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THE INTERPRETATION OF ART. 31, § 3, "C", OF CV/69, IN THE APPLICATION OF WTO LAW TO APCS, IN THE DEI

A INTERPRETAÇÃO DO ART. 31, § 3º, "C", DA CV/69, NA APLICAÇÃO DO DIREITO DA OMC AOS APC, NO DEI

LA INTERPRETACIÓN DEL ART. 31, § 3, "C", DE LA CV/69, EN LA APLICACIÓN DEL DERECHO DE LA OMC A LOS APC, EN LA DEI

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ABSTRACT

The phenomenon of regionalism has weakened the multilateral system of international trade administered exclusively by the World Trade Organization. The filling of aim was to fill an existing legal gap. The analysis of the scope of the expression "the relationship between the parties" in Article 31, paragraph 3, final part, of the 1969 Vienna Convention on the Law of Treaties was carried out only with regards to preferential trade agreements. By delimiting the study to narrow the research, it was possible to collate the interpretation of the specific provision of the "treaty of treaties", to the law applicable to the World Trade Organization. Divided into five main parts, the research began with the analysis of the 1969 Vienna Convention on the Law of Treaties. It the focused on the World Trade Organization. Free Trade Agreements were analysed as a genus of the International Treaties and Preferential Trade Agreements as a species. The phenomenon of regionalism and the crisis of WTO multilateralism were exploited. We analysed International Economic Law and the international economic jurisdiction administered by the WTO. Justified the legal thesis that, in international economics controversies, when two or more State Parties sign an interpretation among themselves, in a preferential trade agreement, that interpretation cannot be used to interpret WTO provisions. WTO jurisprudence can be used in regional international economic jurisdictions, but the reverse is not true.

Palavras-chave:
tratados internacionais, interpretação de tratados, multilateralismo, direito econômico internacional, direito internacional.

RESUMO

O fenômeno do regionalismo enfraqueceu o sistema multilateral de comércio internacional, administrado exclusivamente pela Organização Mundial do Comércio. Tratou-se de preencher uma lacuna jurídica existente. A análise do alcance da expressão "a relação entre as partes", constante no artigo 31, § 3º, parte final, da Convenção de Viena sobre o Direito dos Tratados de 1969, foi feita apenas quanto aos acordos preferenciais de comércio. Ao delimitar o estudo, para restringir a pesquisa, foi possível colacionar a

interpretação do dispositivo específico do "Tratado dos tratados", ao direito aplicável à Organização Mundial do Comércio. Dividida em cinco partes principais, a pesquisa começou com a análise da Convenção de Viena sobre o Direito dos Tratados de 1969. Após, concentrou-se na Organização Mundial do Comércio. Foram analisados os Tratados de Livre Comércio, como gênero dos Tratados Internacionais e os Acordos Preferenciais de Comércio, como espécie. Foram explorados o fenômeno do regionalismo e a crise do multilateralismo da OMC. Em último lugar, analisou-se o Direito Econômico Internacional e a jurisdição econômica internacional administrada pela OMC. Justificou-se a tese jurídica de que, em sede de controvérsias econômicas internacionais, quando dois ou mais Estados-partes firmam entre si uma interpretação, em um acordo preferencial de comércio, dita interpretação não pode ser usada para interpretar um dispositivo da OMC. A jurisprudência da OMC pode ser usada nas jurisdições econômicas internacionais regionais, mas a recíproca não é verdadeira.

RESUMEN

Palabras clave:
tratados internacionales; interpretación de tratados; multilateralismo; derecho económico internacional; derecho internacional.

