (WTO 2015a, para. 512).

Full support for the unconditional, graduation-linked transition period came from South Africa (WTO 2015b, paras. 386-387), the African Group (WTO 2015b, paras. 382-385), as well as the BICs at the subsequent June 2015 TRIPS Council meeting, again illustrating Southern unity of coalitions in this time period (WTO 2015b, paras. 412; 426-428; 438). Referencing the 2013 meetings on the general waiver, the Indian delegation stressed the continued relevance of its position then and its consistent support for LDCs' extension request 'without any conditionalities' (WTO 2015b, para. 412). China on the other hand, rooted its support for the LDC request in the 'economic, financial and administrative constraints of LDC Members, as well as the close relation between the access to certain pharmaceutical products and human life' (WTO 2015b, para. 438). Turning to developed countries, the Chinese delegation further urged industrialized economies to provide more incentives and encourage technology transfer to LDCs (Ibid.). The Brazilian delegation used the June Meeting to again support LDCs and to push for a producers-users balance in international IP protection. Brazil even took the floor twice during the same meeting to stress to

Members that the discussion at hand was about pharmaceuticals and not the general transition period discussed two years earlier (WTO 2015b, paras. 426-428; 483-485).

However, opposition from the Global North also remained strong. The Japanese delegation remained cautious and stressed that LDCs could still make use of the general transition period (WTO 2015b, paras. 440-443). This echoes the Australian opposition to permanent exemptions for LDCs (WTO 2015b, paras. 472-473). The EU on the other hand simply stated its willingness to resolve any legal uncertainty and 'ensure LDCs flexibility' (WTO 2015b, para. 458). Informal meetings held by the United States with the representatives of the LDC Group in turn ensured that the negotiation outcome again fell short of the LDCs' original goals.

US disagreement with the indefinite timeframe, combined with its insistence that individual LDCs could use Art. 66.1 to request an extension whenever needed yielded a decision to extend the LDC transition on pharmaceuticals until 2033 (Saez 2015). Reactions to this watering down of the original request again fall along North-South lines: the delegations of the US (WTO 2015c, para. 344), Japan (WTO 2015c, para. 379), Switzerland (WTO 2015c, paras. 381-382) and the EU (WTO 2015c, paras. 374-375) voiced their support for the decision in a November 2015 meeting. While China (WTO 2015c, para. 376), Brazil (WTO 2015c, para. 388) and India (WTO 2015c, paras. 371-373) also supported the consensus they nevertheless voiced critiques. The Brazilian delegation for one pointed out that the solution fell short of the objective of LDCs, but would be supported, as it was a compromise the LDC Group agreed with (WTO 2015c, para. 388). India on the other hand, claimed that the freedom of extension encapsulated in Art. 66.1 should be interpreted as mandatory, i.e. that the TRIPS Council could not deny requests for extension or impose further conditionalities on LDCs: 'Despite the overwhelming support for the LDC request from all developing countries and many developed countries, a developed country has negotiated an outcome with the LDCs which is a derogation from the provisions of Art. 66.1' (WTO 2015c, para. 372).

Evidently, in the 2010s developed-developing country conflicts remained strong. This is surprising, as we would expect the interest of larger developing countries in

transition schedules to decrease as their direct stake in the negotiations vanished. While discussions over implementation issues in the early 2000s could consequently rely on the parallel attempts of LDCs and developing countries to secure extensions, by the 2010s only the issue of transition periods for LDCs was on the table. While there was general agreement over the need for transition periods for LDCs as part of SDT in the world trade regime, it remained highly contested how to operationalize it. The Global North remained united in its opposition to making transition periods permanent for LDCs, and instead sought to promote domestic IP enforcement as a guarantor of economic development. In the end, LDCs only made marginal gains by securing an extension of transition schedules – but without making them permanent. Unity of Southern coalitions – including the BICs – in this second conflict moment thus translated into the *resilience* of special rights for LDCs.

Table 1 – Overview of attempted norm expansion and negotiation outcomes

First Conflict Moment (2001-03)	
June 2001 Proposal (Brazil, India, African Group, Indonesia and others)	Transition period extensions for developing countries and LDCs.
October 2001 Proposal (Brazil, India, African Group and others)	Transition period extension of five years for developing countries (Art. 65.4) and LDCs (Art. 66.1).
Outcome: November 2001 Declaration on the TRIPS Agreement and Public Health	LDCs exempt from implementing TRIPS Arts. 5 and 7 for pharmaceuticals until 2016.
May 2002 Proposal (African Group)	Transition period extensions for developing countries (Art. 65.4).
May 2002 Proposal (LDC Group)	Transition period extensions for LDCs should be granted automatically.
Outcome: November 2005 Decision on LDC Transition Period Extension	Transition period extension for LDCs until 2013. ‘No roll-back clause’ ensures existing IP

	in LDCs is protected.
Second Conflict Moment (2011-15)	
November 2011 Elements Paper (LDC Group)	Transition period extension for LDCs.
November 2012 Proposal (LDC Group)	TRIPS waiver for LDCs.
Outcome: June 2013 Decision on LDC Transition Period Extension	Transition period extension for LDCs until 2021.
February 2015 Proposal (LDC Group)	TRIPS waiver for LDCs on pharmaceuticals.
Outcome: November 2015 Decision to Extend Pharmaceuticals Transition Period for LDCs.	Transition period extension until 2033.

How the Rise of the BICs Shaped the Negotiation Outcomes on Transition Schedules

Conflicts over TRIPS transition schedules fell along North-South lines. However, Southern unity was less strong in the 2000s as compared to the 2010s, while Northern unity remained relatively high throughout both conflict moments. The BICs were neither able to get an additional expansion of transition schedules for developing countries, including themselves, nor did their backing of the LDC demands to make the extension renewal automatic or permanent lead to an expansion of differential treatment. Arguably, norm expansion was only successful at the margins, with LDCs surpassing the individualized, application-based procedures for extension requests in the TRIPS Agreement by obtaining collective extensions. Against this background, this section unpacks the state preferences at stake that shaped coalition patterns, and analyses legitimacy concerns and institutional opportunity structures as mediating factors of bargaining strength. Together these factors provide a better understanding of why we observe *resilience* concerning the special rights of LDCs.

Despite the rise of the BICs within the global knowledge economy, they continue to hold a shared interest in 'TRIPS flexibilities' similar to LDCs and other developing countries. This facilitated Southern coalitional unity, especially in the 2010s. The meager success their coalition had, however, can be partly explained by the way in which the contested ideological nature of the link between IP protection and development delegitimized LDC demands. The belief in the developmental benefits of 'maximalist' IP protection explains why opposition from the Global North remained so strong, given the marginal economic role that LDCs play in the world economy. Lastly, ample forum shopping opportunities reinforced the North-South stalemate in the WTO.

State Interests and Coalition Building: BICs Unity with the Global South

In the first conflict moment, India and Brazil side with the African group and other developing countries. This can be partly explained by converging interests in maintaining longer transition periods. By the 2000s, most of the 73 developing countries that were WTO members at the time and many LDCs had already put in place some form of patent legislation in line with TRIPS obligations (Musungu and Oh

2005, 7). This meant that transition schedules were not necessary for some of them – even though it is important to mention that in half of these cases the laws for TRIPS implementation pended approval in domestic legislatures (Deere Birkbeck 2009, 13). Moreover, enforcement mechanisms in developing countries often remained weak (Ibid, 14). India, and to some extent Brazil, however, belonged to the group of developing country members that made active use of transition schedules in the early 2000s.

In particular regarding the pharmaceutical sector, India used the ability to delay stronger patent protection. The transition period granted in TRIPS Article 65.4 allowed India to become a global producer of generic drugs. For example, India became the leading producer of antiretroviral therapy for HIV patients, rising to 80% of the annual global supply (UNAIDS 2011, 32). Next to India, only 12 other WTO members made use of this specific transition period for the pharmaceutical sector – including Brazil (Musungu and Oh 2005, 7). While Brazil's generic industry is less dominant compared to India's, Brazil at the time had a very high number of people dependent on HIV medication (UNAIDS 2011, 22). This meant that India, and to some extent Brazil, had a shared interest in supporting the African group's proposal for an extension of the transition schedule for developing countries. Moreover, both countries have some interest in lax enforcement of pharmaceutical patents in LDCs: historically, poorer developing country markets have been reliant on generic producers in emerging economies like Brazil and India (Atal 2016). On the specific issue of pharmaceuticals, the economic interests of BIC states thus align with LDC demands for exemptions or transition extensions.

More generally, the BICs were primarily importers rather than exporters of innovation in the early 2000s, and thus faced more costs than benefits from immediate TRIPS implementation. This is because stronger patent protection raises the costs of products and potentially endangers employment in production sectors that rely on imitation (Deere Birkbeck 2009, 10). According to a World Bank study cited by Deere Birkbeck (Ibid.), the costs from TRIPS implementation remained high:

In 2002, the World Bank estimated that TRIPS implementation would generate annual net losses for Brazil of US\$530 million, for China of US\$5.1 billion, for India of US\$903 million.

The willingness of Brazil and India to push back against the implementation of TRIPS not only reflects these interests, but also represents a change in positions in the early 2000s as compared to the 1990s. Developing country attitudes to IP had sharpened during the late 1990s, both as a consequence of piecemeal TRIPS implementation and as part of a larger globalization backlash.⁷² For example, Brazil and other Latin American countries had initially sought quick implementation of TRIPS in the 1990s. According to one former delegate, this was the result of international pressure by private companies and industrialized economies to refrain from flexibility use, as well as domestic initiatives to attract foreign investment.⁷³ In the early 2000s on the other hand, a more development-oriented approach to IPRs emerged in Brazil, South Africa and several Latin American states, encompassing more assertive positions on patent rights and TRIPS application domestically, constitutional court cases regarding licensing disputes, as well as a more combative tone regarding natural resources, biodiversity and the development dimension.⁷⁴

In particular, developing countries focused on a larger effort related to full implementation of the Uruguay Round Agreements' flexibilities and SDT provisions.⁷⁵ Centring debates on IPR around the fulfillment of already negotiated obligations consequently allowed Brazil and South Africa to join India in a more defensive stance against an increasingly stringent IPR regime.

However, this learning process also meant that in the early 2000s, Southern positions on IP were often still relatively uncoordinated. Highly uneven levels of TRIPS implementation across the Global South (Deere Birkbeck 2009, 12-14) arguably made it difficult to find a coherent position on transition schedules across

⁷² Former Trade Delegate Interview, 9th October 2020

⁷³ Former Trade Delegate Interview, 9th October 2020; Former Trade Delegate Interview, 14th October 2020

⁷⁴ Former Trade Delegate Interview, 9th October 2020

⁷⁵ Former Trade Delegate Interview, 14th October 2020

the different coalitions. As a result, many commentators lamented the lack of coordination between developing country states in the early 2000s (Geiger 2012; Abdel Latif 2005).

By the end of the decade, however, common IP policy-making initiatives and a more self-assertive tone characterize the behavior of developing nations. This did not however inevitably translate into BICs support for LDC proposals. By the early 2010s, the BICs, and in particular China, had developed significant technological capabilities. In contrast to the early 2000s, when the costs of TRIPS implementation remained high for the BICs, their increasing role as knowledge producers went hand in hand with rising benefits from stronger IP protection. This suggests that they could have held an interest in joining the Global North in their opposition to the LDCs' waiver demands.

