Regionalism and BRICS: Understanding BRICS' Trade Policy Agenda in the Era of Growing Regional Trade Agreements

Geetanjali Sharma*

The paper provides a brief overview of the contemporary climate of burgeoning, deep-rooted Free Trade Agreements (FTAs) across the globe and the trend of strong powers entering into asymmetrical trade agreements. In the light of changing global dynamics, this paper traces the policy of regionalism in the BRICS countries based on three parameters: (i) emergence of each country's general trade policy on regionalism, (ii) scope and coverage of issues within BRICS' FTAs, and (iii) BRICS' response to FTA negotiations with the dominant trading partners such as the US and EU. By analysing these factors, readers could derive the commonalities and divergences in the FTA policy amongst BRICS countries. In the end, the paper presents some common policies on regionalism that BRICS should keep in mind while progressing on their future roadmap of concluding Regional Trade Agreements (RTAs).

I. INTRODUCTION

With 40% of world's population and a quarter of global economic output, BRICS' emergence can be linked to a clout which has been able to contain the dominance of a uni-polar world. The eThekwini Declaration of 2013 specifically entails the agenda of BRICS to focus on multi-polar regionalism rather than a North-dominated world order. However, the rise and proliferation of asymmetrical Regional Trade Agreements (RTAs) across the globe is posing a severe threat to this agenda of BRICS. Today, RTAs tend to be used as twin tools in the

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1 See Vijay Prashad, The diffident emergence of the BRICS bloc, 274 Third World Resurgence 8-9 (2013).

2 In this paper, the term RTA has been used interchangeably with other terms such as FTAs, FTAs, Economic Complementarity Agreement, Trade, Development and Co-operation Agreement, Trade and Economic Framework Agreement, Comprehensive Economic Cooperation Agreement, etc. They may differ in their nature and scope but essentially, all the above trade agreements or arrangements fall under the purview of Article XXIV of GATT.
hands of the powerful trading entities for unilateral liberalisation of their own trade agenda and a mechanism for influencing the internal regulatory governance of other countries. This trend is also influencing the political economy of BRICS in relation to their own policy towards regionalism. The dangers posed by manifold proliferation of RTAs is therefore twofold: on the one hand, it undermines the credibility of WTO as an institution, and, on the other, it influences groupings such as BRICS to follow the bandwagon effect of entering into asymmetrical and deep-rooted RTAs advocated by the Global North, especially the United States and European Union. This paper therefore delves into the changing contemporary dynamics of RTAs, also tracing the role of BRICS countries with respect to their own agenda of regionalism.

Part I of the paper discusses the proliferation of RTAs and their expanding nature and scope. Part II of the paper discusses the position of BRICS countries on regionalism; Part III of the paper focuses on certain lessons from a comparative study of BRICS countries in their approach to certain identified issues. This could guide the future of BRICS’ policy on regionalism within their domestic policy-making sphere and at the international level on forums such as the WTO.

II. GROWING PACE OF RTAs: CONTEMPORARY GLOBAL DYNAMICS AND ITS RAMIFICATIONS

The global trend in proliferation of RTAs began with North-North regionalism, followed by South-South regionalism, leading to the current trend of bilateralism, in regionally distinct and economically asymmetrical nations. Another unique feature in the progress of RTAs has been the shift in their scope and forms. As a common denominator, most RTAs dealt with lowering or removal of tariffs on import of goods originating in partner countries. It thereafter progressed to cover services and non-tariff measures. The contemporary trend has been to include RTAs containing rules of not just trade or investment, but encompassing instruments of domestic economic regulation and political co-operation on issues such as e-commerce, combating corruption, etc. Since RTAs promote global free trade and global economic welfare, they could be

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4 Classic examples include the North Atlantic Free Trade Agreement (NAFTA) and the Treaty Establishing the Formation of European Union (TFEU).
5 Examples include MERCOSUR, SAFTA and ASEAN.
6 This is the most recent phenomenon in International Trade, includes: United States FTAs with countries such as Australia, Bahrain, Chile, Jordan, Morocco, Singapore, Malaysia, South Africa, Thailand and the United Arab Emirates; India- EU ongoing FTA etc.
perceived as instruments for consolidating global rules for the governance of all countries that are signatories of the RTA. Thus, many scholars opine that modern day RTAs attempt to represent a step towards nation-building or international federalism.\textsuperscript{7}

While trade agreements concluded bilaterally or at a plurilateral level outside the framework of the WTO may offer certain advantages, such agreements, especially the ones which are entered into by asymmetrical nations, may lead to diverse results for different trading partners within the same agreement. The diverse results in terms of different trade gains may flow from the unequal negotiating abilities amongst members within an asymmetrical trade relationship. Further, the weaker members within an agreement tend to be more susceptible to the challenges of harmonising policy regulations along with the increasing cost of market fragmentation and trade diversion. This argument is further substantiated by the ‘hub and spoke’ theory of regionalism which states that countries with huge economic size, large per capita income, wide economic geography and strong production network strategies of their MNCs will go on to become ‘hubs’ or forces central to the trade agreement and may even dictate the terms of the agreement for other trading partners.\textsuperscript{8} The hub country would therefore gain the maximum benefits from a trade agreement. The spoke countries on the other hand, may remain at the receiving end and therefore may not equally benefit from the rise of regionalism.

An analysis of the FTAs championed by countries such as the U.S. and EU with their smaller trading partners, indicate this trend of asymmetrical FTAs with varying results for different members. A classic illustration of this could be found in the on-going Trans-Pacific Partnership (TPP) agreement negotiations. TPP is a preferential agreement which aims at integrating the economies of 12 countries (as of June 2013) including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. The agreement includes Asian countries along with the U.S., which shows its diverse character; both geographically and economically. Within the TPP, the U.S. naturally becomes the ‘hub’ country, and holds the ability to deflect negotiations towards its own trade policy agenda.\textsuperscript{9} As a result, the relatively smaller countries within the TPP have agreed to adopt the proposed agreement’s ‘high standards’


\textsuperscript{8} Supra note 3.