El fenómeno del regionalismo ha debilitado el sistema multilateral de comercio internacional, administrado exclusivamente por la Organización Mundial del Comercio. El objetivo era colmar una laguna jurídica existente. El alcance de la expresión "la relación entre las partes", contenida en la parte final del apartado 3 del artículo 31 de la Convención de Viena sobre el Derecho de los Tratados de 1969, se analizó únicamente en relación con los acuerdos comerciales preferenciales. Al delimitar el estudio para acotar la investigación, fue posible relacionar la interpretación de la disposición específica del "Tratado sobre los Tratados" con el derecho aplicable a la Organización Mundial del Comercio. Dividida en cinco partes principales, la investigación comenzó analizando la Convención de Viena sobre el Derecho de los Tratados de 1969. A continuación, se centró en la Organización Mundial del Comercio. Se analizaron los Acuerdos de Libre Comercio, como género de Tratados Internacionales, y los Acuerdos Comerciales Preferenciales, como especie. Se estudió el fenómeno del regionalismo y la crisis del multilateralismo de la OMC. Por último, se analizó el Derecho Económico Internacional y la jurisdicción económica internacional administrada por la OMC. Se justifica la tesis jurídica de que, en los litigios económicos internacionales, cuando dos o más Estados parte se ponen de acuerdo sobre la interpretación de un acuerdo comercial preferencial, esta interpretación no puede utilizarse para interpretar una disposición de la OMC. La jurisprudencia de la OMC puede utilizarse en las jurisdicciones económicas internacionales regionales, pero lo contrario no es cierto.

Introduction

1969 Vienna Convention on the Law of Treaties

International relations between states take place through international treaties. These treaties are governed by the 1969 Vienna Convention on the Law of Treaties, as it is the international legal instrument specifically created for this purpose by the international community. Among the various issues related to international treaties, Article 31 and its paragraphs deal with the interpretation of international treaties, which is considered one of the most frequent causes of international economic controversies.

The 1969 Vienna Convention on the Law of Treaties is the international statute that deals with the rules for international treaties signed in writing between states. For this reason, it became known as the "Treaty of Treaties". It is one of the main sources of public international law and has therefore become known as the "Source Treaty".

There are three main reasons why international economic disputes arise between states. The interpretation of International Treaties, the incompatibilities between tax measures created by Free Trade Agreements and WTO Agreements, as well as macroeconomic protectionist measures such as non-tariff barriers. International trade moves the world and is of paramount importance to nations as well as private economic actors.

Media and technology have played an unprecedented role in international trade. They have facilitated trade and made the global economy very dynamic. This dynamism has helped to create global organizations that converge their macroeconomic objectives through international treaties. (FUNIBER, n.d.)

The multilateral sphere of international trade was governed to a limited extent by the rules of the provisional *General Agreement on Tariffs and Trade* or GATT. Created in 1947, GATT was in force from 1948 until 1994. Since 1995, this trade area has been administered exclusively by the World Trade Organization, which absorbed GATT-47 after changing it to GATT-94.

The regional sphere of international trade has existed for centuries. There is no higher authority to administer it, so regional international trade disputes depend on different international economic forums.

Regional cooperation is embodied through Regional Trade Agreements, which come in different forms, such as Free Trade Agreements, Preferential Trade Agreements and Deep Preferential Agreements or Mega Agreements.

The aim of the research was to create a legal thesis capable of explaining the interpretation of article 31, paragraph 3, final part, of the 1969 Vienna Convention on the Law of Treaties, to define who are the parties to the relations referred to in that provision and to determine whether the parties can apply an interpretation, signed between them, at the end of an international economic dispute in the context of a Preferential Trade Agreement, to interpret a provision of the World Trade Organization.

The study defined who these parties are after analyzing the Convention. He explained the emergence and functioning of the WTO, starting from its predecessor, the GATT. He pointed out the main differences between Free Trade Agreements and Preferential Trade Agreements, as well as between the areas of international trade. He analyzed the crisis of multilateralism in the face of the phenomenon of regionalism. He explained the purpose of international economic law, with an emphasis on the multilateral jurisdiction of the WTO. He clarified the law applicable to the organization and how its jurisprudence is produced.

World Trade Organization

The World Trade Organization is an international economic organization and therefore falls under International Economic Law. It incorporated the Principles of Common International Law and the Multilateral Principles of *GATT* 1947, considered its predecessor.

Created in 1994 with seventy-six member states, the organization currently has one hundred and sixty-four member states. It is the only international body in charge of administering and establishing the rules of international trade between states and independent customs territories.