However, a closer look at the economic interests of the BICs shows that their economic rise did not translate into a clear-cut shift from a 'minimalist' to a 'maximalist' position on IP protection. While domestic IP protection did increase across the BICs, benefits from patents or trademarks are often still passed on to foreign companies. In India and Brazil, for instance, the majority of national patent applications still belong to foreign entities (Muzaka 2019, 360-362) - a trend that is different for China (Cheng 2019, 147). Nevertheless, according to World Bank estimates, in 2015 88% of IP benefits still went to entities in the US, the EU and Japan (Muzaka 2019, 252-253). This signals that despite their economic rise, the BICs still hold an interest both in 'maximalist' and 'minimalist' positions.

This ambiguous position is replicated at the level of TRIPS implementation, where the BICs at times go beyond their obligations in some areas of IP (so-called TRIPS-plus commitments), whilst at the same time making use of TRIPS flexibilities elsewhere. In China, for instance, some domestic forces push for stronger IP protection at the national level, while at the same time it ranks among the main patent infringers at the local level (Morin et al. 2018, 264; Serrano 2016, 359). Similarly, Brazil emerged as a strong force against a 'maximalist' IP agenda in the world trade regime, even though it had adopted strong patent legislation at the domestic level that went beyond TRIPS requirements (Morin et al. 2018, 268). Out of

the three BICs, India is clearest in its opposition to a ‘maximalist’ IP regime, even though this seems only partly interests-based, and partly a reflection of strong ideological beliefs in the importance of technology transfer and weak IP protection for development (Serrano 2016, 356). Yet, both India (2005) and China (2008) articulated domestic patent laws that made full use of the flexibilities in the TRIPS Agreement, particularly on compulsory licensing (Zeferino de Menezes, 2018). These ambiguities in the economic interests of the BICs thus partly explain why it was conceivable for them to side with LDCs.

In general, the first half of the 2010s is characterized by a more proactive and organized group of developing countries. Their aims were to minimize the fallout of TRIPS-plus provisions in the trade agreements of the Quad Group, to advocate for continued TRIPS flexibilities, to formulate common foreign policy priorities and to integrate their interests in new pieces of international IP legislation. With the rise of the BICs this has in turn allowed these countries to emerge as leaders of a broader coalition of developing economies and to vocally counter the erosion of implementation flexibilities.

BICs support for LDC proposals thus forms part of a larger North-South conflict over IP protection. A trade official underlined that proposals on transition scheduling need to be seen as part of a larger platform that emerged in the 2000s on implementation related issues. The African Group’s 2003 proposal for developing country extensions must consequently be seen as just one element of an agenda that tackled up to 110 issues in the WTO Agreements flagged by developing countries. Misgivings about the developmental impact of the Uruguay Round agreements were in turn amplified by resistance to the notion that ‘SDT was to be only transitory’, targeted at ensuring full participation in the multilateral trading system.⁷⁶

Notions of political solidarity and South-South ties were also important in facilitating Southern unity of coalitions in the second conflict moment. Recalling debates over

⁷⁶ Former Trade Delegate Interview, 14th October 2020

LDC extensions, one former trade negotiator accentuated the strong support that these marginal traders received from Brazil, India and Egypt and the consultations that some of these delegations entered into with the LDC Group.⁷⁷ Sympathy both for extension requests and for permanent exemptions were in turn linked by several interviewees to wider political notions of solidarity between developing country members at the WTO.⁷⁸ An LDC insistence on pushing for exemptions rather than extensions was in turn partly explained as a result of NGO consulting.⁷⁹ Increased bilateral ties between Brazil, India and China on the one hand and individual LDCs on the other exemplified new coalition-building initiatives.⁸⁰ One official explained developing country support for LDC proposals as follows:

It's largely political. These countries ultimately are our allies on many issues as well. There are many alliances at work in the WTO. And often times a country will support another even if they don't have such a large stake in the issue.⁸¹

The coalescence of developing country actors in this manner in turn mirrors the parallel formation of the BRICS: properly founded in 2011, the BRICS group promoted both a continued balance of rights and responsibilities in the WTO and the development mandate of the Doha Round (BRICS 2011). It is of particular note that the 2012 New Delhi Summit underlined the adverse effects of trade protectionism in the economies of the Quad members, particularly on Least Developed Countries (BRICS 2012). Here consequently a group of emerging economies frame their interests in a way that includes the poorest members of the developing country group. This type of alliance building also took place more specifically on IPR.⁸²

⁷⁷ Former Trade Delegate Interview, 6th October 2020 (b)

⁷⁸ Former Trade Delegate Interview, 6th October 2020; Former Trade Delegate Interview, 6th October 2020 (b)

⁷⁹ Former Trade Delegate Interview, 5th October 2020

⁸⁰ Former Trade Delegate Interview, 6th October 2020 (b)

⁸¹ Former Trade Delegate Interview, 9th October 2020

⁸² The 2016 New Delhi Trade Ministers Meeting stressed "the importance of cooperation on intellectual property rights (IPR) towards the development of a BRICS perspective that will be informed by national priorities." The formation of a 2010-14 Joint Action Plan between Brazil and

In short, the rise of the BICs has not yet translated into a clear-cut shift from a ‘minimalist’ to a ‘maximalist’ agenda on IP protection. This made it possible for the BICs to unanimously support the LDC proposal in the 2010s and to secure the *resilience* of special rights for LDCs. Growing Southern coalition unity in the early 2010s did not however translate into norm expansion. While the Global South increasingly united, the Global North – led by the US – was also united in its opposition to LDC proposals.

Legitimacy: Contestation of the IP-development nexus

To understand the outcomes described above, it is important to consider the normative environment that helped to shape the legitimacy of competing negotiating positions. In contrast to agriculture negotiations, the status of the BICs as beneficiaries of differential treatment did not play a major role in IPR debates. The shift to granting transition periods solely to LDCs already occurred in the early 2000s. However, legitimacy conceptions nonetheless influenced the negotiation dynamics regarding transition schedules. In particular, divides between ‘minimalist’ and ‘maximalist’ approaches to IP protection and development underpinned opposing demands. They explain both the inclination of the BICs to support later LDC proposals, as well as the stubborn resistance of the Global North to give in to the demands of these peripheral traders. From the perspective of the Global North, LDC demands for permanent exemptions would undermine, rather than facilitate development. The question to what extent implementation of the TRIPS Agreement serves to further development policy thus adds an ideological dimension to the drive to extend transition schedules.

In terms of explaining BICs positions on IPR, it is important to consider divides over integration into the multilateral trading system. Describing WTO politics in the early 2000s, one former trade delegate accentuated the presence of ‘combative developing country delegates, talking about the development dimension’ with a

China, including a Working Group on Intellectual Property fits in with this new cohesion. (BRICS 2016; Zeferino de Menezes 2018).

focus on sovereign rights over natural resources and biodiversity.⁸³ This sovereigntist approach in turn contrasts heavily with the integrative thrust emanating from developed countries over the past twenty years:

The developed countries are consistently trying to undermine the special rights of developing countries and they follow a strategy of graduation. And not just in the international trade regime, everywhere.⁸⁴

These ideological differences reinforced the opposing positions of Global North and Global South coalitions. In October 2001 the United States, Canada, Japan, Switzerland and Australia circulated a document that defended their reluctance to renew transition schedules for pharmaceutical products with reference to the 'maximalist' ideological position that links stronger IP protection to developmental gains. Framed as a potential preamble, the proposal declared that WTO Members 'recognize that strong, effective and balanced protection for intellectual property is a necessary incentive for research and development of life-saving drugs and, therefore, recognize that intellectual property contributes to public health objectives globally' (WTO 2001d). This is extended even further in the requirement for members to reaffirm their 'commitment to the TRIPS Agreement and its implementation' due to its contribution to making medicines more available. An earlier Japanese statement on IPR also reflected this 'maximalist' stance, accentuating that members should first ensure the full implementation of the TRIPS Agreement and that harmonization of different jurisdictions' IPR systems would actually promote the further economic development of developing countries (WTO 1999b).

The US representative emphasized in the June 2003 TRIPS Council meeting that

[H]is delegation believed that a prolonged transition period under Article 65.4 would discourage those developing country Members that had not yet done so from implementing product patent

⁸³ Former Trade Delegate Interview, 9th October 2020

⁸⁴ *Ibid.*

protection in certain important technologies. This could have the effect of impeding the growth of these innovative industries in those Members and undermine economic development (WTO 2003, para. 215).

Aside from the economic benefits of full implementation, the statement by the US addressed the fundamental question of the WTO's purpose: 'Extended transition periods would also run contrary to the objectives of the multilateral trading system, which was to remove barriers to trade, including non-tariff barriers such as the lack of adequate and effective intellectual property protection' (Ibid.).

This 'maximalist' ideological perspective on the link between IP protection and development was strongly opposed by the BICs and other developing countries. The Venezuelan delegation – akin to India – attacked the structural limitations in developing countries' trade profiles, stating that development goals are 'not automatically reached by trade liberalization, nor are they helped by just allowing transitional periods' (WTO 1999c; WTO 1999d). Instead, officials from the Global South emphasized that it would be necessary for developing countries to be able to actively create their own patentable subject matter before implementing stronger IP protection. The African group proposal emphasized that all provisions in the TRIPS agreement should be read in the light of its objectives, including the need 'to promote the development of manufacturing capacities of pharmaceuticals'. This statement echoed a 'minimalist' ideological perspective on IP protection based on the need to become competitive in the knowledge economy before enforcing stronger protection regimes. A 'minimalist' perspective was also echoed by India: 'Excessive protection of IPRs may end [a] virtuous cycle of knowledge transmission and regeneration in the developing world' (WTO 1998c).

Paying attention to these ideological divides also allows us to understand why the Global North was so reluctant to accept an automatic or permanent exemption for LDCs. In 2003, the US stated that automatic extensions risked permanent derogation from TRIPS implementation, which would in turn be counter-productive as IP protection formed the basis for further development (WTO 2003, para. 205). The Canadian delegation mirrored this approach in its dismissal of the LDC proposal:

Implementation of a minimum level of IPR was fundamental to attracting investment and improving LDCs' economies. Development was thus based – at least in part – on the implementation of TRIPS obligations by a specific deadline (WTO 2003, para. 206).

This 'maximalist' perspective was reiterated in 2013, when Canada encouraged LDCs to adopt 'measures that would help create an enabling environment for development through a transparent and rules-based regulatory framework' (WTO 2013b, para. 11.44). The United States in turn reiterated its conviction that 'IPR protection and enforcement provided critical incentives for creation and innovation that would promote economic growth and create jobs' (WTO 2013b, para. 11.64-66). Similarly the delegate from Switzerland

[W]ondered, whether from a long-term perspective, a decision of the Council to declare TRIPS provisions inapplicable to LDCs for good would actually be the most beneficial decision to promote the objective of establishing economic development and competitiveness of LDCs in the world trade system. LDCs had also to gain for their own IP assets as they implemented the Agreement and put in place an IP protection system (WTO 2013b, para. 11.62).

