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Does Democratization Alter the Policy Process? Trade Policymaking in Brazil

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This article explores the implications of transitions to democracy for the economic policymaking process in developing countries. Democracy is supposed to give citizens oversight of their political leaders, while providing leaders with electoral incentives to respect citizens' preferences. Consequently, a shift from authoritarian to democratic rule ought to alter policymaking. Using the case of Brazilian trade policy, this article examines changed versus consistent patterns of post-transition interest aggregation, political participation, and economic goal-setting. Contrary to expectations of a notably enlarged role for the legislative houses, the study finds that Brazil's executive still dominates trade policymaking. However, significant and increasingly transparent interest aggregation occurs within the federal executive. Moreover, policy capture by sectoral special interests has decreased, while non-traditional civil society participants have gained some influence, and trade policy outcomes now are arguably more public-regarding. We find that Brazil's trade policy process has been incrementally democratized.

Key words: Brazil; democracy; trade; policymaking; Latin America; governance

How might democratization influence economic policy progresses and outcomes? Recent literature reveals at least three implicit hypotheses about how democratic, as contrasted to authoritarian, governance should shape economic policymaking. These are spelled out in the first section. Section two proposes a research design for studying trade policymaking in the context of rising international economic integration. Our country case is Brazil, an important emerging power. Sections three through six evaluate the framing hypotheses, first through a chronological examination of overall trade policy and institutional/procedural changes from one presidential administration to the next, and subsequently within three industrial sectors chosen for their diversity: sugar/ethanol, computers/information technology, and intellectual property protections for pharmaceuticals. A concluding section returns to the hypotheses, summarizing the evidence.

Expectations of Democratization and the Policy Process

Political scientists disagree about the best definitions of liberal democracy and democratization.[1] A minimalist definition of democracy requires only that principal

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government offices be decided by competitive elections.[2] However, most contemporary definitions highlight at least three dimensions that are deemed necessary of democracy: partisan competition, breadth of meaningful political participation, and guarantees of civil liberties. They note also that democratization is not an end state but an on-going process.[3] Larry Diamond lists 11 elements of 'liberal democracy', of which only two appear directly relevant to the policymaking process. They are, first, the existence of checks on executive power by other branches of government, and second, the availability to citizens of a variety of substantive participatory channels and associations.[4] These two characteristics inform our first two hypotheses about democracy's impact on policymaking, both of which concern the policymaking *process*. A third hypothesis concerns policy *outcomes*. While these are by no means the only social science predictions about democracy and policymaking, each one of the three is interesting, significant, and has a substantial literature behind it.

Hypothesis 1: Democratization increases checks and balances on executive power within the national government.

This first hypothesis says that democratization increases roadblocks to executive initiative: the state, or at least the federal government, becomes more plural. Autocracies are comparatively centralized and dictatorial, while democratization brings institutional checks and balances. Policy change is more difficult as more actors, including collective actors such as legislatures or political parties, must be convinced to approve alterations. The broader citizenry also enjoys periodic oversight rights: major policy innovations must be explained to voters, who otherwise can retaliate against incumbents. The senior elected political leader thus is constrained not to behave capriciously. *Ceteris paribus*, we expect democracies to have public policies that are more stable, credible, and less flexible than those of autocracies.[5] Policy change becomes more incremental.

Hypothesis 2: Democratization increases the participation and substantive influence of societal actors, including non-elite actors, in public policy deliberations.

Many Latin Americanists have assumed that contemporary authoritarian regimes in the Western hemisphere typically offered at least informal channels of influence and participation for big business. Democratization in contrast implies expansion of meaningful participation rights to new social groups who are not economic elites, as well as to the political parties and civil society organizations (CSOs) that claim to represent them. Alvarez, Dagnino, and Escobar somewhat sceptically observe that 'conservative and progressive analysts and activists alike tend overwhelmingly to sing the praises of civil society's democratizing potential'.[6] New groups ranging from grass-roots organizations of the poor, to middle-class women's organizations, indigenous movements, and advocates for the environment or human rights have pushed at the barriers to participation and political voice established under military regimes.[7] Such groups can seldom initiate or block policy choices on their own, yet nonetheless possess some independent political resources (votes, money, the ability to mount street protests, ideological legitimacy, and so forth). The participation of interest groups, particularly those whose voices were intentionally muted under military rule, is theoretically significant to our understanding of democracy. Kathryn Hochstetler observes that '[p]arties, unions, and social movements are all mediating institutions that link citizens and the state, turning individuals into collective actors and articulating their demands and values to political decision-makers'.[8] We hypothesize that democratization will bring an increase in substantive political voice and participation for previously excluded or marginalized social groups. Big business will not be the only civil society voice to obtain a hearing with policymakers. At the same time, the participation of business may be formalized, thus rendering its influence more transparent.

Hypothesis 3: Transition to mass democracy increases the 'public', and decreases the 'private', orientation of public policy.