The World Trade Organization has a permanent institutional structure, made up of a secretariat and four decision-making levels. The 1st level is the Ministerial Conference, its highest body; the 2nd level is made up of three main bodies, which are the General Council, the Dispute Settlement Body or DSB and the Trade Policy Review Body or TPRB; the 3rd level encompasses the Agreements of its organic structure, which are GATT, GATS, TRIPS, SPS and TBT; and finally, the 4th level is made up of the Committees and Working Groups. The Ministerial Conference and the General Council apply the Multilateral Consensus Principle positively and the Dispute Settlement Body applies it negatively or inverted.

The Dispute Settlement Body is a unique and rather complex mechanism because it applies both Civil Law principles to its own trade agreements and Common Law principles to its own case law. It has an adjudicatory legal nature. It is the guardian of the Dispute Settlement System and has been jurisdictionalized by the World Trade Organization. It has the legal primacy of procedural rules and coerciveness, by authorizing the application of retort measures by its member states. The Dispute Settlement Body administers and is guided by the Understanding on Procedural Rules for Dispute Settlement, its initial normative framework. The OSC is made up of the Panels, which correspond to the 1st Instance, and the Appellate Body, which corresponds to the 2nd Instance, both of which are judicial in nature.

It is not up to the WTO to challenge decisions made by other regional international economic jurisdictions and vice versa, because these jurisdictions are competitors. Regional trade agreements deal with different and sometimes broader issues than the WTO's multilateral and plurilateral agreements.

By jurisdictionalizing its dispute settlement system, the WTO has left the application of its provisions and agreements to the scrutiny of the Consensus Decision-Making Principle of its member states. This consensus is sometimes negative or, conversely, sometimes positive. The WTO Dispute Settlement Body, through the panels and the Appellate Body, depend on negative consensus. The Ministerial Conference and the General Council depend on positive consensus.

The WTO's multilateral dispute settlement system is victorious because it manages to compel compliance with its norms and rules, as well as helping to prevent trade conflicts from proliferating between nations on a global level.

However, this system has been criticized. It has been advocating structural reform, which must be multilateral, which has been difficult since the Doha Round. It is becoming increasingly difficult to reach consensus among WTO member states. This difficulty has hampered the organization and even paralyzed its Appellate Body since 2019.

Even so, it is the system chosen by countries to settle their international economic disputes, despite the existence of other jurisdictions. Some WTO member states, as signatories to preferential trade agreements, use interpretations reached between them at the end of regional disputes to interpret WTO provisions. However, the WTO does not accept this practice, as it considers it impertinent to apply it multilaterally.

Although the law applicable to the WTO is not to be confused with the law applicable to Preferential Trade Agreements, both depend on the dispute settlement systems that exist in their respective areas. In some cases, there are common obligations between multilateral agreements and regional agreements. This is especially true of deep preferential agreements (de Carvalho and Salles, 2022).

Free Trade Agreements

Free Trade Agreements are genres of international treaties, of indefinite duration, bilateral or plurilateral. These treaties are considered Regional Trade Agreements, as well as second and third generation Trade Agreements, mainly to create Free Trade Zones. They are primarily used to liberalize international trade by reciprocally reducing or eliminating customs tariffs between their signatory states.

Free Trade Agreements do not create or repeal taxes. However, the measures they create in this area are incompatible with the rules of the World Trade Organization.

Preferential Trade Agreements are a type of Free Trade Agreement. Most of them are plurilateral. Signed between a small number of countries or specific groups, they are faster and less bureaucratic than the World Trade Organization's Trade Agreements.

However, Preferential Trade Agreements are considered a derogation from the rules of the World Trade Organization. For this reason, they must be used with reservations, in the form of exceptions, based on Article XXIV of the GATT-94, in the case of goods, to create Free Trade Areas; or based on the enabling clause of the GATT-94, in the case of subsidies, as an exemption to Article I of the GATT-47; and, finally, based on Article V of the GATS, in the case of services.