In contrast, permanent exemptions for LDCs were supported by non-LDC developing countries with a strong and regular emphasis on the 'policy space' that these nations' development and infrastructure deficits necessitated. The Brazilian delegation anchored its backing of an unconditional LDC exemption in three arguments: firstly, SDT was an important systemic component in the WTO and TRIPS ensuring that international trade was an effective motor of international development. Secondly, Brazil was invariably supportive of policy space in the domestic implementation of international IP legislation – again, to secure developmental potential. Lastly, the integration of developing countries into an international knowledge economy was presented as a daunting challenge the 'complexity of which could not be properly assessed when the Uruguay Round was completed' (WTO 2013b, para. 11.20). An early 2000s integrative thrust regarding

TRIPS was subsequently seen as a miscalculation that should not be repeated for the poorest economies.

China's support for the LDC proposal in the 2010s reflects a similar ideological perspective on the IP protection-development nexus: only once a viable technological base was built up with the given flexibility, could WTO Members count on LDCs' more effective participation in the global trading system (WTO 2013b, para. 11.29). India's support for the LDC proposal was, moreover, justified with reference to the need to 'support[...] all initiatives that promote access to medicines at affordable costs to the people living in the poorest countries of the world' (WTO 2015a, para. 511).

This larger conflict over development and IPR thus helps to explain both the strong support that the BICs gave to an LDC proposal that they had no direct stake in, as well as the strong opposition of major developed countries from the Global North to granting LDCs automatic or permanent exemptions from TRIPS implementation.

That being said, the implementation of the TRIPS Agreement and twenty years of economic development have also allowed for changes in this strong North-South polarization over IP implementation. As one trade negotiator and long-term IP expert put it, while in the 1990s the developing country appreciation of TRIPS was not positive, by 2020 many Latin American and Asian countries had accepted IP as part of their development. Most of Asia and parts of Africa however still remained convinced that international IP regulation was primarily 'for the developed world'. The same official noted that while previously Brazil, India, South Africa and Nigeria – amongst others – were clearly positioned to limit the consequences of IP, this has been changing in the last five years. As a result some actors, most notably Brazil, have become less vocal on the supposedly negative impact of IP enforcement in developing countries.⁸⁵

At the same time, the recent global Covid-19 pandemic has engendered renewed pushes for policy space and limits to TRIPS implementation: in October

⁸⁵ Former Trade Delegate Interview, 6th October 2020

2020, the delegations of India and South Africa submitted a draft decision to the TRIPS Council concerning waivers from the implementation of Sections 1, 4, 5 and 7 of the TRIPS Agreement. While this call for derogations from TRIPS implementation is noteworthy in itself, it further stresses that the right of LDCs to request transition schedule extensions under Art. 66.1 shall not be impeded (WTO 2020b). The need to secure the policy space of WTO Members on IP matters during a health crisis – and of LDCs in particular – has consequently survived over the past two decades and provides an ideological backdrop to conflicts over transition scheduling. While divides over the IP-development nexus have on the one hand stopped LDCs from achieving exemptions, it has also enabled a Southern unity that has left special rights for LDCs *resilient*.

Institutional Opportunity Structures: Forum Shopping Reinforces Stalemate

Differing institutional opportunity structures can affect the influence of the BICs, as the ability to forum shop can either support or undermine the demands of these larger traders. Arguably, opportunities for forum shopping have further entrenched the North-South conflict lines within the WTO. As a result, BICs support for LDC transition schedule proposals in the 2010s – and the *resilience* of their special rights – can be seen as part of a larger attempt to push back against ‘TRIPS-plus’ obligations that go beyond TRIPS in bilateral or plurilateral initiatives outside the WTO.

Prior to the finalization of the Uruguay Round in 1995, the World Intellectual Property Organization (WIPO) provided the main stage for IP regulation (Sell 2011). Thereafter, the passing of the TRIPS Agreement shifted the IPR regime’s centre of gravity to the newly formed WTO. The vital issue of access to medicines in turn allowed the World Health Organization (WHO) to play a strong forum role, while attempts by developing countries to marry biodiversity concerns with TRIPS gave prominence to the Convention on Biological Diversity (CBD). These multilateral forums were accompanied by a flurry of bi- and plurilateral trade agreements, which have increasingly incorporated IP-related provisions. This latter development was mainly a result of deadlock between members of the Quad Group and the BICs regarding TRIPS reform. Industrialized economies thus transferred their attempts to

gain deeper commitments on IP protection to the bilateral level while developing countries used the TRIPS Council and other multilateral forums to defend their interests.

Parallel negotiation aims in turn resulted in different policy-making trajectories in the 2000s: while developing countries paired with NGOs to promote the formulation of further flexibilities regarding TRIPS and public health (Ibid.), the US attempted to restart talks on a Substantive Patent Law Treaty (SPLT) and an Internet Copyright Convention in WIPO (Ibid.). These early 2000s initiatives had differing levels of success. The anthrax attacks of 2001 allowed industrialized economies to recognize the utility of exemptions from strong patent protection for pharmaceuticals (Lee 2015; Kumar 2018). This backdrop, paired with a drive by NGOs to tackle the HIV/AIDS crisis in developing countries consequently allowed for the signing of the 2001 Doha Declaration on TRIPS and Public Health. The 2002 attempt by the US to restart the SPLT in turn did not bear fruit.

Vertical forum-shifting in the form of a flurry of plurilateral trade agreements (PTAs), bilateral investment treaties (BITs) and European Partnership Agreements (EPAs) allowed actors from the Quad Group to incorporate TRIPS-plus provisions in individual treaties with developing countries (Sell 2011). In doing so, they avoided the type of universal consensus and coalition building required by the WTO. As one former official claimed, it had become apparent that it was impossible to go beyond the TRIPS Agreement in the WTO, thus necessitating a shift of the TRIPS-plus push to the bilateral level.⁸⁶ In essence, this bifurcated international IPR politics as developing countries continued to push for the conservation of TRIPS flexibilities and developed countries attempted to strengthen international IP legislation in bilateral policy-making.

Developing countries, supported in their endeavors to secure TRIPS flexibilities by various international organizations (Zeferino de Menezes 2018), also attempted to expand the TRIPS Agreement. The protection of traditional knowledge,

⁸⁶ Former Trade Delegate Interview, 6th October 2020

folklore and biodiversity was thus pursued by these countries in the TRIPS Council, along with initiatives by some developing countries for an expansion of the geographic indicators protections available for wines and spirits (Dreyfuss 2009). Such initiatives were echoed in WIPO, where the adoption of a Development Agenda in 2007 entailed the creation of a Committee on Development and Intellectual Property and the formation of a Development Agenda Group (DAG) (May 2007, Deere Birkbeck 2016). The replacement of WIPO's heavily technical outlook by a development-oriented approach was in turn led by Brazil, India and Argentina.⁸⁷ Several interviewees stressed the conversion of WIPO from an institution focusing on the harmonization of technical standards to a development-conscious body as a significant forum change.⁸⁸

Accompanying these efforts to incorporate developmental priorities in multilateral trade forums, the late 2000s witnessed attempts by the Quad to expand IP regulation plurilaterally. Most notably, in 2007 negotiations amongst the Quad, Australia, New Zealand, South Korea, Switzerland, Mexico and Morocco would yield the Anti-Counterfeiting Trade Agreement (ACTA). This Quad-led initiative was widely considered an affront to established, multilateral avenues of IP policy-making. While ACTA also accentuated divisions within the developed country group – the European Parliament notably rejected the agreement in 2012 – it is still of note that the remaining negotiators signed the Agreement. The proliferation of TRIPS-plus provisions such as those on the ACTA negotiating table in turn led analysts to declare that the TRIPS flexibilities that were meant to ensure policy space were at risk of losing their relevance (Sell 2011).

Developing countries took to the TRIPS Council in the early 2010s to sharply criticize the growing trend of TRIPS-plus provisions as embodied by the ACTA draft text. Lengthy contributions by China and India consequently honed in on the 'even more phenomenal and strong' (WTO 2010, para. 250) trend of legislating below the

⁸⁷ Former Trade Delegate Interview, 6th October 2020

⁸⁸ Former Trade Delegate Interview, 5th October 2020; Former Trade Delegate Interview, 6th October 2020; Former Trade Delegate Interview, 6th October 2020 (b); Former Trade Delegate Interview, 9th October 2020; Former Trade Delegate Interview, 14th October 2020.

multilateral level, the ‘systemic concerns’ (WTO 2010, paras. 255; 257) this trend engendered and the fact that ‘[a]greements such as ACTA had the potential to completely upset the balance of rights and obligations of the TRIPS Agreement’ (WTO 2010, para. 273). The Brazilian delegation summarized the fears of developing countries as follows:

Brazil shared the main thrust of the statements by China and India, emphasizing two points of particular concern. The first one was the ACTA negotiating process, which lacked the legitimacy of initiatives conducted in multilateral organizations and had been conducted in a non-transparent atmosphere of secrecy that was not conducive to trust. The second one was that ACTA might, in addition to being TRIPS-plus, end up being TRIPS-minus to the extent that it contributed to narrowing down the scope for flexibilities (WTO 2010, para. 318).

Indeed a rejected proposal by China attempted to protect countries from the adverse affects of such extra-WTO trade legislation, arguing that provisions of FTAs should be mandated to conform with the TRIPS agreement, should not ‘create distortive effects’ and should not restrain a Member’s ‘autonomy for utilizing its public enforcement resources’ (WTO 2010, para. 259).

While developed country actors continued to pursue mega-regionals such as the Trans-Pacific Partnership, emerging economies also created new legislative initiatives: 2012 witnessed the commencement of negotiations on the Regional Comprehensive Economic Partnership (RCEP) under the leadership of China. Similarly, negotiations in WIPO led by developing countries allowed for the signing of two major IP agreements on protections for audio-visual performances – the 2012 Beijing Treaty – and on access to knowledge for the visually disabled – the 2016 Marrakesh Treaty. Inside the WTO, the 2010s in turn witnessed a continued push for amendments to the TRIPS agreement that would use disclosure of origin provisions to protect the biological diversity, traditional knowledge and folklore that disproportionately made up the IP interests of developing countries (Yu 2022).

In short, the expansion of bilateral IP regulation – at the behest of developed countries – has included TRIPS-plus provisions, which stand in contrast to BIC attempts to preserve policy space for development purposes. Fears of erosion in non-multilateral fora consequently drive the push by developing countries to keep existing flexibilities intact in the WTO. This broader context helps us to understand why BICs unity with the Global South in terms of coalitions only yielded *resilience* and was not sufficient to facilitate a significant expansion of differential treatment for LDCs in the 2010s, given the issue became entangled in the firmly entrenched North-South conflict over IP in the broader regime complex.

Conclusion

The relationship between IP protection and economic development remains contested. This allows IPR to become a prime centre of North-South conflict in the trade regime. Quad states have pushed for the full and universal implementation of the TRIPS Agreement as well as an expansion of the existing IPR regime via TRIPS-plus provisions, while larger developing countries have jealously guarded flexibilities available to them to secure their policy space.

These underlying forces erupt in full conflict when developing countries – or even a marginal sub-group – propose extensions for their TRIPS transition schedules or call for permanent exemptions. Such derogations stand in diametric opposition both to industrialized economies' attempts to move the legislative frontier beyond the TRIPS minimum, as well as the 'maximalist' logic they promote in general: integration into the global trading system is promoted as a motor for economic growth and a key poverty alleviation tool for developing country members. Differing appraisals of the value of such integration for development in turn make this 'maximalist' logic clash with the BICs' 'minimalist' emphasis on policy space. The strong rejection of extensions for developing countries and the watering down of LDC proposals underline an ongoing process of contestation regarding the special rights of developing countries.