\textsuperscript{9} See generally Ian Ferguson \textit{et al.}, \textit{The Trans Pacific Partnership Negotiations and Issues for Congress} (Congressional Research Services), June 17, 2013.
which are promoted by the U.S. Further, the TPP agreement can be found to be WTO plus in several ways. Its TRIPS plus provisions are the most controversial and include extension of Intellectual Property Rights (IPR) protection, especially for copyrights, strict enforcement norms in terms of criminalising minor infringements, conditioning market access on technology transfer etc. The TPP follows a negative list approach for services liberalisation, as opposed to the positive list, which is the approach followed under the GATS. Further, the agreement covers several domestic issues such as environmental laws and state-owned enterprises (SOE). It is ironical that TPP formulates the same rules for governance of SOEs in countries as varied as Vietnam and the US. This goes to show the extent of asymmetry on the part of the negotiating parties and the ability of the dominant member to prevail over less dominant entities. Moreover, the regulatory coherence chapter within the TPP even goes on to recommend that TPP partner countries should ‘endeavor’ to establish their domestic regulatory structures ‘similar to the U.S. Office of Information and Regulatory Affairs in the Office of Management and Budget. Therefore, there is serious apprehension that agreements in the type of TPP bear the potential for asymmetrical trade liberalisation. Countries such as the U.S. have on earlier occasions made attempts for unilateral liberalization through tools such as Plaza Accord, the 1970s Nixon surcharge policy and Section 301 of the Trade and Tariff Act, 1984. RTAs tend to follow the similar suit of primarily advancing the U.S. trade agenda, leaving aside the other trading partners.

Another related problem of the modern day PTAs is their changing nature which transcends their traditional scope of international trade and investment liberalisation. Modern FTAs tend to interfere with the internal regulatory regimes of the trading partners on issues such as labour, environment, competition policy, government procurement norms etc. This curtails the ability of countries to independently decide

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10 Id. at 43.
11 Id.
12 Id.
14 Section 301 of 1984 Trade & Tariff Act (which amended 1974 Trade Act) gives the US President, authority to deal with states that failed to provide "adequate and effective" protection for US intellectual property rights. US President can authorize withdrawal of trade benefits or impose duties on goods (or the USTR can "self-initiate" a 301 Action without President).
on the domestic issues, as they are brought to the negotiating table and several of these domestic standards are even compromised during the process of conclusion of FTAs.

To illustrate this trend, I cite the example of the on-going negotiations for Trans-Atlantic Trade and Investment Partnership (TTIP) which began during July, 2013. Unlike the TPP which highlights the existence of an asymmetrical agreement, TTIP is being negotiated between the U.S. and EU. If concluded, it could become the biggest FTA ever in terms of trade contribution. Even though the proposed agreement involves two symmetrical trade powers, the two parties have held several differences over trade policy issues. For example, divergences arise *inter alia*, because the U.S. is demanding more stringent investment protection norms, for example, the referral of even pre-establishment investment disputes to the investor state dispute settlement mechanism. On the other hand, the EU is proposing its own strict standard of Geographical Indication (GI) protection and labour issues, which the U.S. is likely to oppose. Therefore, even the FTAs between two symmetrical trading partners who hold equal bargaining abilities bears the danger of impinging upon the internal regulatory policies of the trading countries.

It is evident that trading partners are increasingly attempting to curtail the internal policy space of FTA partners in matters such as intellectual property protection, investment protection, competition policy and government procurement norms. This trend is observed both in symmetrical and asymmetrical FTAs, although the impact could be more acute in the case of the latter.

Apart from these dangers posed by the modern day FTAs, the results of this fundamental shift in regionalism, is also undermining the credibility of the institution of the WTO. The WTO lacks a well-defined legal framework to define rules for FTAs and effectively regulate them. The WTO Committee on Regional Trade Agreement (CRTA) has lost its credibility in terms of approving FTAs and several FTAs continue to exist, even without notifying to the WTO. The WTO’s dispute settlement body has also faced several disputes of clashes between its

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own jurisdiction and jurisdictions of tribunals set up under FTAs.\textsuperscript{18} This conflict of jurisdiction is leading to fragmentation of laws within the WTO system. Consequently, the rules of international trade which were once protected under the umbrella of the WTO as the sole authority for global governance is being fragmented due to a proliferation of FTAs which are creating parallel regimes alongside the WTO.\textsuperscript{19}

In the light of the changing geometry of international trade regimes, it will be interesting to study BRICS' policy on regionalism. The subsequent part of this paper examines the nature and scope of BRICS' trade policy agenda towards regionalism and the extent to which the global practices on regionalism influence BRICS.

III. UNDERSTANDING BRICS' STANCE ON REGIONALISM:
AN OVERVIEW OF THE POLITICAL ECONOMY OF BRICS

Table 1: BRICS' overall profile with respect to conclusion of RTAs

<table>
<thead>
<tr>
<th>Country</th>
<th>List of notified RTAs in force (both goods and services)</th>
<th>List of RTAs for which an early announcement has been made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>Global System of Trade Preferences among Developing Countries (GSTP); Latin American Integration Association (LAIA); MERCOSUR - India; Protocol on Trade Negotiations (PTN); Southern Common Market (MERCOSUR)</td>
<td>None</td>
</tr>
</tbody>
</table>


A. Study of individual BRICS countries

1. Brazil

a. General policy: Emergence and spread of Regionalism

Brazil's entry into regional trade agreements began in 1990s, a period which preceded domestic hyper-inflation, economic stagnation and crisis. Initially, RTAs were perceived as laboratories to facilitate Brazil's trade on the multilateral forums including the WTO. Pursuing this principle, Brazil concluded MERCOSUR in 1991 which involved its

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neighboring countries including Argentina, Paraguay and Uruguay, with the addition of Venezuela in 2012. Later, it was the joint agreement of MERCOSUR which became wide in its approach and entered into agreements with individual countries including two of the BRICS, India and South Africa, and other countries including Israel, the Caribbean Community (CARICOM) and the European Union. Barring MERCOSUR, Brazil’s individual FTAs do not include any big trading partner as such and have been concluded with smaller countries such as Bolivia, Chile, Columbia, Ecuador, Venezuela, Cuba, Mexico, Peru, Guyana and Surinam.\textsuperscript{21} Apart from these concluded FTAs, Brazil is currently negotiating a FTA with GCC and other countries such as Egypt, Jordan, Morocco and Turkey.\textsuperscript{22}