In the form of Deep Agreements or Mega Agreements or even Megablocks, they are considered to be state-of-the-art trade agreements, because they go beyond purely economic issues. In these cases, they can be WTO Plus Agreements, as they go deeper into the rules that already exist in the WTO; or WTO Extra Agreements, beyond these rules, as they create rules that do not exist in global trade, as is the case with political areas and trade flows.

Regionalism vs. Multilateralism

The World Trade Organization is facing an unprecedented crisis. Global interests and negotiating strategies are no longer the same as they were in 1994, when the organization was created. The phenomenon known as regionalism is attributed to the proliferation of regional agreements. This proliferation worries the WTO, because the multilateral sphere has begun to lose ground to the regional sphere. However, other structural problems of multilateralism are pointed out as the various factors attributed to the crisis of this regime.

Coexistence between international trade areas is inevitable. It has led to the fragmentation of multilateralism, with its consequent weakening, while it has strengthened regionalism through increased regional cooperation around the world. This cooperation is no longer limited to the simple liberalization of markets, but has come to serve economic, political, geopolitical, commercial and security objectives.

Regionalism encompasses, in particular, the exacerbated proliferation of Preferential Trade Agreements. It took place in three main periods, between 1950 and 1970, from 1990 and from 2001, coinciding with the Doha Round of the World Trade Organization.

The expansion of the globalization phenomenon, coupled with technological, communication and logistical advances, has led to the emergence of Global Value Chains. The latter, combined with the lack of consensus in the World Trade Organization, caused

a feeling of immediacy among the organization's member states, who, in the short term, migrated to the regional international trade system in order to achieve their trade objectives.

However, this migration has brought several problems to international trade. Among the main ones are the implementation of rules; the overlapping of members; the inconsistencies between Regional Trade Agreements and the WTO; the fragmentation and weakening of the multilateral regime; the negative impacts on trade flows, due to the increase in transaction costs, especially with regard to certificates of origin; the Spaguetti Bowl, which is the proliferation of Plurilateral Agreements, which have not replaced the existing Bilateral Agreements, but have been added to and formed this tangle of international trade norms and rules; and, finally, the Shopping Forum, which is the creation of dispute settlement mechanisms in each of the Regional Trade Agreements.

Despite the creation of the *Single Undertaking* Principle during the Uruguay Round and the end of GATT *à la carte*, compensatory measures that had been created to solve the problem of the imbalance in competitiveness between countries were not overturned by macroeconomic protectionist measures, such as non-tariff barriers.

Environmental and public order issues generate trade detour, because member state governments use the exception rules, authorized by the World Trade Organization, to divert the focus of regional negotiations, creating rules parallel to multilateral ones.

The most sensitive issues, which were at the forefront of multilateral negotiations in the QUAD bloc made up of the United States, Canada, the European Union and Japan, were replaced by the G-20 group, led by Brazil, in the area of agriculture, and the NAMA-11 group, led by South Africa, in the area of market access.

Developing countries, which make up two-thirds of the member states, demand preferential treatment at the World Trade Organization, but they make up the majority. There is also the organization's lack of capacity to modernize its own rules.

The clash between the United States and China, as the world's two largest economic powers, led to the paralysis of the Dispute Settlement System in 2019 in the face of repeated US vetoes for the appointment of new judges to the World Trade Organization's Appellate Body.

China's accession to the World Trade Organization in 2001, the reason why it should have become a market economy, did not happen. Distortion caused by the strong influence of the Chinese government on global trade. Finally, there is the lack of total transparency in the national trade policies of the member states of the World Trade Organization.

International Economic Law

International economic law, an autonomous branch of international law and essentially public, governs international trade relations between states, as well as their macroeconomic policies. These relationships often generate controversy. These disputes are settled by international economic forums. There are various international economic forums and there is no hierarchy between them.

International Economic Law, a specialized branch of Public International Law, regulates macroeconomic legal relations between states, given the reciprocity of these relations.

One of the problems in the international community is that international economic law is not applied equally across the five continents (Hernández et al., 2011). This lack of equal application leads to divergent interpretations of international treaties. It is up to international economic law to resolve these differences.