Debates over transition scheduling in the TRIPS agreement further underline a strong Southern unity that promotes norm expansion and enables the *resilience* of special rights for LDCs. This runs counter to expectations that the rise of the BICs would blur North-South divides. The proposals reviewed above push for expansion of the normative frontier in three ways: firstly, the push for extensions for the developing country group as a whole goes beyond the assumption that the 1995 schedules were to be the final say on transition flexibilities. Secondly, the LDC proposals for a collective extension runs counter to the individual, application-based procedure envisaged in TRIPS. Lastly, the promotion of permanent exemptions for LDCs marks a significant attempt at expanding existing SDT rights. The latter strategy holds particular currency as LDCs recently submitted a request for a further transition schedule extension encompassing the duration of their status as an LDC,

as well as a further twelve years following graduation from the LDC Group (WTO 2020a). In keeping with the legislative trends described above however, in June 2021 LDCs were not granted exemptions, instead gaining a transition period extension until 2034 (WTO 2021).

Cumulatively, these proposals accentuate a process of *resilience* concerning the rights of the LDC sub-group: on the one hand, the narrowing of the group of beneficiaries to LDCs marks a *fragmentation* of special rights. On the other, proposals by Global South actors aimed at norm expansion clash with efforts by developed states to achieve norm erosion. Together these trends result in severely limited norm expansion as LDCs only manage to get transition schedule extensions, albeit at a collective instead of an individual level. The continued validity of the differential treatment norm, as evidenced in these extensions, thus signals an overall trend of *resilience* amidst heavy contestation.

While during the first conflict moment lacking coordination between developing countries allowed for the adoption of TRIPS-plus provisions in a flurry of trade agreements, the more self-assertive tone from developing countries thereafter balances out the international stage. This deadlock between developing country states trying to promote flexibilities and Quad Group states trying to promote TRIPS-plus provisions in turn limits potential negotiation areas between the two blocs.

In a nutshell, the use of non-multilateral fora to engender a TRIPS-plus push, as well as stronger coordination between the BICs from the mid-2000s onwards has driven a vocal defense of implementation flexibilities by larger traders. We thus find that in the case of the TRIPS regime, the economic rise of the BICs does not necessarily undermine their unity with the Global South – in contrast to negotiations on agriculture.

Continued divides over the utility of IP protection for development purposes provide the main ideological backdrop to the alignment of the BICs with Southern coalitions. As we have seen in the second conflict moment, the rights of LDCs can become a significant arena of conflict as the small issue of transition schedules for

LDCs becomes a proxy issue for larger divides on IPR, development and integration into the world trading system.

This chapter also sheds light on the role of the BICs in global governance. The case of transition periods shows that they are willing to support a key norm for developing countries – SDT – even when its applicability is limited to LDCs. Their willingness to side with Southern coalitions helped to renew transition periods for LDCs in the 2010s on TRIPS. However, this unity – driven by shared interests in maintaining ‘TRIPS flexibilities’ as well as political South-South ties – did not necessarily tip the balance of power at the negotiation table towards SDT expansion because major developed countries were also relatively united in their opposition. On the flipside, the support of the BICs for the LDC proposal arguably prevented further norm erosion. The fact that, so far, LDCs have been successful in getting extensions to their transition schedules shows that differential treatment for this sub-group of developing countries remains *resilient* over time. It remains to be seen, however, whether IPR conflicts will continue to fall along North-South lines.

Reference List

- Abdel Latif, A. (2005). 'Developing Country Coordination in International Intellectual Property Standard-Setting'. *South Centre Trade-Related Agenda Development and Equity Working Paper Series* 24.
- Alter, K.J. and Meunier, S. (2009). 'The Politics of International Regime Complexity'. *Perspectives on Politics* 7:1, 13–24.
- Arrow, K.J. (1962). 'Economic Welfare and the Allocation of Resources for Invention'. National Bureau of Economic Research. *The Rate and Direction of Inventive Activity: Economic and Social Factors*. Princeton: Princeton University Press.
- Atal, M.R. (2016). 'View on Private Sector: Pharma shift won't help poorest.' *SciDevNet*. 7th April 2016. Available Online: <https://www.scidev.net/global/column/private-sector-pharma-poor-gsk/>
- Baker, D., Jayadev A. and Stiglitz, J. (2017). 'Innovation, Intellectual Property, and Development: A Better Set of Approaches for the 21st Century.' *Access/BSA Paper Series*. Available Online: <https://cepr.net/images/stories/reports/baker-jayadev-stiglitz-innovation-ip-development-2017-07.pdf>
- BRICS (2011). 'Sanya Declaration'. 14th April 2011. Available Online: <https://web.archive.org/web/20170406064302/http://infobrics.org/document/9>
- BRICS (2012). 'The 2nd Meeting of the BRICS Trade and Economic Ministers: Joint Press Release'. 28th March 2012. Available Online: <https://web.archive.org/web/20170404075933/http://infobrics.org/document/5/>
- BRICS (2016). '6th Meeting of the BRICS Trade Ministers on 13 October 2016 at New Delhi: Trade Ministers Communique'. 13th October 2016. Available Online: <https://web.archive.org/web/20170404080314/http://infobrics.org/files/pdf/95.pdf>
- Cheng, W. (2019). 'China Engages with the Global Intellectual Property Governance: The Recent Trend.' *The Journal of World Intellectual Property* 22:3-4, 146-161.

- Correa, C. & Seuba, X. (2019). *Intellectual Property and Development: Understanding the Interfaces*. Singapore: Springer.
- Deere Birkbeck, C. (2009). *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*. Oxford: Oxford University Press.
- Deere Birkbeck, C. (2016). 'WIPO's Development Agenda and the Push for Development-Oriented Capacity-Building on Intellectual Property: How Poor Governance, Weak Management, and Inconsistent Demand Hindered Progress.' *GEG Working Paper Series 105*.
- Dreyfuss, R.C. (2009). 'The Role of India, China, Brazil and Other Emerging Economies in Establishing Access Norms for Intellectual Property and Intellectual Property Lawmaking.' *IILJ Working Paper Series 5*.
- EPRS (2021). 'World Trade Organization TRIPS waiver to tackle coronavirus.' European Parliamentary Research Service Note. Available Online: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690649/EPRS_ATA\(2021\)690649_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690649/EPRS_ATA(2021)690649_EN.pdf)
- Gehring, T. and Oberthür, S. (2009). 'The Causal Mechanisms of Interaction Between International Institutions.' *European Journal of International Relations* 15:1, 125–56.
- Geiger, C. (2012). 'Weakening Multilateralism in Intellectual Property Lawmaking: A European Perspective on ACTA'. *The WIPO Journal* 3:2, 166-178.
- Groombridge, M.A. (1999). 'The TRIPS Trade-Off: Reconciling Competing Interests in the Millennium Round.' *Journal of World Intellectual Property* 2:6, 991-1013.
- Hindley, B.V. (1971). *The Economic Theory of Patents, Copyrights, and Registered Industrial Designs: Background Study to the Report on Intellectual and Industrial Property*. Ottawa: Economic Council of Canada.
- Ikenberry, G.J. (2011). 'The Future of the Liberal World Order: Internationalism After America.' *Foreign Affairs* 90:3, 56–68.
- Kumar, M. (2018). *Negotiation Dynamics of the WTO*. Singapore: Palgrave Macmillan.
- Kupchan, C.A. (2012). *No One's World: The West, the Rising Rest and the Coming Global Turn*. New York: Oxford University Press.

- Lee, J. (2015). *A Human Rights Framework for Intellectual Property, Innovation and Access to Medicines*. London: Routledge.
- May, C. (2007). 'The World Intellectual Property Organization and the Development Agenda.' *Global Governance* 13, 161-170.
- Moon, S. (2011). 'Rising Powers, Emerging Markets: Implications of Multipolarity for Intellectual Property Rules, Access to Medicines and Global Health.' Working Paper presented at the *International Studies Association Convention*, Montreal, 16th-19th March 2011.
- Morin, J.F., Serrano, O., Burri, M. and Bannerman, S. (2018). 'Rising Economies in the International Patent Regime: From Rule-Breakers to Rule-Changers and Rule-Makers.' *New Political Economy* 23:3, 255-273.
- Morse, J.C. and Keohane, R.O. (2014). 'Contested Multilateralism.' *The Review of International Organizations* 9:4, 385-412.
- Moschini, G. (2003). 'Intellectual Property Rights and the World Trade Organization: Retrospect and Prospects.' *Center for Agricultural and Rural Development (CARD) Publications* 3.
- Musungu, S.F. and Oh, C. (2005). 'The Use of Flexibilities in TRIPS by Developing Countries: Can They Promote Access to Medicines?' *Commission on Intellectual Property Rights, Innovation and Public Health Study*. Available Online: <https://www.who.int/intellectualproperty/studies/TRIPSFLEXI.pdf>
- Muzaka, V. (2019). 'India and Brazil in Pursuit of the Competitive Knowledge Economy.' *Review of International Studies*. 45:2, 345-364.
- Narlikar, A. (2006). 'Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO.' *The World Economy* 29:8, 1005-1029.
- New, W. (2013). 'At WTO, LDC Fight for Extension of TRIPS Transition Continues.' *IP Watch*. Available Online: <https://web.archive.org/web/20201023094457/https://www.ip-watch.org/2013/05/24/lcd-fight-for-extension-of-trips-transition-continues/>
- Odagiri, H., Goto, A., Sunami, A. and Nelson, R.R. (2010). *Intellectual Property Rights, Development and Catch-Up: An International Comparative Study*. Oxford: Oxford University Press.

- Park W.G. and Lippoldt, D.C. (2008). 'Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries.' *OECD Trade Policy Working Papers* 62.
- Raustiala, K. and Victor, D.G. (2004). 'The Regime Complex for Plant Genetic Resources'. *International Organization* 58:2, 277–309.
- Robbins, C.A. (2009) 'Measuring Payments for the Supply and Use of Intellectual Property'. Reinsdorf, M. and Slaughter M.J. (eds.) *International Trade in Services and Intangibles in the Era of Globalization*. Chicago: University of Chicago Press.
- Saez, C. (2013). 'LDC Request For Waiver Of IP Obligations Meets Conditions From Developed Countries.' *IP Watch*. Available Online: <https://web.archive.org/web/20201023085507/https://www.ip-watch.org/2013/05/09/lcd-request-for-waiver-of-ip-obligations-meets-conditions-from-developed-countries/>
- Saez, C. (2015). 'LDC Pharma IP Waiver Until 2033 Approved by WTO TRIPS Council.' *IP Watch*. Available Online: <https://web.archive.org/web/20200930081858/https://www.ip-watch.org/2015/11/06/lcd-pharma-ip-waiver-until-2033-approved-by-wto-trips-council/>
- Sell, S. (2011). 'TRIPS Was Never Enough: Vertical Forum Shifting, FTAs, ACTA and TPP.' *Journal of Intellectual Property Law*. 18:2, 447-478.
- Serrano, O. (2016). 'China and India's Insertion in the Intellectual Property Rights Regime: Sustaining or Disrupting the Rules?' *New Political Economy* 21:4, 343-364.
- Shalal, A. and Farge, E. (2022). 'US, EU, India, S.Africa reach compromise on COVID vaccine IP waiver text.' *Reuters*. Available Online: <https://www.reuters.com/business/healthcare-pharmaceuticals/us-eu-india-s-africa-reach-tentative-pact-covid-vaccine-ip-waiver-sources-2022-03-15/>
- Syam, N. (2014). 'Transition Period for TRIPS Implementation for LDCs: Implications for Local Production of Medicines in the East African Community.' *South Centre Research Paper* 59.