Table 2: Ambit of regionalism- Nature and Scope of Issues covered

<table>
<thead>
<tr>
<th>Trade Agreements (FTAs) involving MERCOSUR</th>
<th>Scope and Coverage of Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>MERCOSUR</td>
<td>Economic complementarities, Investment, IPR, Trade remedy (dumping from non-MERCOSUR countries), Commercial arbitration agreements, Services, Competition, International freight contracts.</td>
</tr>
<tr>
<td>MERCOSUR-Israel</td>
<td>Trade in goods, Safeguards, Technical Barriers on Trade (TBT), Sanitary and Phytosanitary (SPS), Institutional provisions, Dispute settlement</td>
</tr>
<tr>
<td>MERCOSUR-Peru</td>
<td>Economic complementation agreement- focusing on legal and institutional frameworks, creation of free trade area, FDI, economic cooperation in trade, energy, science, technology etc.</td>
</tr>
<tr>
<td>MERCOSUR-Chile</td>
<td>Trade in Goods, Rules of Origin (ROO), Services, Mutual Recognition Agreement (MRA)</td>
</tr>
<tr>
<td>MERCOSUR-SACU</td>
<td>Tariff reductions, build in agenda for further exchange of tariff information, ROO, SPS, automotive sector</td>
</tr>
</tbody>
</table>

\textsuperscript{21} Infra Table 2.

<table>
<thead>
<tr>
<th>Trade Agreements involving Brazil</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil-Surinam, MERCOSUR-Columbia, Brazil- Ecuador and Venezuela, MERCOSUR-India, MERCOSUR-Mexico, Brazil-Mexico, Brazil-Guyana, Brazil-Argentina, Brazil-Uruguay</td>
<td>Partial Preferential Agreements- Such agreements aim at progressive elimination of tariff during a period of time, which may, in due course, lead to complete tariff elimination. These agreements aim at trade and investment facilitation and establishing a framework for further bilateral, regional and multilateral cooperation to expand and enhance the benefits of the current Agreement.</td>
</tr>
</tbody>
</table>

*Source: Information on Brazil, Foreign Trade Information System, Organization of American States*

Table II is indicative of the varying nature and scope of Brazil’s agreements. While agreements such as MERCOSUR-Peru are more general in terms of their focus on sectoral co-operation, other agreements tend to make rules already incorporated in the WTO, such as dispute settlement provisions, trade remedy, rules on standards, TBT, SPS, rules of origin, as part of the framework. Some of the agreements also import rules developed outside the WTO framework such as investment and competition. Therefore, a trend of entering into some deep FTAs is gradually emerging in Brazil.

**b. Brazil’s response to FTA negotiations with Asymmetric Trading Partners**

Brazil and the U.S. were involved in the FTAA (Free Trade Area of the Americas) negotiations in early 2000s. The FTAA negotiations have now almost become defunct. Brazil had serious concerns with the U.S. regarding its position on products such as soybeans, sugar and orange juice where Brazil has a competitive advantage. Further, the chapter on Intellectual Property Rights (IPR) protection also raised concerns as the U.S. was pressing for more stringent norms of patent protection, biodiversity etc. which Latin American countries including Brazil protested.\(^{23}\)

Currently, Brazil is negotiating with the EU under the MERCOSUR-EU FTA. The negotiations were re-initiated during 2010 after being stalled in 2004. Over the years, through which negotiations have

progressed, issues of privatisation of water and agriculture-related terms which could potentially affect farmers in Latin America, have slowed the pace of negotiations. Further, the TRIPS plus provisions of the proposed MERCOSUR-EU agreement such as five year patent extension for drugs and 10-year data exclusivity have also raised concerns for Brazil and its allied MERCOSUR partners.\textsuperscript{24}

Therefore, as is evident from Table 2 and the aforesaid analysis, Brazil has not concluded any FTA with a large trading group despite years of negotiation. However, some attempts of concluding comprehensive FTAs with big trading partners are being made through the MERCOSUR route. As discussed above, the asymmetric power relations and divergences in internal policies in areas such as agriculture and intellectual property protection have resulted in a tepid progress in FTA negotiations between Brazil and bigger trading nations.\textsuperscript{25}

2. Russia

a. General policy: Emergence and spread of Regionalism

Russia's approach to regionalism has been largely influenced by the fall of the Soviet Union. Russia has also been conservative in entering into preferential trading agreements. Russia has concluded PTAs mainly with its neighbouring countries. A significant PTA signed by Russia was its Customs Union with Belarus and Kazakhstan. Russia has also signed FTAs with its geo-political neighbours such as Georgia, Serbia and Montenegro. Russia is also making further efforts towards opening its trade with all CIS members (Commonwealth of Independent States). Russia and EU concluded a partnership and co-operation agreement during the 1990s. Further, Russia has gradually started expanding its circle of trade partners and has initiated FTA negotiations with New Zealand, Peru, Vietnam, EU and India.\textsuperscript{26}


\textsuperscript{25} Id.

Table 3: Ambit of Regionalism: Nature and scope of issues covered

<table>
<thead>
<tr>
<th>Trade Agreements</th>
<th>Scope and Coverage of Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russia: Azerbaijan, Armenia, Belarus, Georgia, Moldova, Kazakhstan, Ukraine, Uzbekistan, Tajikistan, Kyrgyz Republic</td>
<td>Removal of quantitative restrictions, elimination of technical barriers, harmonisation of customs procedures, subsidies, services, dispute settlement</td>
</tr>
</tbody>
</table>

Source: Information on Russia, Foreign Trade Information System, Organization of American States

Table 3 indicates that the scope of Russia’s FTAs has been fairly narrow. It has concluded rules for eliminating trade barriers but does not include specialised rules for trade remedies or matters outside the purview of WTO such as investment, competition, government procurement, etc.