It is not a question of normative antinomy, because there is no conflict of norms. These rules coexist and that's how it should be. The problem is the interaction between them. At the international level, there is no higher political authority with coercive powers. The creators as well as the recipients of the legal norm are the same. This is because the means of producing and applying the international economic legal order lie with the very people who create them. (FUNIBER, n.d.)

Regional international economic forums are created by the international treaties themselves, through their dispute settlement systems. They can also be elected by the disputing parties, signatories to the respective international treaties, when there is no primacy of regional jurisdiction. All according to the specific provisions of each of the regional trade agreements.

The choice of a regional international economic jurisdiction may or may not rule out the possibility of the dispute being subsequently examined multilaterally. This possibility depends on the existence of primacy of regional jurisdiction in the respective treaty. In this respect, the WTO Dispute Settlement Body has primacy of jurisdiction over the trade agreements under its administration, i.e., the WTO has primacy of multilateral international economic jurisdiction.

On the other hand, there are various regional international economic jurisdictions, made up of various regional international economic forums, divided into Courts and International Organizations. There is no hierarchy between the regional jurisdictions and the multilateral jurisdiction of the World Trade Organization, because they are concurrent.

The problem is that this leads to conflicting regional decisions, generating unpredictability and legal uncertainty. This situation does not occur in the World Trade Organization, which provides predictability, reliability, credibility and efficiency for the entire system. It also provides legal certainty, which is beneficial for international trade.

The main objective of the WTO, with its dispute settlement system, is to offer security and predictability to the multilateral regime. However, when these disputes concern regional agreements, the solution to the disputes depends on the decisions handed down by the different regional economic jurisdictions. The consequence is the existence of divergences or antagonism between these decisions.

The multilateral jurisdiction of the WTO exerts a strong influence on regional jurisdictions, because gaps and ambiguities are not only filled on the basis of the concepts and rules of its own Trade Agreements; it stabilizes the tangle of international norms that form the regulation of international trade; and, finally, because of the inevitable relationship between the various contemporary global issues and international economic controversies.

The World Trade Organization's Appellate Body uses systematic, extensive and constructive interpretations of public international law, such as the 1969 Vienna Convention on the Law of Treaties. In this way, this judicial body will look to the concepts and interpretations of the courts of other international organizations, such as the International Monetary Fund, the World Bank and the Organization for Economic Cooperation and Development, to resolve disputes between its own member states. As a result, it creates its own case law which, in turn, will guide future litigation.

It is in this sense that WTO jurisprudence becomes even more important for international trade. The decisions handed down by its dispute settlement system are used by its member states in regional dispute settlement systems. Its jurisprudential production cannot stop.

Methodology

The design is descriptive, ethnographic and qualitative in nature. The scope of the research is exploratory. The study is not probabilistic, but purely legal-theoretical and its results are presented in text form. There are no variables, just as there is no specific population or sample. In terms of research scope, the correlational technique was used. The research is non-experimental. The measuring instruments used were databases accessible to the general public and electronic academic search sites. The research method is longitudinal. The sources used were documentary and bibliographical. The technique used was research on academic dissemination platforms, through the specialized academic search engines EBSCOhost, Google Academy, ResearchGate and Academia.edu. The descriptive and explanatory techniques were used together, as far as bibliographic means were concerned. The logical-legal technique was used to justify the combination of the articles and principles contained in the international diplomas. The procedure used was internet research, through scientific search sites. The time frame of the research is cross-sectional. The approach was descriptive-historical. In terms of statistical analysis, a simple conclusion analysis was carried out.

Results

States parties to the Preferential Trade Agreement that are not part of the procedural relationship of the regional international dispute are not part of the expression "the relationship between the parties", which is the subject of the study, brought up in article 31, paragraph 3, final part, of the 1969 Vienna Convention on the Law of Treaties, specifically for the purposes of the interpretation signed at the end of the dispute between the litigating states parties.