- TRIPS (1994). *Agreement on Trade-Related Aspects of Intellectual Property Rights*. Available Online: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf
- UNAIDS (2011). 'DOHA+10 TRIPS Flexibilities and Access to Antiretroviral Therapy: Lessons from the Past, Opportunities for the Future.' Available Online: https://www.unaids.org/sites/default/files/media_asset/JC2260_DOHA+10TRIPS_en_0.pdf
- Weinhardt, C. (2020). 'Emerging Powers in the World Trading System: Contestation of the Developing Country Status and the Reproduction of Inequalities.' *Global Society* 34:3, 388-408.
- WIPO (2020). *China Becomes Top Filer of International Patents in 2019 Amid Robust Growth for WIPO's IP Services, Treaties and Finances*. PR/2020/848. Available Online: https://www.wipo.int/pressroom/en/articles/2020/article_0005.html.
- WTO (1998a). *Concerns Regarding Implementation of Provisions relating to Differential and More Favourable Treatment of Developing and Least-Developed Countries in Various WTO Agreements*. General Council. 13 November 1998. WT/GC/W/108 Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/w108.pdf&Open=True>
- WTO (1998b). *Special and Differential Treatment for Developing Countries in the Multilateral Trading System*. General Council. 5th November 1998. WT/GC/W/109. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/COMTD/W49.pdf&Open=True>
- WTO (1998c). *Communication from India*. General Council. 18th November 1998. WT/GC/W/114. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/w114.pdf&Open=True>
- WTO (1999a). *Preparations for the 1999 Ministerial Conference*. General Council. 2nd June 1999. WT/GC/W/193. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/W193.pdf&Open=True>

WTO (1999b). *Preparations for the 1999 Ministerial Conference*. General Council. 6th July 1999. WT/GC/W/242. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/W242.pdf&Open=True>

WTO (1999c). *Preparations for the 1999 Ministerial Conference*. General Council. 29th July 1999. WT/GC/W/279. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/W279.pdf&Open=True>

WTO (1999d). *Preparations for the 1999 Ministerial Conference*. General Council. 6th August 1999. WT/GC/W/282. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/W282.pdf&Open=True>

WTO (2001a). *Communication from the European Communities and their Member States*. Council for Trade-Related Aspects of Intellectual Property Rights. IP/C/W/280. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/W280.pdf&Open=True>

WTO (2001b). *Submission by the African Group, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela*. 29th June 2001. IP/C/W/296. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/W296.pdf&Open=True>

WTO (2001c). *Proposal by the African Group, Bangladesh, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela*. Council for Trade-Related Aspects of Intellectual Property Rights. 4th October 2001. IP/C/W/312 or WT/GC/W/450. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/W450.pdf&Open=True>

- WTO (2001d). *Access to Medicines for HIV/AIDS and other Pandemics. Council for Trade-Related Aspects of Intellectual Property Rights*. 4th October 2001. IP/C/W/313. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/W313.pdf&Open=True>
- WTO (2001e). *Declaration on the TRIPS Agreement and Public Health*. Ministerial Conference Fourth Session. 14th November 2001. WT/MIN(01)/DEC/2. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/Min01/DEC2.pdf&Open=True>
- WTO (2002a). *Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with Respect to Pharmaceutical Products. Council for Trade-Related Aspects of Intellectual Property Rights*. 1st July 2002. IP/C/25. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/25.pdf&Open=True>
- WTO (2002b). *Special and Differential Treatment Provisions*. Committee on Trade and Development Special Session. 24th May 2002. TN/CTD/W/3. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/Ctd/W3.pdf&Open=True>
- WTO (2002c). *Special and Differential Treatment Provisions*. Committee on Trade and Development Special Session. 17th July 2002. TN/CTD/W/3/Rev.2. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/Ctd/W3R2.pdf&Open=True>
- WTO (2002d). *Special and Differential Treatment Provisions*. Committee on Trade and Development Special Session. 1st July 2002. TN/CTD/W/4/Add.1. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/Ctd/W4A1.pdf&Open=True>

- WTO (2003). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 22nd August 2003. IP/C/M/40. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/M40.pdf&Open=True>
- WTO (2004). *Special and Differential Treatment Proposals Referred to the Council for TRIPS – Informal Note by the Secretariat*. Council for Trade-Related Aspects of Intellectual Property Rights. 19th November 2004. JOB(04)/164. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/Jobs/Ext04/164.pdf&Open=True>
- WTO (2005). *Extension of the Transition Period under Article 66.1 for Least-Developed Country Members*. Council for Trade-Related Aspects of Intellectual Property Rights. 30th November 2005. IP/C/40. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/40.pdf&Open=True>
- WTO (2010). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 4th October 2010. IP/C/M/63. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/M63.pdf&Open=True>
- WTO (2011). *Elements Paper on the Extension of the Transition Period under Article 66.1 of the TRIPS Agreement*. Council for Trade-Related Aspects of Intellectual Property Rights. 11th November 2011. IP/C/W/566. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/M63.pdf&Open=True>
- WTO (2012a). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 15th February 2012. IP/C/M/67. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/M67.pdf&Open=True>
- WTO (2012b). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 14th February 2012. IP/C/M/68. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/M68.pdf&Open=True>

WTO (2012c). *Request for an Extension of the Transitional Period under Article 66.1 of the TRIPS Agreement*. 5th November 2012. IP/C/W/583. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/IP/C/W583.pdf&Open=True>

WTO (2013a). *Extension of the Transition Period under Article 66.1 for Least Developed Country Members*. Council for Trade-Related Aspects of Intellectual Property Rights. 11th June 2013. IP/C/64. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/64.pdf&Open=True>

WTO (2013b). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 5-6th March 2013. IP/C/M/72. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M72.pdf&Open=True>

WTO (2013c). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 10-11th October 2013. IP/C/M/74. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M74.pdf&Open=True>

WTO (2015a). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 24-25th February 2015. IP/C/M/78/Add.1. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M78A1.pdf&Open=True>

WTO (2015b). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 9-10th June 2015. IP/C/M/79/Add.1. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M79A1.pdf&Open=True>

WTO (2015c). *Minutes of Meeting*. Council for Trade-Related Aspects of Intellectual Property Rights. 15th October-23rd November. IP/C/M/80/Add.1. Available Online: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/M80A1.pdf&Open=True>

WTO (2015d). *Request for an Extension of the Transitional Period under Article 66.1 of the TRIPS Agreement for Least Developed Country Members with Respect to Pharmaceutical Products and for Waivers from the Obligation of Articles 70.8 and 70.9 of the TRIPS Agreement*. Council for Trade-Related Aspects of Intellectual Property Rights. 20th February 2015. IP/C/W/605. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W605.pdf&Open=True>

WTO (2020a). *Extension of the Transition Period under TRIPS Article 66.1 for Least Developed Country Members*. Council for Trade-Related Aspects of Intellectual Property Rights. 1st October 2020. IP/C/W/668. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W668.pdf&Open=True>

WTO (2020b). *Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19*. 2nd October 2020. IP/C/W/669. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True>

WTO (2021). *Extension of the Transition Period under Article 66.1 for Least Developed Countries*. 29th June 2021. IP/C/88. Available Online:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/88.pdf&Open=True>

Yu, P. (2022). 'TRIPS Wars: Developing Countries Strike Back'. George, A. (ed.). *Flashpoints: Changing Paradigms in Intellectual Property and Technology Law*. New Orleans: Quid Pro Press.

Zeferino de Menezes, H. (2018) 'South-South Collaboration for an Intellectual Property Rights Flexibilities Agenda.' *Contexto Internacional*. 40:1, 117–138.

Conclusion

The North-South distinction has gone from being a core structuring principle of international politics to a focal point of contestation in the world trade regime. This dissertation has examined this shift by honing in on the norm of special and differential treatment (SDT) in the World Trade Organization (WTO), as well as the developed-developing country binary that underpins it. Moving through different levels of analysis the chapters of the thesis address the core research question:

How has the rise of the BICs shaped special rights for developing countries in the world trade regime?

Engaging with this question has required a cumulative thesis structure in order to provide a detailed and multifaceted account of special rights for developing countries and the status of emerging economies. This interlinked research project allows for both a more nuanced appraisal of the erosion of SDT and a clearer image of the individual trajectories that Brazil, China and India have assumed in response to recent contestation of their status. What underscores all five chapters of the dissertation is the erosion of the North-South distinction in international trade politics. The heterogeneity of pathways that emerging economies adopt in response to contestation thus underlines the lack of a uniform rise of the BICs. The interactions of larger developing countries with status uncertainty moreover often follow path dependent trajectories. This allows some rising states to give up special rights for developing countries in practice while others cling on to their developing country status with great zeal. The lack of a common approach in this regard lies at the core of contestation regarding the special rights of developing countries. The five constituent chapters of the dissertation consequently delineate and build on two, parallel trends: the divergence of emerging economy positions amidst contestation and the fragmentation of special and differential treatment that this engenders.

At the outset, the second chapter provided an overview of SDT and its contestation at the WTO, as well as a tripartite typology that delineated ideal typical pathways for the development of differential treatment norms. This sets up one of the dissertation's main findings, namely that fragmentation – as opposed to graduation

or individualisation – has characterised special rights for developing countries over the past quarter century. This broad analytic scope was complemented by the four ideal types of the following paper, which allow us to compare the different strategies that Brazil, China and India have adopted in response to contestation of their developing country status. Here, the stark differences between strategies of resistance and accommodation – particularly between Brazil on the one hand and India and China on the other – show how emerging economies adopted different approaches to contestation of their developing country status. By zooming in on a specific part of the contestation that shapes the outcomes at the WTO level, namely the position of emerging powers themselves, the third chapter thus unpacks the refusal to give up special rights that lies at the heart of contestation surrounding SDT. In chapters four and five, the level of analysis shifted to focus on how China and Brazil have respectively positioned themselves in world trade politics. In conjunction, the middle three chapters thus paint a detailed picture of the BICs’ struggle to fuse status considerations and special rights for developing countries with their individual economic trajectories. The final chapter adds nuance to these diverging paths by analysing some of the driving forces behind fragmentation of special rights. It shows that (dis)unity across the BICs – and across the BICs and other developing countries – helps to account for the particular trajectory of special rights in the realm of intellectual property rights. Unity of emerging economies is still possible, however this takes the form of support for SDT initiatives that they bear no direct stake in, i.e. those for LDCs.

In the following, I will go through the results of each paper to underline how special rights for developing countries have been fragmented as their contestation continues to centre on the status of emerging economies. I conclude with implications for academic and policy discussions, as well as potential avenues for future research.

Chapter Two: The Unmaking of the North-South Distinction in a Multipolar World

The second chapter provides a primer for understanding differential treatment in the trade regime and its development since the establishment of the WTO in 1995. Based on research conducted over the entire duration of my PhD, it was published in

November 2021 – together with my co-author Clara Weinhardt – in *Third World Quarterly* (Weinhardt and Schöfer 2021).