Russia has also signed trade agreements on general co-operation in various trade related areas such as customs clearance. With some countries, it has bilaterally agreed on areas of economic co-operation such as collection of indirect taxes in mutual trade and protocols on phasing out exemptions from free trade regime.\(^\text{27}\)

It is vital to note that one of the recent developments in the Russian trade policy took place during July 2010 when Russia formally concluded a Customs Union with Kazakhstan and Belarus. According to estimates, the common market comprises of 170 million people with a $2-trillion economy, $900-billion trade and 90 billion barrels of oil reserves.\(^\text{28}\) It is speculated to be a first step in launching a broad-based EU style economic integration amongst the former Soviet powers.\(^\text{29}\)

By virtue of this Customs Union, Russia also expedited the scope of its FTA negotiations with other countries. For instance, Russia’s negotiation (as a member of this CU) with New Zealand aims to deliberate and conclude agreement on issues, encompassing Market Access, Rules of Origin, Customs Procedures, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Intellectual Property, Government Procurement, Electronic Commerce, Competition Policy, Trade and Labour, Trade and Environment, Dispute Settlement.\(^\text{30}\)

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\(^{29}\) Id.

Russia is also initiating negotiations for a Comprehensive Economic Partnership Agreement with India, via the Customs Union comprising Russia, Belarus and Kazakhstan.\textsuperscript{31}

While pursuing its regional economic integration goals, Russia also joined the WTO in 2012. Post its WTO accession, certain problems have arisen with respect to its scope of WTO obligations and its pre-existing trade agreements. Further, the trade agreements entered by Russia with its traditional partners, have not led to many fruitful results. Certain studies on Russia indicate that in view of the differences in harmonisation among the constituent members of the economic partnership, trade integration in a number of areas has been limited.\textsuperscript{32} For instance, Russia and Belarus continue to have different system of tariff and non-tariff regulations, different approaches to trade contingent measures and different ways of regulating customs mechanisms. Therefore, the challenge before Russia is to evolve harmonised principles of trade policy and trade legislations amongst its trading partners.\textsuperscript{33}

b. Russia’s response to FTA negotiations with Asymmetric Trading Partners

Russia has concluded a trade agreement with the U.S., which pre-dates the Soviet era. It is a rather general agreement focusing on trade facilitation, basic intellectual property protection and overall trade relations.\textsuperscript{34}

As stated above, a general partnership and co-operation agreement exists between EU and Russia but no FTA has been concluded as yet. During recent times, Russia and Germany have initiated talks for the larger conclusion of the Russia-EU FTA. The proposed EU-Russia agreement aims to provide a comprehensive framework for bilateral relations in trade and investment. It also aims at the regulatory environment by building upon the WTO rules.\textsuperscript{35} However, talks are progressing at a very slow rate as EU is uncomfortable with Russia’s customs union policy towards Belarus and Kazakhstan and its investment security regime. Further, the overall divergent values between the two entities in terms of the development of science, technology and society

\textsuperscript{31} Id.
\textsuperscript{33} Id. at 19.
\textsuperscript{34} See US Russia Trade Agreement on Trade Relations, http://tce.export.gov/Trade_Agreements/Exporters_Guides/List_All_Guides/exp_005537.asp (last visited September 17, 2013).

3. India

a. General policy: Emergence and spread of Regionalism

India's policy towards regionalism is marked by its geographical proximity, owing to agreements with its immediate neighbors of South Asia such as Nepal, Bhutan, Bangladesh, Afghanistan, Pakistan and Sri Lanka in the form of SAARC.\footnote{See Arnav Durani, *Regionalism and the Drive Toward Liberalizing Trade*, February 21, 2011 at 16, http://people.carleton.edu/~amontero/Arnav%20Durani.pdf (last visited September 17, 2013).}

Like Brazil, India too expanded its circle of bilateral trade agreements in the 1990s, after a period of economic crisis. Therefore, several agreements have been concluded as a part of India's broader agenda or 'Look East Policy' initiated during early phase of 1990. India has focused on Asia Pacific Trade Agreement (AFTA), South Asian Free Trade Agreement (SAFTA) and Association of South East Asian Nations (ASEAN). It concluded individual agreements with the Asian economies such as Singapore, Malaysia and Japan. Further, BIMSTEC (Bay of Bengal Initiative on Multi Sectoral Technical and Economic Cooperation) was also negotiated involving the Asian and South-East Asian economies of Bangladesh, Bhutan, India, Myanmar, Nepal, Sri-Lanka and Thailand.

Apart from these agreements, India also concluded agreements with BRICS partners such as India-MERCOSUR (involving Brazil) and is currently negotiating under India-SACU (involving South Africa). India, of late, has started negotiation with geographically distant trading economies such as the EU, Gulf Cooperation Council (GCC) and New Zealand which reflects a shift from its traditional focus on co-operation with Asian economies.

b. Ambit of regionalism- Nature and Scope of Issues covered

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<td>General rules for Economic Cooperation</td>
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<tr>
<td>SAFTA</td>
<td>Trade liberalisation, Safeguards, Dispute Settlement Mechanism</td>
</tr>
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Table 4: Concluded Agreements
is also deterring formulation of broad-based trade agreement agendas.\textsuperscript{36}

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</tr>
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</table>

\textsuperscript{36} See, e.g., XieRong et al., How far is it for Russia, EU to reach FTA, November 28, 2010, \url{http://news.xinhuanet.com/english2010/world/2010-11/29/c_13626067.htm} (last visited Sept. 17, 2013).