States parties to a Preferential Trade Agreement that have signed an interpretation between themselves at the end of a regional international economic dispute, as a rule, cannot use that same interpretation to interpret a provision of the World Trade Organization. However, it is worth noting that this rule has exceptions. This is because when a regional jurisdiction establishes an interpretation of a Preferential Trade Agreement in its own dispute settlement mechanism, that case law does not form part of the law applicable to the WTO.

The law applicable to the World Trade Organization is made up of all its multilateral and plurilateral agreements in force, as well as the relevant rules of international law. The interpretation of WTO agreements is based on the 1969 Vienna Convention on the Law of Treaties. However, the WTO Dispute Settlement Body has in its jurisprudence decisions that were taken on the basis of evolving interpretations by the Appellate Body. In this respect, these decisions were not based on the rules contained in the WTO agreements, but on multilateral rules from other international organizations.

The principle basis of the WTO's multilateral trade system brings us to the Principle of Consensus Decision-Making, which must be reached by all of the organization's one hundred and sixty-four member states, considered to be a positive consensus, when the Ministerial Conferences and the General Council, both of which have the same composition, are held.

Due to the institutional functioning of the World Trade Organization, as well as its legal framework, the interpretation of its provisions falls to the Dispute Settlement Body, composed of all its member states, when it accepts, modifies or rejects the reports of the organization's panels or Appellate Body, by means of negative consensus. However, the

Appellate Body has, on more than one occasion, interpreted the organization's agreements, even though this is not its specific task under the WTO's Constitutive Agreement. In the meantime, instead of the usual textual interpretation, in accordance with the 1969 Vienna Convention on the Law of Treaties, this body has filled in gaps and resolved ambiguities in the terms contained in the agreements analyzed, by means of evolutionary interpretation, in order to resolve the controversies brought before it. Despite this, these decisions form part of the jurisprudence of the SCO and can be used in regional dispute settlement mechanisms, even in the face of the primacy of these jurisdictions.

Discussion and Conclusions

Article 31, paragraph 3, final part, of the 1969 Vienna Convention on the Law of Treaties is sufficient to determine who are the parties involved in disputes in the commercial dispute resolution mechanisms of regional and multilateral international economic jurisdictions. However, the rule is not sufficient to resolve the overlapping of rules or even the competition of rights and obligations between the international treaties of the different international trade jurisdictions, and the solution falls to the primacy of jurisdiction.

The clash between the phenomenon of regionalism and the crisis of multilateralism is an old one. (Capucio, 2018) The difficulty of creating new multilateral agreements in the rounds of negotiations at the WTO Ministerial Conferences fuels the phenomenon of regionalism.

The proliferation of Preferential Trade Agreements is due to the institutional and regulatory problems of the World Trade Organization. (Capucio, 2017; Loures, 2020; Thorstensen et al., n.d.)

From a normative point of view, the Principle of Consensus Decision-Making is the main cause of the fragmentation of the multilateral trade system. (Capucio, 2017; Linn, 2017; Loures, 2020; Vicente, 2022; de Medeiros Fidelis, 2020; Mattoo et al., 2020; de Carvalho et al., 2018; Leão and Borgui, 2022; European Commission, 2021; de Carvalho and Salles, 2022; Thorstensen et al., 2014)

The member states of the World Trade Organization have migrated to regionalism in order to deepen or extend their economic integration, while preserving their own macroeconomic interests as well as the interests of their economic actors.

The three exceptions in Articles XXIV of the GATT-94, V of the GATS and the Enabling Clause, which allow the member states of the World Trade Organization to sign Preferential Trade Agreements, are discriminatory and go against the basic Most Favoured Nation Principle of the multilateral trade system. (de Carvalho, 2018b; Thorstensen and Nogueira, 2017; WTO, 2011)

The trade distortion caused by the excessive use of Preferential Trade Agreements, which should be an exception to the general rule of the multilateral system, circumvents the law of the World Trade Organization. (Loures, 2020; Thorstensen et al., n.d.)

WTO law needs to be adapted to the new times if it is to survive, grow stronger and not fall back on the progress it has made over the last few decades.