Aside from its structural utility as an overview of SDT at the beginning of the thesis, the chapter directly engages with the question of how these special rights have been shaped by the rise of Brazil, China and India. In the process, it develops a model based on three ideal typical pathways – graduation, individualisation and fragmentation. Not only does this typology allow for a clearer understanding of how different reform initiatives have played out at the WTO, but it also contributes to scholarship on other regimes of international politics. As mentioned in the introduction, reserving special rights for developing countries is not unique to the WTO or its predecessor the General Agreement on Tariffs and Trade. Similar differential treatment has for instance been central in the legal frameworks of international climate governance (Brunnée and Streck 2013).

As the economic growth of the BICs has altered their position in international relations generally, pressure for changes to differential treatment have not remained unique to trade diplomacy. The tripartite categorization provided in this paper therefore comprises a theoretical contribution for analysts of institutional change (Stephen and Skidmore 2019; Ikenberry 2018). In the case of the trade regime, elements of all three pathways can be observed: contestation of SDT has recently reached a heavily explicit level that includes proposals for graduation via the shrinking of the developing country group. These initiatives have however not borne fruit. In parallel, some analysts saw a move ‘beyond’ differential treatment in the potential individualization of SDT that came to prominence with the Trade Facilitation Agreement (Pauwelyn 2013). This trend has however also failed to take hold in more substantial areas of negotiation and remains on the margins of international trade politics.

Examination of legal decisions and debates in two distinct periods of policy-making – 1995-2008 and 2009-2019 – shows that the system of special rights for developing countries in the WTO has become fragmented, reliant on different sub-groups of developing countries competing for access to differential treatment. In particular, SDT provisions in new legislation are now primarily targeted at Least Developed

Countries and are less prevalent compared to the 1990s and 2000s. Delineating the explicit contestation at the heart of this trend reveals the notable role of emerging economies in the erosion of SDT, and the waning legitimacy of self-declaration as a practice for the demarcation of developing country status. This in turn signals the unmaking of the North-South binary as a relevant distinction in international trade politics. While contestation of the BICs' status in international relations has thus engendered an unmaking of special rights for developing countries at the WTO, emerging economies have also had to deal with these status questions themselves. The second chapter consequently directly answers the dissertation's core research question and simultaneously sets up the nuanced and more detailed accounts that constitute the rest of the thesis.

Chapter Three: 'Privileges' of the Weak – Emerging Powers' Pursuit of Special Rights for Developing Countries

Having established the fragmentation of special rights at the outset of the dissertation, the third chapter brings emerging economies – and their interactions with contestation – to the fore. Using case studies of the three BIC states it delineates differing reactions to US-led contestation of special rights for developing countries and the status of emerging economies. Its empirical results concerning Brazil, India and China's positions in the WTO, as well as their implications for power shift theory will be published in *International Affairs* in November 2022.⁸⁹

While the previous research paper looked at what happens to norms of differential treatment, this chapter investigates what strategies for adaptation emerging economies pursue as their status as beneficiaries of differential treatment comes under pressure. As such it provides a clearer picture of the status uncertainties at the heart of an ongoing contestation of special rights for developing countries. In aid of this empirical analysis, the chapter first constructed a typology of four ideal typical pathways, built around two dimensions of adaptation. On the one hand, emerging economies can either accept or reject changes to their status in light of the growing

⁸⁹ This paper will be published as Schöfer, T. and Weinhardt, C. (2022). 'Developing Country Status at the WTO: Brazil, India and China's Divergent Strategies.' *International Affairs* 98:6.

economic heterogeneity of the Global South. On the other, while historical ties and identity considerations complicate status questions, emerging economies may (or may not) accept changes in the practice of differentiation – i.e. giving up *de facto* use of special rights without trading away *de jure* access via self-declared developing country status.

As with the previous chapter, the theoretical element of the paper contributes to broader IR scholarship. It does so by dislodging status from the practices of differential treatment. This allows for a more fine-grained categorization of the (self-)placement of emerging economies as they rise in – and interact with – a hierarchical international order. Different approaches to their changing position in world politics can thus comprise full accommodation (acceptance of status change and relinquishing of rights), de-facto accommodation (maintenance of status and change in practices), de-facto resistance (acceptance of an official status change but continued persistence on rights) or principled resistance (reluctance to give up previous status or rights).

Empirically, the paper finds that the three BIC states vary greatly in their responses to contestation of their privileges in the WTO. While Brazil has shown itself to be most in line with accommodation strategies, India's principled resistance to any redefinition of its status or rights stands in diametric opposition to such flexibility. China, whilst often keen to defend its developing country status, adopts an intermediary position between these two states by accommodating some changes in practice. These differing strategies hold implications for scholarship on international order. They comprise a more nuanced assessment that goes beyond the blanket assumption of emerging powers acting as established ones with regards to their status as beneficiaries of differential treatment.

The chapter's core finding – that there is no uniform trend observed across the BICs – goes beyond the base assumptions of power shift theory (Lavenex et al. 2021; Kruck and Zangl 2020). Additionally, the empirics of the paper show that institutional change can be gradual and not necessarily linked to formal changes on the legal level – i.e. redefinitions of developing country status (see Roger 2020). Lastly, the chapter shows that status considerations do not function in a unidirectional fashion, as

different (self-)appraisals of status and status change can engender both reformist approaches amongst emerging economies and approaches based on resistance (compare Narlikar 2020). These findings underline the need to avoid broad-brush narratives concerning rising powers' interaction with international order. In the specific case of the WTO, emerging economies can vary significantly in their adaptation strategies, as reflected in the fact that Brazil is prepared to approach its special rights and status more flexibly, while India firmly resists changes to its developing country status and access to SDT. The divergent paths that such actors can take to navigate their rise amidst contestation of their position is further borne out by the fourth and fifth chapters on China and Brazil respectively. This chapter's theorization and direct comparison of adaptation strategies thus sets up two in-depth case studies on the status signalling and negotiation practices of emerging economies.

Chapter Four: Identity at the WTO – How China Defends its Developing Country Status

As the first of the two national case studies, the fourth chapter zooms in on China's defence of its developing country status as one of the main targets of US-led contestation. The paper shows that several, overlapping arguments and self-images comprise this defence, thus detracting from analysts that divine a common strategic narrative in Chinese trade policy.

China's arguments fall into four broad categories: recent US attempts to use socio-economic criteria to question the continued validity of a common developing country group have focused primarily on China. The Chinese delegation at the WTO has responded in kind by using a range of alternative indicators to underscore continued developmental challenges. At the same time however, China criticizes the ability of any set of economic indicators to demarcate membership of the developing country group.

A second category of arguments concerns a contemporary crisis of multilateralism. Chinese statements consequently place SDT and the practice of self-declaration at the heart of a multilateral system at risk. Countering unilateral risks to established

multilateral governance structures thus necessitates the preservation of the existing system of special rights.

The importance of ideational factors in determining trends at the WTO is further borne out in the third category of arguments, which dissects the purpose of SDT. On the one hand, carve-outs for developing countries are promoted as tools that can aid their integration into global trade flows. On the other, historical and contemporary imbalances in international trade legislation – termed ‘reverse SDT’ – legitimize special rights for a broad group of developing countries.

The third chapter of the thesis made the important distinction between changes in status and changes in practice. This is reflected in the final category of arguments delineated in this paper, as China accentuates its supposedly model behaviour in WTO politics and concedes that while it may reconsider use of individual SDT provisions, it will not give up its right to SDT via redefinitions of its status in the process.

The four overlapping images of China that emerge from government statements – an objectively classifiable developing country, a defender of a system at risk, a victim of historical and contemporary imbalances, and a strong, responsible WTO member – underline the inertia and stickiness one encounters when reform of countries’ official status in international politics is tabled. As a result, they show how individual emerging economies are likely to act defensively and adopt strategies of resistance when a retooling of their rights and responsibilities involves relinquishing long-held identities.

The previous two chapters both provided broad analyses of trends at the WTO in order to respectively delineate how special rights have become contested and fragmented with the rise of the BICs and how this contestation has elicited different responses across emerging economies. Within the dissertation, this chapter adds to this picture by accentuating the importance of status considerations to contemporary Chinese trade policy. In doing so, it builds on existing scholarship on status signalling and the ‘rebranding’ of China (Pu, 2019, Yang 2021). Going beyond established status signalling models however, the chapter shows how in a specific

forum and on a specific issue – SDT at the WTO – China marshals different, sometimes contradictory arguments and images to legitimize its claims of being the world’s largest developing country. This narrative overlap helps to explain why China firmly clings on to its developing country status, yet is more flexible in its practices of SDT use. It further calls into question scholarship that has sought to conclusively portray China as a challenger or contestator of the established (liberal) international order (Lee, Heritage and Mao 2020; Zhang 2016; Malkin 2019). As such, the paper expands on the previous chapter by providing a more detailed picture of Chinese status considerations at the WTO and sets up a contrasting case study of Brazil’s role in international trade negotiations.

Chapter Five: From Southern Leader to Flexible Negotiator – New Directions in Brazilian Trade Policy

While the Chinese case underlines how developing country status can remain central to the negotiation strategies of even the most dynamic emerging economies, this chapter unpacks the Brazilian case, which stands out amongst the BICs as the only country more or less willing to give up benefits across the board – at least regarding future SDT. Moreover, Brazil’s new position in international trade politics holds particular salience as it previously acted as a leader of Global South coalitions. The research paper is currently under review at the *World Trade Review*.

The Brazilian case study acts as a counterpoint to the defensive attitudes of China and India. As such, its core contribution to the dissertation’s research question is to underline the heterogeneity of pathways that are open to emerging economies facing contestation of their status. On the one hand, this reaffirms the utility of the four-part typology developed in the third chapter, as the positional strategies of the BICs cannot be determined homogeneously. On the other, the particular case of Brazil accentuates how power shifts can engender not just rigidity – as is the case for instance with India – but complete recalibration of strategic narratives.

In order to underscore the severity of the changes that have recently characterized Brazilian trade policy, the paper first sets up both an established literature on Brazil’s status in international relations and foreign policy (De Carvalho 2020; De Sá

Guimaraes 2020), as well as a portrait of the Southern leadership role that it assumed at the WTO in the 2000s (compare Doctor 2015; Efstathopoulos 2012). These two structural elements deliver a clear picture of Brazil's hitherto position in world trade politics: at the outset of the Doha Development Round (2001-), interests in the liberalization of agricultural trade and the Lula administration's South-South rhetoric placed Brazil in opposition to subsidy regimes and established negotiation practices employed by the European Communities and the United States. This allowed the Brazilian trade delegation to concentrate its energies on the establishment of a broad and varied developing country coalition – the G20 – with Brazil acting as organizer and main spokesperson. This leadership role in turn allowed Brazil to become part of the New Quad, i.e. the inner circle of WTO negotiations.