\textsuperscript{37} See Arav Durani, Regionalism and the Drive Toward Liberalizing Trade, February 21, 2011 at 16, \url{http://people.carleton.edu/~amontiero/Arn%20Durani.pdf} (last visited September 17, 2013).
<table>
<thead>
<tr>
<th>Agreement</th>
<th>Trade in Goods, services, dispute settlement, may be expanded to harmonisation standards, Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>India-Singapore (Comprehensive Economic Cooperation Agreement)</td>
<td>Trade in Goods, ROO, Standards, Investment, Services, Air Services, Movement of natural persons, E-Commerce, IPR, Education, Media, Dispute Settlement with annexure pertaining to telecom services etc. along with exchange of letters pertaining to SPS, expropriation, Security exceptions for services.</td>
</tr>
<tr>
<td>India-Malaysia (Comprehensive Economic Cooperation Agreement)</td>
<td>Trade in Goods, ROO, Customs cooperation, Trade remedies, SPS, TBT, Services, movement of natural persons, investment, transparency, dispute settlement, institutional provisions along with annexure pertaining to indirect expropriation, security exceptions.</td>
</tr>
<tr>
<td>GSTP</td>
<td>Trade concessions, tariff, para-tariff and non-tariff measures</td>
</tr>
<tr>
<td>India Chile (PTA)</td>
<td>Tariff reductions, safeguards, dispute settlement; there also exists a framework for FTA covering trade in goods, services, investment and other areas of economic co-operation</td>
</tr>
<tr>
<td>India-Afghanistan (PTA)</td>
<td>Tariff, safeguards, BOP rules</td>
</tr>
<tr>
<td>India-ASEAN</td>
<td>Trade in goods and schedules for commitments</td>
</tr>
<tr>
<td>India-Bhutan</td>
<td>Tariff, non-tariff barriers</td>
</tr>
<tr>
<td>India-Japan (CEPA)</td>
<td>Measures against corruption, environmental protection, taxation, trade in goods, antidumping, BOP, ROO, customs procedures, Services, movement of natural persons, Investment, IPR, Government procurement, Competition, Dispute Settlement</td>
</tr>
<tr>
<td>India-Korea (CEPA)</td>
<td>ROO, Trade facilitation, Financial Services, Movement of natural persons, Investment, Competition, IPR.</td>
</tr>
<tr>
<td>India-MERCOSUR (PTA)</td>
<td>Tariff preferences, along with provisions pertaining to ROO, Safeguards, Dispute Settlement Procedure</td>
</tr>
<tr>
<td>BIMSTEC</td>
<td>Tariff concessions on trade in goods, customs cooperation, services, investment</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>India-Bangladesh; India-Maldives; India-Bhutan; India-Nepal; India-Sri-Lanka</td>
<td>Mutual beneficial agreements</td>
</tr>
</tbody>
</table>

Table 5: Other Agreements/Negotiations not concluded yet

<table>
<thead>
<tr>
<th>List of Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Framework Agreement with ASEAN</td>
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<tr>
<td>Framework Agreement with GCC</td>
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<tr>
<td>Framework Agreement with Thailand</td>
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<tr>
<td>India-EU Trade Investment Agreement</td>
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<tr>
<td>India-Australia Joint FTA feasibility study</td>
</tr>
<tr>
<td>India-Korea</td>
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<tr>
<td>India-EU Strategic Partnership Joint Action Plan</td>
</tr>
<tr>
<td>India-Indonesia</td>
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<tr>
<td>India-Maldives</td>
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<tr>
<td>India-New-Zealand</td>
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<tr>
<td>India-SACU</td>
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<tr>
<td>India-Canada</td>
</tr>
</tbody>
</table>

Source: Department of Commerce, Ministry of Commerce and Industry, GOI, Trade Agreements Section

An overview of India’s FTAs indicate that even though most of the agreements focus on general issues of trade, some have a deep integration focus. For example, the India-Singapore agreement focuses on several issues outside the purview of WTO such as investment and e-commerce, etc. Further, Chapter V of the India-Malaysia agreement includes rules for trade remedies for imposition of bilateral safeguards and defines the method of investigation, application of provisional measures and rules for compensation under the agreement. The chapter also specifically prohibits the act of ‘zeroing’ under the anti-dumping rules of the agreement. The India-Japan CEPA is also ambitious in its scope as it includes broad rules on dumping and internal issues of corruption, environment, taxation, government procurement, etc. Therefore, India is slowly veering towards modern regionalism and its current negotiations also involve large trading countries such as the EU, New Zealand, and Canada.
c. India’s response to FTA negotiations with the Asymmetric Trading Partners

India and the U.S. have established a Trade Policy Forum (TPF) in July 2005 to discuss trade and investment issues. However, no talks for a formal FTA have begun so far.

With respect to the India-EU FTA, formal talks were launched in 2007 under the ‘Global Europe Strategy.’ Five years have passed since the negotiation for this comprehensive agreement was launched. There are several areas of disagreement as outlined below. It must be noted that based on persistent demands made by India, the India-EU FTA in the current state excludes rules for protection of data exclusivity, under its chapter on Intellectual property protection, pertaining to patents.38 However, other TRIPS plus issues of extension of monopoly rights, severe penalty in terms of injunctions, seizure of medicines on mere suspicion, broader enforcement rules proposed by the EU, continue to draw opposition from India.39 Further, the investment protection terms as proposed by the EU are feared to give extensive investment protection to foreign investors in India and provide an arbitral tribunal to adjudicate on issues which could undermine India’s sovereignty. In the agriculture chapter as well, the EU has placed Indian products within the ‘sensitive list’ category, but is demanding broad access for its own agricultural products in the Indian market. India has never negotiated the issue of agriculture in such detail and scope in any previous FTA and fears that excessive trade liberalisation may adversely affect the large agrarian sector in India, which is generally unorganised.40

4. China

a. General policy: Emergence and spread of Regionalism

During the mid-90s, China started to consider the possibility of entering into FTAs. China’s strategy was pursuant to its ninth five year plan, which stated that China shall ‘actively participate and develop regional economic cooperation’, as well as “strengthen ‘South-South

Co-operation', and promote and develop...the economic and trade co-
operation with developing countries."41 The same plan, however, also
called for China to "actively participate and defend the global multilateral
trading system, develop both bilateral and multilateral trade, so that
they can promote each other and the market can be diversified."42 Such
an equivocal attitude seemed to indicate that China took a cautious
approach on FTAs initially and tried to hedge its risks by giving equal
emphasis on both multilateral and regional/bilateral initiatives.43 Post
2000, China became active in signing bilateral trade agreements.