The overlapping of rules caused by the phenomenon of regionalism, which encompasses the *spaghetti bowl* and *forum shopping*, fragments the WTO and international trade as a whole. (Thorstensen, et al., n.d.; Capucio, 2017; Loures, 2020; de Carvalho, 2019a) This phenomenon will continue to occur, since these resources are constantly arming it against the multilateral system.

From an institutional point of view, the WTO Transparency Mechanism is flawed. (Loures, 2020; Capucio, 2018) In this respect, the WTO Transparency Mechanism is fallible because it controls the exceptional use of Article XXIV of the GATT-94, Article V of the GATS and the Enabling Clause.

The WTO structure was born with problems in 1994, because it came from GATT-47. It is outdated for the dynamics of global trade in the 21st century. (Capucio, 2017; Linn, 2017; Thorstensen et al., 2014; Loures, 2020)

The substantive law of 1947 is totally out of step with the current standards and needs of international trade and runs counter to the objectives of economic integration and customs tariffs of the WTO member states.

The *Single Undertaking* rule in Article IX, §1 of GATT-94 prevents consensus from being reached in WTO negotiating rounds. (Capucio, 2017; European Commission, 2021)

The proliferation of Preferential Trade Agreements is a systemic problem in the WTO. (Capucio, 2017; WTO, 2011; European Commission, 2021)

The blockage of the WTO's Appellate Body, due to repeated vetoes by the United States to appoint new judges, is detrimental to international trade as a whole. (Capucio, 2017; Loures, 2020; Linn, 2017; European Commission, 2021)

The multilateral WTO model is in crisis. Factors such as the WTO's inability to adapt to the needs of the 21st century, new business models and the needs of global economic players, as well as new international trade issues, are fueling this crisis. (Loures, 2020; Thorstensen et al., n.d.; European Commission, 2021)

The normative and institutional reform of the WTO is necessary in order to preserve legal certainty, the predictability of the system, the uniformity of decisions in dispute settlements, the standardization of rules, the speed of multilateral negotiations, the effectiveness of the multilateral system and the efficiency of international trade.

The discussion on the legality of regional law vis-à-vis multilateral WTO law is due, among other reasons, to the trade barriers being erected by the Preferential Trade Agreements. (Thorstensen et al., 2014; de Carvalho, 2019c)

The conflict of jurisdiction between the dispute mechanisms of the Preferential Trade Agreements and the WTO mechanism is defended by Loures (2020). In the meantime, we disagree, because we believe that there is no conflict of jurisdiction between dispute settlement mechanisms, but rather that regional and multilateral rules overlap.

The competition between regional jurisdictions and the multilateral WTO, in terms of its dispute settlement mechanisms, is defended by Thorstensen et al. (2014). We agree, because we believe that there is no antinomy between rules, but rather that they overlap.

Conclusions

In terms of rules for interpreting international treaties signed between states, the applicable public international law instrument is the 1969 Vienna Convention on the Law of Treaties, which specifically regulates the matter in its article 31. The problem of overlapping rules between regional law, through Preferential Trade Agreements, and multilateral law, through WTO treaties, is resolved by textual, extensive, evolutionary or constructive interpretation, based on Article 31 of the aforementioned Convention, in cases of gaps, obscurities, ambiguities or contradictions in the WTO legal framework.

The law applicable to the WTO is decided by the positive consensus of its one hundred and sixty-four member states, at Ministerial Conferences and the General Council, both of which have identical composition. On the other hand, this right is decided by negative consensus of its one hundred and sixty-four member states, in the Dispute

Settlement Body, by adopting, modifying or rejecting the reports of the organization's panels and Appellate Body.

The 1969 Vienna Convention on the Law of Treaties does not allude to all one hundred and sixty-four member states of the World Trade Organization when it refers to the expression "the relationship between the parties" in the final part of §3 of Article 31, when regulating the interpretation of international treaties and the international legal instrument is a preferential trade agreement. There are no preferential trade agreements to which all WTO member states are signatories at the same time. By their very nature, preferential trade agreements involve fewer states parties, unlike the WTO's multilateral agreements. In the case of deep preferential agreements, the number of states parties is smaller than the total number of WTO members, even though they create mega-blocks of regional economic integration.