In contrast, recent government statements, interviews with trade delegates, dispute settlement case law and legislative proposals paint a very different picture of Brazil's current position. The G20 – and Brazil's leadership of it – has completely disappeared from the negotiation scene. Instead, a series of EU-Brazil reform proposals underline a more flexible coalition-building strategy, less reliant on the North-South distinction. Notably, on domestic support reform, such common initiatives with the European Union come into conflict with alternative Sino-Indian proposals. New coalitional patterns further come atop a greater readiness to engage with new issues – even if this requires a plurilateral approach – and a greater diversity of dispute settlement targets. Most strikingly, Brazil has been completely absent from defences of self-declaration and the WTO's established system of special rights. Instead, it has signalled that it will give up access to future special and differential treatment.

Together with the previous two chapters, the Brazilian case study rounds out a detailed account of how the BICs have adopted different adaptation strategies when faced with contestation of their status in international trade politics. This variation in turn lies at the heart of contestation regarding SDT and consequently helps to explain the unmaking of special rights for developing countries. The fragmentation of special rights and the divergence of emerging economy positions at the WTO suggest

that BICs unity around SDT is increasingly unlikely. This sets up the final chapter of the dissertation, which examines fragmentation in more detail by analysing intellectual property negotiations and the positions of the BICs *vis-à-vis* the special rights of Least Developed Countries.

Chapter Six: Conflicts over Special Rights – Southern Unity in Intellectual Property

The final chapter of the dissertation seeks to broaden the level of analysis again by employing a thematic lens focused on intellectual property negotiations at the WTO. Drawing on empirical material covering two decades and a range of countries – including all three BICs – the research paper uncovers the role of emerging economies in stalling the complete erosion of SDT. In particular, the unity of the BICs with LDC initiatives helps to explain the resilience of LDC rights against the backdrop of an overall process of fragmentation. The chapter forms part of a monograph on the unmaking of special rights in trade, climate and health politics and is currently under review at *Oxford University Press*.⁹⁰

The unmaking of the North-South distinction in world politics, the resulting fragmentation of special rights for developing countries, and the splintering of emerging economy positions when faced with contestation raises a final question: why does special and differential treatment not wholly disappear from the negotiation table? This chapter hones in on the position of the BICs towards initiatives aimed at expansion of transition schedules concerning WTO intellectual property (IP) provisions. In doing so, it comprises both an empirically thick analysis of fragmentation in a specific sub-field of international trade and a case study of BICs unity on special rights for developing countries. The unity of emerging economy actors regarding differential treatment is particularly pronounced once they lose a direct stake in SDT negotiations, i.e. when reform proposals only affect smaller developing countries. This arguably allows special rights for LDCs to persist.

⁹⁰ This chapter is currently under review as Schöfer, T. 'Conflicts over Transition Periods for Intellectual Property Rights'. Dingwerth, K., Weinhardt, C., Eckl, J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

Using minutes of TRIPS Council meetings, reform proposals, secondary literature, and interviews with trade delegates, the chapter compares two distinct periods of negotiation – the early 2000s (2001-03) and the mid-2010s (2011-15). This allows for a direct comparison of attempts to extend IP grace periods for developing countries *and* LDCs with later initiatives that sought to extend only LDC schedules. In the first time period, Indian and Brazilian attempts to push through extensions with the African Group failed. While parallel proposals by the LDC Group were not accepted as such, this sub-group of developing countries could eventually secure extensions both on IP in general and pharmaceuticals in particular. By the 2010s, with TRIPS provisions implemented in non-LDCs, Least Developed Countries again pushed for further implementation flexibilities.

Three trends stand out: firstly, instead of further extensions, LDCs pushed for permanent exemptions from TRIPS coverage. This strengthening of SDT was, second, strongly opposed by industrialised countries, while the BICs, thirdly, united with LDCs in their reform ambitions. This Southern unity can be explained when considering BICs interests in the maintenance of flexibilities in general, ideological differences between industrialised and developing countries concerning the IP-development nexus, and the desire to counter initiatives outside the WTO that aim to move beyond the regulatory minimum embodied in the TRIPS Agreement.

The findings of this chapter provide a final element of nuance and detail to the dissertation's core research question. Its primary empirical finding in this regard pertains to the unity of emerging economies when it comes to supporting special and differential treatment for LDCs. In conjunction with the other dissertational chapters, three contributions emerge: first, while fragmentation of special rights and contestation of developing country status are two overarching empirical trends in international trade politics, these shifts can vary *within* the trade regime. For instance, Southern unity concerning LDC rights in intellectual property differs from the type of divergence and stalemate we can witness in agriculture. This suggests, second, that BICs unity is still feasible, however mainly when emerging economies have a diminished (or no) direct stake in the preservation or extension of special rights. Lastly, the chapter underscores developed countries' resistance to expand

special rights for even the most marginal economies – the LDCs (compare Yu 2022; Zeferino de Menezes 2018; Deere Birkbeck 2016). This re-emphasises how contested special and differential treatment has become at the WTO and how contestation of special rights for developing countries contributes to ongoing negotiation deadlock.

Implications

The hierarchical and stratified nature of international order has gained prominence as an empirically rich research area for International Relations (IR) scholars (Viola 2020; Fehl and Freistein 2020; Lake et al. 2021; Zarakol 2016). Cognizant of the need to better understand ordering principles of world politics, this dissertation has contributed to this recent scholarship by examining special rights for developing countries in the world trade regime, their contestation, the importance of status questions in this regard, and the seismic shifts that have accompanied the rise of the BICs. It has done so via a cumulative research approach structured around the core research question of how the rise of the BICs has shaped special rights at the WTO.

The thesis chapters have individually – and in different constellations – shown how contestation of the BICs' continued access to (or use of) SDT has led to the unmaking of the North-South distinction in world trade politics as special rights for developing countries have fragmented. Moreover, at the heart of this contestation lie the divergent adaptation strategies that emerging economies have adopted in response to uncertainty over their status in trade multilateralism. In parallel to the fragmentation of special rights, the dissertation's second core finding is that the BICs have not been uniform in their handling of adjustment challenges. An economic powerhouse like China can consequently adopt a strongly defensive approach to external redefinitions of its status, while Brazil – the smallest of the three BICs economies – completely retools a negotiation position that previously allowed it to lead the Global South at the WTO. Fragmentation of special rights and divergence of emerging economy positions do not however spill over to complete disunity and erosion of SDT. As the dissertation has shown, in areas where the BICs do not have a strong direct stake in SDT anymore, unity of positions and resilience of remaining differential treatment provisions is still possible.

In concert, these findings not only provide a detailed and nuanced answer to the dissertational research question, but also hold implications for larger questions in the study of IR. One of the clearest contributions in this regard has been to problematize the frequent assumption that the existing international order and its normative underpinnings are automatically in favour of established, industrialised powers (Ikenberry 2018; Zangl et al. 2016).

Honing in on special and differential treatment and its relationship to the rise of formerly marginal economies questions the suitability of academic or policy frameworks that see these new powers as challengers – or even threats – to an established international order (Mearsheimer 2019; Kahler 2013). Rather, the case of SDT at the WTO shows a) how established powers can act as challengers of institutional legal frameworks and b) how emerging economies can adopt a variety of adaptation strategies to adjust to these challenges. The latter phenomenon adds nuance both to predictions of an incipient ‘multiplex’ world (Acharya 2017) and prognoses of the fall of the established order (Mearsheimer 2019).

The thesis results further hold promise for scholars interested in established practices of international politics that fall beyond the purview of the *liberal* international order. Focusing on a norm that was developed by and for the Global South (Lamp 2017) corrects an empirical bias in accounts of normative change in international institutions. In particular, the controversy surrounding the continued bifurcation of the WTO membership – instead of division into further sub-groups – adds to scholarship both on the individualization of differential treatment (Pauwelyn 2013) and differentiation in world politics (Albert et al. 2013).

At the same time, as multiple chapters in the dissertation have shown, it is clear that the strategies that emerging economies rely upon as they rise are not uniform – and that they form part of emerging economies’ need to renegotiate their positions within existing regimes. The question of developing country status is particularly pertinent in this regard (compare Farias 2019). As the middle chapters of the dissertation have shown, attempted redefinitions of such long-held identities can result in varying degrees of accommodation or resistance by the largest members of the Global South (compare Bishop and Zhang 2020; Esteves et al. 2020). The thesis

thus contributes to an emerging literature on the strategic use of (poverty) narratives both as status signalling devices (Pu 2019) and as methods of gaining or sustaining power (Narlikar 2020). The rise of the BICs and their relationship to special rights for developing countries is thus embedded in narratives and discussion of responsibility in international relations, itself a growing field of research (Bukovansky et al. 2013; Falkner and Buzan 2022).

Beyond trade politics, it proves important to delineate the multiple potential and actual pathways that emerging powers traverse whilst navigating their – often contested – rise. Scholarship on rising powers and power shifts should therefore move away from attempts to abstractly and homogeneously approach these questions. Closely linked to these implications is the need to question the utility of broad-brush frameworks that conclusively identify individual rising powers as challengers, preservers or reformers of the existing system of international politics.

For practitioners and those engaged in the policy field, the implication is that diplomatic issues are complicated, not made clearer, by critiques or redefinitions of actors' path dependent identities. At the WTO, the dissertation's findings suggest that the special rights of Least Developed Countries are most secure and can still muster the greatest legitimacy. Processes of fragmentation that keep this subgroup's rights secure and make the remainder of beneficiaries more controversial however hold particular hazard for a 'middle bracket' of developing countries. These non-emerging, non-LDC actors could benefit greatly from new special rights but are unable to do so, as such new rights would have to be extended to the BICs and other emerging economies as well.

Future Research

While this dissertation has focused on the trade regime, research gaps still remain on the dissolution of the North-South distinction as a key structuring principle of other areas in international relations. Do – and if so, how do – North-South relations become blurrier with the rise of the BICs in other regimes? The trade case highlights how international institutional frameworks that rely on bifurcation of state actors into those with privileges and those with responsibilities can quickly become stuck in

negotiation deadlock as new powers emerge. More generally, the dissertation shows how sticky identity issues in international relations can be and how institutions that build identity questions into their constitutional makeup have difficulty reaching consensus.

The limitations of the research outlined in the introduction further provide ample scope for further empirical research into status uncertainty and the contestation of differential treatment at the WTO. A selection bias concerning interview partners – due to a reliance on referrals and uneven responses across delegations and institutions – unfortunately relegated interview material to a supplementary, contextual role in the dissertation. A greater (and more diverse) number of interviews could form an empirical research project that picks up where this dissertation left off. Such a project could provide insights into informal talks and overlooked contextual factors that help to explain both negotiation outcomes and varying patterns of activity. In the past, similar large-scale interview projects have proven particularly fruitful for teasing out the intersubjective understandings that accompany status considerations at the WTO (see Hopewell 2021).

While the focus on Brazil, India, and China was justified at the outset with reference to their economies' position ahead of other developing states, the findings of this thesis have also shown how diverse their adaptation strategies have been to ongoing adjustment challenges. This variation calls for closer examination of other emerging economies, such as Indonesia, South Africa or Mexico, and the path-dependent trajectories that help to explain their approach to special and differential treatment. This would allow for a greater variety of cases – and a broader contribution to IR scholarship – beyond the limited trio analysed here. While the dissertation has further shown that the adaptation strategies pursued by BIC states can develop along two dimensions – changes in status and changes in practice – detailed study of the latter phenomenon was beyond the scope of the thesis. Debates about status and narratives of marginalization thus permeate international trade politics (Narlikar 2020), but the more subtle ways in which *uses* of SDT have changed amongst WTO Members remain understudied.