China has focused on regional FTAs, such as Framework Agreement
on Comprehensive Economic Cooperation between China and ASEAN
for the establishment of China-ASEAN FTA, Asia Pacific Trade
Agreement (involving China, Bangladesh, India, Republic of Korea,
Lao, Sri-Lanka) and individual FTAs with Hong Kong and Macao. It
has also concluded FTAs with distant and diverse countries including
Chile, Peru, Pakistan, Singapore and New Zealand. China has further
expanded its outreach with economies such as Australia, GCC, Iceland,
Norway and Costa Rica. It is currently holding talks with South Africa
through an agreement with South African Customs Union (SACU).44

An analysis of the FTA policy of China shows interesting results.45 From
the agreements enumerated above, it is clear that China seeks a wide
strategy to access markets which are part of wider regional trade
frameworks to expand its ambit of regionalism.46 In its FTAs with
relatively weaker trading partners, China is known to exercise its wide
bargaining powers.47 The clout of China's negotiating power has also
been felt in the China-Korea-Japan trilateral agreement negotiations,
where the other two countries have raised concerns regarding China's
attitude to lay the terms of the agreement, rather than negotiating as an
equal partner. Through FTAs, trading partners have also come to
recognize the market economy status of China. So far, 37 economies
have recognized the market economy status, although most of such
members can in principle treat China as a NME until 2016, in terms of
China's accession to WTO protocol.48 Through this recognized status,

41 Henry Gao, China's Strategy for Free Trade Agreements: Political Battle in the Name of
Trade (unpublished, on file with the author) http://www.networkideas.org/ideasact/dec09/
42 Id.
43 Id.
45 Supra note 41, at 10.
46 Id.
47 Id. at 11.
48 Id. at 12.
China is able to benefit bilaterally, especially in anti-dumping matters.\textsuperscript{49}

b. Ambit of Regionalism: Nature and scope of issues covered

Table 6: Concluded Agreements

<table>
<thead>
<tr>
<th>Trade Agreements</th>
<th>Nature, Scope and Coverage of Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>China-ASEAN (2005)</td>
<td>Trade in Goods (Dispute settlement framework), Services, Investment</td>
</tr>
<tr>
<td>China-Pakistan (2006)</td>
<td>Elimination of tariffs, Goods (Arbitral panel for disputes), Services</td>
</tr>
<tr>
<td>China-Chile (2006)</td>
<td>Tariff concessions on goods, Services</td>
</tr>
<tr>
<td>China-New-Zealand (2008)</td>
<td>Tariff concessions on Goods, Special Agriculture Safeguards mechanism, Rules of origin, Tariff quotas on certain products, Services, Expropriation, Side letters pertaining to specialised issues such as skilled workers, doctoral research.</td>
</tr>
<tr>
<td>China-Singapore (2008)</td>
<td>Tariff elimination on goods, Services, Side letters on recognition of academic degrees, salary requirements.</td>
</tr>
<tr>
<td>China-Peru (2009)</td>
<td>Goods, ROO, Customs procedure and trade facilitation, Trade Remedies, SPS and TBT, Investment, IPR, Cooperation, Transparency, Dispute Settlement along with several annexures covering topics such as Public Debt, Expropriation, GIs.</td>
</tr>
</tbody>
</table>

\textsuperscript{49} World Trade Organization, Ministerial Declaration of November 10, 2001, WT/L/432 [hereinafter Accession of the People's Republic of China] (Article 15 of China's Accession protocol provides for 'Price Comparability in Determining Subsidies and Dumping', which is based on recognition of its NME status).
<table>
<thead>
<tr>
<th>China-Costa-Rica (2008)</th>
<th>Goods- ROO, Customs Procedure, SPS, TBT, Trade Remedies, Investment, IPR, Transparency, Dispute Settlement along with annexure on GIs, Free trade commission etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>China-Iceland</td>
<td>Goods, ROO, Customs procedure, Trade facilitation, Competition, IPR, Services, Investment, Institutional provisions, Dispute Settlement</td>
</tr>
<tr>
<td>China- Switzerland (2013)</td>
<td>Goods (industrial and agricultural), ROO, customs procedure and trade facilitation, trade remedies, TBT, SPS, Services, IPR, Competition, Investment, Transparency in Government procurement, Trade related environmental and labour issues, institutional provisions</td>
</tr>
</tbody>
</table>

Table 7: Other Agreements

<table>
<thead>
<tr>
<th>Under Negotiations</th>
<th>China-GCC, China-Australia, China-Norway</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under Consideration</td>
<td>China-India, China-Korea, China-Japan</td>
</tr>
<tr>
<td>Preferential Trade Agreement</td>
<td>Asia Pacific Trade Agreement</td>
</tr>
</tbody>
</table>

Source: China FTA network, Ministry of Commerce, PRC

Similar to Brazil and India, some of China’s recently concluded FTAs indicate the incorporation of WTO plus provisions. For instance, the China-Switzerland FTA concluded on July 6, 2013, includes areas such as trade remedies, TBT, SPS, intellectual property rights, investment, competition apart from the traditional rules on trade in goods and services. The trade remedies provision allows parties to apply bilateral safeguards measures subject to certain conditions. The TBT and SPS rules within the agreement include various rules over and above the WTO with respect to raising national regulations on standards. Further, the parties have undertaken deeper co-operation as compared to the TRIPS. New categories of trademarks have been added, thereby enhancing the overall level of protection in the IPR sector. GI protection has been expanded and the agreement requires protection of test data for a period of at least six years. The agreement also incorporates rules on environment, competition, labour and investment protection.

c. China’s response to FTA negotiations with Asymmetric Trading Partners

Though the U.S. and China have not formally negotiated any FTA, China’s strategic policy towards regionalism bears great linkages to the
U.S. trade policy. The expanse of TPP has made China more aggressive in its own agenda on regionalism. China was always aware that TPP was envisioned as an instrument of the U.S. to pivot to Asia, in order to contain China’s economic rise and growing dominance in the region. It has been widely discussed that the vision of the U.S. for the TPP amounted to an ‘anyone but China club’ that aimed at containing China.”

China, in response, has pushed for its own negotiations with Japan and South Korea to strengthen its Asian impact and counter the U.S.’ growing Asian ties. The competition between China and the U.S. towards competing for Asian blocks took a vital turn during March 2013, when Japan formally joined the TPP.