The main objective of Free Trade Agreements is to liberalize trade by reducing customs tariffs on a reciprocal basis between the signatory parties. Considered foreign policy instruments, FTAs are used to eliminate trade barriers, which allows access to international markets, as well as promoting economic integration and international cooperation.

Preferential Trade Agreements, on the other hand, grant customs advantages or other types of benefits to the signatory parties, not always on a reciprocal basis. These agreements do not respect the Most Favored Nation Principle and discriminate against trade. They create their own rules for regulating trade in goods and services and have an impact on their respective flows. The PCAs have their own dispute settlement mechanisms. The WTO authorizes regional agreements. On the basis of Article XXIV of the *General Agreement on Tariffs and Trade* or GATT, they can sign regional integration agreements in the form of a free trade area or customs union. As far as services are concerned, they are based on Article V of the *General Agreement on Trade in Services* or GATS. As for subsidies, they are based on the Enabling Clause and the General System of Preferences in order to sign preferential trade agreements. In the meantime, the study suggests a new survey of the number of existing regional trade agreements notified to the World Trade Organization, with regard to the growing trend of regionalism compared to the multilateral system of international trade.

The regional sphere of international trade, made up of all regional trade agreements, includes free trade agreements, preferential trade agreements and deep preferential agreements. They have their own dispute resolution mechanisms and their own rules. These rules overlap with multilateral rules because they regulate the same trade issues or new issues not regulated by the WTO. This sphere is made up of regional international economic jurisdictions, with no hierarchy between them. The phenomenon of regionalism, meanwhile, refers to the proliferation of regional trade agreements, especially preferential agreements. This phenomenon has occurred in waves and the third is linked to Global Value Chains.

The multilateral sphere of international trade, on the other hand, is made up of all the multilateral and plurilateral agreements under the exclusive administration of the World Trade Organization and is newer than the regional sphere. It operates on a lean, clear and pre-defined principle base, with exceptions. The WTO is intergovernmental, with its own legal personality that differs from that of its member states, which, to date, number one hundred and sixty-four. Within a permanent structure, the multilateral system is made up of bodies at different decision-making levels, the Ministerial Conferences, the General Council and the Dispute Settlement Body. This system has its own dispute resolution mechanism, which is not a court, but exercises a jurisdictional

function and produces case law. Multilateral law competes with regional law, so their rules overlap.

Given the existence of different regional international economic jurisdictions, which compete with the multilateral jurisdiction of the WTO, divergent and conflicting decisions arise. The overlap between regional and multilateral trade rules creates unpredictability in decisions, which leads to legal uncertainty. These rules can complement each other. The jurisprudence of the WTO Dispute Settlement Body benefits international trade as a whole, because it is based not only on its own law, but also on the rules of other international organizations and bodies. The rules of interpretation of public international law, according to the 1969 Vienna Convention on the Law of Treaties, make it possible to fill in gaps and clarify ambiguities, obscurities and contradictions in agreements.

The law applicable to Preferential Trade Agreements is not to be confused with the law applicable to the WTO. Preferential Trade Agreements regulate matters that are not regulated in the WTO agreements, or are regulated insufficiently. The outcome of the WTO Appellate Body's legal proceedings is incorporated into the jurisprudential framework of the Dispute Settlement Body. It will benefit all WTO members in future disputes, including at the regional level. Therefore, the interpretation first established in a regional dispute cannot be used to interpret a WTO provision, but the reverse is true. The Appellate Body's analysis is legal, so it is not a question of applying the Principle of Consensus Decision-Making. It is a question of applying rules of public international law, specifically the rules of interpretation of Article 31 of the 1969 Vienna Convention on the Law of Treaties. Even if this interpretation is extensive or evolutionary, the WTO fulfills one of its primary purposes, listed in its Constitutive Agreement, given the express provision for cooperation with other international organizations and bodies in the Treaty of Marrakech.

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