Another drawback of the methodological approach and research question employed in this thesis has been that dispute settlement practices have only marginally been referenced and that dispute settlement case law only plays a supplementary role in the empirics. This stems from the dissertation's focus on the contestation of SDT and the status of emerging economies. These trends most clearly come to the fore in the legislative, rather than the judicial arms of the WTO. However, for scholars of international law the ways in which patterns of dispute complainants and respondents have changed over the past twenty years could form a key piece of the puzzle of who engages – and against whom – in international litigation. This in turn holds the potential to reveal broader re-alignments or fissures in international politics, particularly as pertains to the Global South. These broad legal histories⁹¹ could further investigate the subtle ways in which the Appellate Body has avoided adjudicating on the issue of developing country status and individual members' institutional rights.

The possible break-up of the Global South also raises the question of how non-emerging economies position themselves amidst fragmentation of special rights for developing countries and the contestation of developing country status. Do they side with maintenance of the status quo, cognizant of the fact that this would probably only continue hitherto negotiation patterns? Or, do they promote greater differentiation in order to separate themselves from the controversy surrounding the status of emerging economies? While the final chapter of this dissertation has provided some insights into the positions of LDCs, how the 'middle bracket' of countries caught between LDCs and the BICs positions itself on this issue holds promise for future empirical work.

For those interested in the history of ideas and the normative underpinnings of the established international order, the dissertation has further teased out a tension that requires further analysis, namely the liberalization-development nexus. While economists have debated the relationship between trade liberalization and

⁹¹ Due to the blocking of appointments to the Appellate Body, such legal analysis can unfortunately, at time of writing, not stretch into the present day.

economic development for decades (for a brief, critical review see Siddiqui 2015), how views on this connection have changed – and perhaps even diverged – in the Global South holds promise for new research agendas. While other regimes of international politics can rely on a certain consensus on the ‘end goal’ of discussions – such as climate change mitigation or the improvement of health outcomes – the trade regime has often witnessed strong contention over the aim of negotiations and the benefits of liberalization – as seen for instance in the sixth chapter. In parallel, the desirability of carve-outs from liberalization – such as the policy space entailed in SDT – has also often been called into question (for instance Ornelas 2016). How individual country governments have (re-)positioned themselves on these issues – and what explains ideological change – thus comprises an open question for scholars of IR and its cognate disciplines.

This dissertation has delineated the myriad ways in which special rights for developing countries can become contested and how this contestation centres on the status of the largest states in the developing country group. In the process, it has shown that the North-South distinction has lost traction at the WTO. The key open question is whether – and how – WTO members can find ways out of a fragmented system of special rights for developing countries. Will an institution caught in an entrenched, multi-decade deadlock be capable of reforming the special and differential treatment norm – or even the developing country status that underwrites it – or will WTO politics continue to be marked by impasse? Whatever the answer to this question, status considerations and the divergent paths of developing countries will continue to characterize international trade talks. How countries in the Global South feature in new modes of trade governance and where emerging economies are positioned in a changing international order thus remains open for further research.

Reference List

- Acharya, A. (2017). 'After Liberal Hegemony: The Advent of a Multiplex World Order'. *Ethics and International Affairs* 31:3, 271-285.
- Albert, M., Buzan, B. and Zürn, M. (2013). *Bringing Sociology to International Relations: World Politics as Differentiation Theory*. Cambridge: Cambridge University Press.
- Brunnée, J. and Streck, C. (2013)- 'The UNFCCC as a negotiation forum: Towards Common But More Differentiated Responsibilities'. *Climate Policy* 13:5, 589-607.
- Bukovansky, M., Clark, I., Eckersley, R., Price, R., Reus-Smit, C. and Wheeler, N.J. (2012). *Special Responsibilities: Global Problems and American Power*. Cambridge: Cambridge University Press.
- De Carvalho, B. (2020). 'Brazil's (Frustrated) Quest for Higher Status'. Esteves, P., Gabrielsen Jumbert, M. and De Carvalho, B. (eds.) *Status and the Rise of Brazil*. Palgrave Macmillan.
- De Sá Guimaraes, F. (2020). 'The uneasy 'well-placed' state: Brazil within Latin America and the West.' *Cambridge Review of International Affairs* 33:4, 603-619.
- Deere Birkbeck, Carolyn (2016) 'WIPO's Development Agenda and the push for development-oriented capacity-building on intellectual property: How poor governance, weak management, and inconsistent demand hindered progress.' *GEG Working Paper Series* 105.
- Doctor, M. (2015). 'Brazil's Role in Institutions of Global Economic Governance: The WTO and G20'. *Global Society* 29:3, 286-300.
- Efstathopoulos, C. (2012). 'Leadership in the WTO: Brazil, India and the Doha development agenda'. *Cambridge Review of International Affairs* 25:2, 269-293.
- Falkner, R. and Buzan, B. (2022) *Great Powers, Climate Change, and Global Environmental Responsibilities*. Oxford: Oxford University Press.

- Farias, D.B.L. (2019). 'Outlook for the 'Developing Country' Category: A Paradox of Demise and Continuity.' *Third World Quarterly*. 40:4, 668-687.
- Fehl, C. and Freistein, K. (2020). 'Organising Global Stratification: How International Organisations (Re) Produce Inequalities in International Society.' *Global Society* 34:3, 285-303.
- Hopewell, K. (2021). 'Heroes of the developing world? Emerging powers in WTO agriculture negotiations and dispute settlement.' *The Journal of Peasant Studies*.
- Ikenberry, G.J. (2018). 'The End of Liberal International Order?.' *International Affairs* 94:1, 7-23.
- Kahler, M. (2013). 'Rising powers and global governance: negotiating change in a resilient status quo.' *International Affairs* 89:3, 711-729.
- Kruck, A. and Zangl, B. (2020). 'The Adjustment of International Institutions to Global Power Shifts: A Framework for Analysis.' *Global Policy* 11, 5-16.
- Lake, D.A., Martin, L.L. and Risse, T. (2021). 'Challenges to the Liberal Order: Reflections on International Organization.' *International Organization* 75:2, 225-257.
- Lamp, N. (2017). 'The 'Development' Discourse in Multilateral Trade Lawmaking', *World Trade Review* 16:3, 475-500.
- Lavenex, S., Serrano, O. and Büthe, T. (2021). 'Power Transitions and the Rise of the Regulatory State: Global Market Governance in Flux'. *Regulation and Governance* 15, 445-471.
- Lee, P.K., Heritage, A. and Mao, Z. (2020). 'Contesting liberal internationalism: China's renegotiation of world order.' *Cambridge Review of International Affairs* 33:1, 52-60.
- Malkin, A. (2019). 'Challenging the liberal international order by chipping away at US Structural power: China's state-guided investment in technology and finance in Russia.' *Cambridge Review of International Affairs* 33:1, 81-104.

- Mearsheimer, J.J. (2019). 'Bound to Fail: The Rise and Fall of the Liberal International Order.' *International security* 43:4, 7-50.
- Narlikar, A. (2020). *Poverty Narratives and Power Paradoxes in International Trade Negotiations and Beyond*. Cambridge: Cambridge University Press.
- Ornelas, E. (2016). 'Special and Differential Treatment for Developing Countries.' *CESifo Working Paper Series* 5823.
- Pauwelyn, J. (2013). 'The end of differential treatment for developing countries? Lessons from the trade and climate change regimes', *Review of European, Comparative & International Environmental Law*, 22:1, 29-41.
- Pu, X. (2019). *Rebranding China: Contested Status Signaling in the Changing Global Order*. Stanford: Stanford University Press.
- Roger, C.B. (2020). *The origins of informality: Why the legal foundations of global governance are shifting, and why it matters*. Oxford: Oxford University Press.
- Siddiqui, K. (2015). 'Trade Liberalization and Economic Development: A Critical Review'. *International Journal of Political Economy* 44:3, 228-247.
- Stephen, M.D. and Skidmore, D. (2019). 'The AIIB in the Liberal International Order.' *The Chinese Journal of International Politics* 12:1, 61-91.
- Viola, L.A. (2020). 'US Strategies of Institutional Adaptation in the Face of Hegemonic Decline.' *Global Policy* 11, 28-39.
- Weinhardt, C. and Schöfer, T. (2021). 'Differential Treatment for Developing Countries at the WTO: The Unmaking of the North-South Distinction in a Multipolar World'. *Third World Quarterly* 43:1, 74-93.
- Yang, Y.E. (2021). 'China's Strategic Narratives in Global Governance Reform Under Xi Jinping'. *Journal of Contemporary China* 30:128, 299-313.
- Yu, P. (2022). 'TRIPS Wars: Developing Countries Strike Back'. George, A. (ed.). *Flashpoints: Changing Paradigms in Intellectual Property and Technology Law*. New Orleans: Quid Pro Press.

Zangl, B., Heußner, F., Kruck, A. and Lanzendörfer, X. (2016). 'Imperfect Adaptation: How the WTO and the IMF Adjust to Shifting Power Distributions among their Members.' *The Review of International Organizations* 11:2, 171-196.

Zarakol, A. (2017) *Hierarchies in World Politics*. Cambridge: Cambridge University Press.

Zeferino de Menezes, H. (2018) 'South-South Collaboration for an Intellectual Property Rights Flexibilities Agenda.' *Contexto Internacional*. 40:1, 117–138.

Zhang, Y. (2016). 'China and liberal hierarchies in international society: power and negotiation for normative change.' *International Affairs* 92:4.

Annex

Information on Cumulative Dissertation

This dissertation comprises five research papers, corresponding to the following chapters, in the following order:

Chapter Two: The Unmaking of the North-South Distinction in a Multipolar Era.

- Published as Weinhardt, C. and Schöfer, T. (2021). 'Differential Treatment for Developing Countries at the WTO: The Unmaking of the North-South Distinction in a Multipolar World'. *Third World Quarterly* 43:1, 74-93.

Chapter Three: 'Privileges' of the Weak – Emerging Powers' Pursuit of Special Rights for Developing Countries.

- This paper will be published as Schöfer, T. and Weinhardt, C. (2022). 'Developing Country Status at the WTO: Brazil, India and China's Divergent Strategies.' *International Affairs* 98:6.

Chapter Four: Identity at the WTO – How China Defends its Status as a Developing Country.

Chapter Five: From Southern Leader to Flexible Negotiator – New Directions in Brazilian Trade Policy.

- Currently under review at *World Trade Review* as Schöfer, T. 'From Southern Leader to Flexible Negotiator: New Directions in Brazilian Trade Policy'.

Chapter Six: Conflicts over Special Rights – Southern Unity in Intellectual Property.

- Currently under review with *Oxford University Press* as Schöfer, T. 'Conflicts over Transition Periods for Intellectual Property Rights'. Dingwerth, K., Weinhardt, C., Eckl, J., Herr, S. and Schöfer, T. *The Unmaking of Special Rights: Differential Treatment and its Contestation in Times of Global Power Shifts*.

List of Pre-Publications

Weinhardt, C. and Schöfer, T. (2021). 'Differential Treatment for Developing Countries at the WTO: The Unmaking of the North-South Distinction in a Multipolar World'. *Third World Quarterly* 43:1, 74-93.

Schöfer, T. and Weinhardt, C. (2022). 'Developing Country Status at the WTO: Brazil, India and China's Divergent Strategies.' *International Affairs* 98:6.