Finally during May 2013, based on a policy which could be considered as a break from the past, the Ministry of Commerce within China announced its decision to study whether China would (itself) participate in the TPP negotiations. The initiation of China’s participation into the TPP framework makes it an interesting case study. The TPP is bound to impact India and China, the two powerful trading blocks of Asia which have remained outside of it so far. If China is initiating talks with the TPP partners, how that will affect the strategic alliances within BRICS and within Asia would remain an important question. Similarly, how would it affect India, the only large Asian trading block excluded from the TPP, is another pertinent question. Also, if China decides to become a part of TPP, it would want to join the negotiations sooner rather than at a time when the rules have already been set. As of September 2013, eighteen rounds have already taken place under the TPP.

The rise of TPP may also impact the ongoing negotiation of the Regional Comprehensive Partnership Agreement (RCEP), where China is a negotiating partner. RCEP aims to link the ten Asian economies with countries such as Australia, China, India, Japan, South Korea and New Zealand. The negotiations for this agreement comprising of 16 countries’ groupings began in January 2013. RCEP is aimed to be a comprehensive agreement covering trade in goods and services, investment, economic and technical cooperation and dispute settlement. Since several of the RCEP countries are also members of the TPP, there are fears that the ASEAN countries may face a dilemma of competing goals and agenda

51 Id.
of RCEP vis-à-vis TPP. These ongoing negotiations, including the RCEP and TPP, are bound to influence China’s regional trade ties, especially in the Asian region.

With respect to China-EU FTA, the EU DG Trade circulated a draft during May, 2013, which stated that an EU-China FTA could be looked at seriously in the future. However, in the meanwhile, EU suggested that China address the problems of current market obstacles created by it and competition concerns within China. The EU expects China to regulate its export credits and also provide access to its banks and financial institutions in order to enter into FTA talks.

5. South Africa
   a. General policy: Emergence and spread of Regionalism

   South Africa’s trade policy holds FTAs as routes “to achieve substantial market access for manufactured and agricultural goods and leverage export-oriented investment”.

   Therefore, South Africa, the recent entrant to the BRICS framework has concluded agreements in the form of SACU and individual FTAs with Malawi and Zimbabwe. Recently, South Africa has also concluded the T-FTA or Tripartite FTA which establishes a single FTA covering 26 countries of Africa combining the three regional economic communities in Africa. Incidentally, it has also concluded an individual FTA with the EU and despite its traditional approach towards regionalism, it is the first BRICS member to have an individual FTA with an economy such as the EU, the second being India, which is currently negotiating the India-EU FTA.

b. Ambit of regionalism: Nature and scope of issues covered

   Table 7: Concluded Agreements

<table>
<thead>
<tr>
<th>Trade Agreements</th>
<th>Scope and Coverage of Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>SACU</td>
<td>Duty free movement of goods with common external tariff on goods entering from any of the countries outside SACU.</td>
</tr>
</tbody>
</table>

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56 Tripartite FTA involves the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern Africa Development Community (SADC).
<table>
<thead>
<tr>
<th>SADC</th>
<th>Duty free trade in goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa-EU</td>
<td>Trade, development, cooperation agreement</td>
</tr>
<tr>
<td>SACU-EFTA</td>
<td>Trade in goods, Competition, IP, Government Procurement, Services Investment, Institutional and Procedural provisions</td>
</tr>
<tr>
<td>South Africa-Zimbabwe (PTA)</td>
<td>Preferential rate of duty, rebates, and quotas on certain goods traded between two countries</td>
</tr>
<tr>
<td>SACU-MERCOSUR (PTA)</td>
<td>Tariff reductions on select goods</td>
</tr>
<tr>
<td>SACU-US (Cooperative framework agreement)</td>
<td>Issues of mutual interest, investment promotion, non-tariff barriers, SPS, infrastructure</td>
</tr>
</tbody>
</table>

Table 8: Current negotiations

<table>
<thead>
<tr>
<th>Trade Agreements</th>
<th>Scope and Coverage of Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>SACU-India (PTA)</td>
<td>Tariff reduction on select goods</td>
</tr>
<tr>
<td>SACU-EAC-COMESA (involving 26 countries)</td>
<td>Market integration, infrastructure, and industrial development aims to cover trade in goods in first stage and then trade in services etc. in other phases</td>
</tr>
</tbody>
</table>

Source: South-Africa Trade Agreements, Department of Commerce.

c. South Africa’s response to FTA negotiations with Asymmetric Trading Partners

It is pertinent to note that in pursuance of South Africa’s policy of regionalism, negotiations on a free trade agreement between SACU and the U.S. commenced in 2003. However, disagreement on the inclusion of ‘new generation items’ within the agreement such as services, intellectual property, government procurement and investment, led to a collapse of the negotiations in 2006.\(^57\) This indicates that South Africa has been wary of big trading partners and was hesitant in signing asymmetric trade agreements, which include WTO plus obligations.

At the same time, South Africa was keen to send out a positive signal to investors about its commitment to trade reform and to address broader development issues including aid and support for industry.\(^58\) The Trade, Development and Co-operation Agreement (TDSCA) which was signed


\(^{58}\) Id.
in 2004 has established a free trade area that covers 90% of bilateral trade between the EU and South Africa. South Africa aims to protect its development mandate even while negotiating with a powerful trading partner.

IV. LESSONS FROM COMPARATIVE STUDY OF BRICS COUNTRIES’ POLICY TOWARDS REGIONALISM

In Part II of the paper, I have highlighted the growth in trade policy development of each BRICS country pertaining to their policy on regionalism. The paper also highlights factors affecting this development, and the newer rules of regionalism in terms of incorporation of WTO plus factors, embraced by each of the country.

One can say that Russia has largely remained aloof from the global politics of regionalism and is gradually expanding its scope through the formation of a customs union. China has been competitive in its policy, especially in terms of wooing Asian economies. China’s response has largely been triggered by the trade policy of the U.S. in Asia and the progress of TPP negotiations. Brazil and India are negotiating actively with the EU but maintain a cautious stand, instead of hurrying the conclusion of any agreement. South Africa similarly has been bold enough to forgo discussions on big FTAs when faced with WTO plus issues, as it did not suit its trade agenda at that given time.

Overall, BRICS entry into regional politics has been relatively new. BRICS countries are actively entering into FTA negotiations but there is no clear strategic guideline which lays down a future roadmap for further negotiations. This becomes problematic in an era of an increasing number of aggressive and deep-rooted FTAs promoted by powerful trading countries. Therefore, a few issues are drawn from the comparative BRICS study which each of the countries should keep in mind, while devising their future rules for regionalism. The issues highlighted below require a balancing act on the part of BRICS countries if they wish to evolve more dynamic and coherent policies for regional and global trade agreements.

A. Time devoted for FTA negotiations versus focusing synergies for evolving multilateral rules of trade

There is no doubt that the rise of FTA is linked to the time-taking process at multilateral forums which is stalling international trade. However, the conclusion of FTAs may be equally time-consuming and arduous. Comprehensive discussion on modern FTA chapters, making
compromises and seeking bargains and in the end getting domestic approval for an internationally negotiated agreement is a complicated task. To illustrate, MERCOSUR-EU FTA has held nine rounds of negotiation since 2010 and is still not concluded. It was initially stalled in 2004 after a series of failed negotiations. Similarly, the India-EU FTA has taken over six years and has still not reached the stage of closure. Therefore, BRICS should keep in mind, the pros and cons of entering into FTAs and whether time-consuming FTAs are worth the energy they put into it. If the same amount of time and vigour is contributed by countries to strengthen the multilateral regime, more positive outcomes might be achieved and this would be beneficial for the globe at large.

B. Numerical value of FTAs versus actual trade gains flowing from them

There is a perception about FTAs which was adequately expressed by news magazine *The Economist* as follows: “FTA negotiations may sometime be seen as ‘scrubbing the floor’: They feel virtuous, take forever and entail breaking work; but, when done, it is often hard to see any difference.”59 Therefore, BRICS should understand that the benefits of trade liberalisation are not linked to mere numbers of FTA negotiations. BRICS in turn, should focus on domestic institution-building, removing bureaucratic impediments, simplifying ROO mechanisms which could reduce transaction cost of firms, and ensuring that FTA benefits are taken by domestic firms while making use of these preferences at the time of exporting goods and services. Only this would lead to true benefits from FTA conclusions.

C. Deep FTAs versus Clashing Development Goals

BRICS countries are incorporating several WTO plus provisions in their FTAs and are also giving ample scope for future expansion by including topics such as competition, investment etc. However, it must be borne in mind that while deep economic integration through FTAs is not per se bad, they may become dangerous when they clash with internal sovereignty and developments goals of a country. For instance, in the India-EU FTA, India is demanding improved market access of its services especially under Mode 1 and Mode 4 of GATS, for better access in the EU market. However, EU is not acceding to this demand before India signs certain international labour agreements to improve its

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domestic labour standards. It is apt to mention that not only are these two issues unrelated, such a pressure created through a FTA route raises questions of compromising national sovereignty in the name of an international agreement.

Therefore BRICS countries must ensure that political will on internal issues of labour protection, environment etc., should remain independent and not be dictated through the means of an international agreement such as a FTA. Similarly, each country should study its own preparedness while welcoming WTO plus obligations and its potential benefits in terms of growth and development. At the same time, countries should enhance their legal capacity to tackle future disputes which could arise from their WTO plus obligations under FTA vis-à-vis their WTO obligations to the global trading community, at large.

D. BRICS FTA versus strengthening efforts at the WTO

In recent times, proposals for the negotiation of a BRICS FTA in order to tackle the rise of agreements such as the TPP and TTIP, have been made. However, it must be borne in mind that a BRICS FTA may neither be feasible nor beneficial at this stage. A BRICS FTA cannot be concluded till BRICS resolve their internal trade policy divergences and economic problems. BRICS’ previous co-operation such as issues of agriculture, non-agricultural market access (NAMA), have been significant efforts at the WTO. BRICS within their own meetings such as the recent eThekwini Declaration of 2013 have proposed for more open and transparent rule based mechanisms at the WTO and successful completion of Doha rounds by reinforcing its development mandate. They are also establishing rules for better co-operation of SOEs and evolving best practices therein.

Therefore BRICS could translate their partnership on the WTO forum as well and boost reforms for RTAs. BRICS can actively advocate against the incorporation of terms in the RTAs which govern regulatory framework of the partners. This would lead to overcoming of several provisions in bilateral FTAs negotiated under pressure by the developed

63 Id. at ¶18.
countries such as environmental norms, curtailing of intellectual property provisions which impact public health. Furthermore, BRICS could also strengthen the dispute settlement mechanism at the WTO and evolve rules for preventing clashes between the FTA tribunals and the WTO DSB. BRICS could strengthen efforts towards harmonising rules of origin at the WTO level to ensure that a large part of global trade follow these harmonised rules, rather than the divergent preferential rules set by the FTAs. BRICS could further work on reviving the relevance of Doha Declaration and its mandate on public health in order to keep a check on the proliferation of TRIPS plus FTAs.

CONCLUSION

An analysis of the different RTAs engaged by the BRICS countries in this paper indicates that unlike the aggressive policy pursued by western powers, BRICS have followed a milder approach towards regionalism. BRICS have largely adhered to the traditional approaches behind entering RTAs. Most of the initial FTAs concluded by BRICS countries have been with partners who share similar geo-political and economic backgrounds. However, with time, BRICS are gradually embracing the newer rules of regionalism by negotiating with big trading partners and incorporating elements of deep economic integration within the scope of their agreements. It is interesting to study that each country has evolved its unique policy towards regionalism which inevitably is affected by economic and political factors, surrounding it. It is too early to comment on the benefits and negative externalities of BRICS’ policy on their growth and development. However, BRICS can learn from each other’s trade policy agenda and issues of controversies arising therein, and modify their own policy while implementing their agenda on regionalism, thereby overcoming the short-falls.

Further, BRICS in their own agenda have not addressed the problems arising out of asymmetrical and deep FTAs and their ramifications on the global economy. Therefore the description of the current global phenomenon on the ramifications of RTAs (discussed in Part I) and the description of each of the BRICS countries’ policy stance on regionalism (discussed in Part II), gives ample platform for future policy thinking by BRICS. A few issues of competing interests, enumerated in the last section of the paper, could further guide the BRICS in their future agenda on regionalism, thereby also leading to positive co-operation at the WTO forum for devising more coherent rules for RTAs.