Our third hypothesis derives from a different literature, that of public choice and political economy.[9] A core assumption is that incumbent leaders in democracies are electorally constrained to adjust public policies to the preferences of the median voter. *Ceteris paribus*, the broader as a share of the total population is the constituency to which an elected official responds, the more rational it is for that official to seek to provide 'public goods' of benefit to all, rather than 'private goods', such as clientelistic favours and preferences. These would become too diluted to be meaningful if they must be broadly shared. The prediction is that democratization increases the degree to which policies oriented toward growth, responsible public administration, inflation stabilization, or enhanced equity replace policies oriented toward particularistic payoffs. The third hypothesis comes with two important caveats, however. First, many scholars suggest that policy outcomes in new, fragile, and imperfect democracies will be sounder and more pro-growth when designed and implemented by expert, disinterested technocrats insulated from populist, short-sighted, and distributive political pressures.[10] Our hypothesis, on the contrary, emphasizes an indispensable and mostly positive role for openness and public accountability, even when done amateurishly. Second is the practical problem of knowing 'public-regarding' policies when we see them. For example, reasonable observers may agree that a state electricity utility run by the incompetent son of a senior general is corrupt and rent-seeking, yet disagree on whether privatization of that utility, particularly if the purchasers are foreigners, represents a solution in the public interest. Caution is necessary when evaluating this hypothesis.

Why Brazil? Why Trade? And What are Our Evaluative Criteria?

There are multiple reasons to select Brazil as a case for assessing shifts in trade policymaking following, and likely resulting from, democratization. Brazil is an intrinsically important country, and a political and economic bellwether and trend-setter for South America. A globally consequential emerging power, Brazil is the fifth most populous state in the world, with 189 million people. It has the world's tenth largest economy, with a gross domestic product (GDP) of US$1,067 billion in 2006 at market exchange rates.[11] Within Latin America, Brazil is the largest market, has the most industrialized economy, receives the largest volume of foreign direct investment (FDI), and, with the exception of Mexico, does the largest volume of international trade.[12] It is also a leading voice for the global 'South' in international trade, diplomatic, and financial fora.[13] Finally, since 1985 Brazil has been a robust (albeit imperfect) democracy. Serious economic crises notwithstanding, there now have been five consecutive and peaceful direct presidential elections with universal suffrage.

Trade issues were chosen from the array of possible policymaking issues as our focus because trade policy is both an economically and *politically* significant public policy arena. The consensus of economists is that relatively open trade is an – often 'the' – essential engine of world economic growth.[14] Yet trade openness has become increasingly contentious in the advanced industrial democracies, as illustrated by for example entrenched executive-legislative splits over presidential 'fast track' authority in the United States, and farmer-led civil disobedience in the European Union. At the same time, trade negotiations are among the least transparent and most ideologically uniform areas of international relations.[15] Trade policy is moreover important for Brazil. Specifically, import restraints were a significant pillar of the import-substituting industrialization policies pursued by Brazil's modernizing military regime and its civilian predecessors over more than three decades. Since the mid-1980s, trade policy has been at the core of Brazil's overall foreign policy, a point expanded below. Finally, Brazil's trade policy process historically has been sectorally based, executive-branch dominated, and closed to societal participation.[16] Trade policy thus poses something of a tough case in which to see the influence of democratization, both in general and within Brazil specifically.

This article is not about the *political economy* of trade, in the sense of elaborating hypotheses about particular groups' structurally determined economic interests with respect to free trade. We do not retell the classic story of how globally uncompetitive sectors, facing large personal losses, are strongly motivated to organize on behalf of protection, to the detriment of the larger society. Instead, trade is viewed as just another issue-arena. The key questions here are *who participates* (Hypotheses 1 and 2) and whether democratization has shifted the *overall process* incrementally in the direction of a more inclusive and competitive pattern. We also ask if public-regarding outcomes (Hypothesis 3), such as transparency, sanctions for clientelism, or orientation toward publicly approved goals, are incrementally more prominent since the onset of democratization.

Hypothesis 1 leads us to expect that democratization will empower newly consequential political actors within the state. Specifically, Brazil's legislature should play a greater role in trade policymaking – as has apparently been the case in other economic policy arenas.[17] We also might see more active participation from powerful governors, minority parties in the government's legislative coalition, or the judiciary. It should be harder, other things remaining the same, for major policy shifts to occur, as more players will have a voice. Hypothesis 2 anticipates an enhanced role for civil society. Concretely, we expect that a) big business will participate less or appear to achieve its trade policy preferences less often, b) the modes of business interest-aggregation will be more transparent and institutionalised, and less easily characterized as personal favours granted among members of a narrow elite, and/or c) that non-elite and/or non-traditional groups such as unions, issue advocacy groups, or consumer groups will participate more and appear to achieve their policy preferences more often.

How can public-regarding shifts in trade policies – as predicted by Hypothesis 3 – be recognized? The goodness of trade policy must not be equated simply with the extent of trade liberalization.[18] Instead, trade outcomes are judged to be more public-regarding to the extent that trade policymaking processes are transparent and accountable and appear to advance goals that are plausibly broad and national, rather than narrowly particularistic. Our assessments are necessarily subjective, though informed, and are comparative in nature, explicitly with autocratic Brazil and implicitly with other contemporary democracies.

After summarizing trends in Brazilian trade performance since the return to democracy, the analysis turns to Brazil's trade policies at both the national and sectoral levels. It begins with the evolution of policy goals under successive democratic presidents, to establish if there have been notable shifts since democratization began and whether shifts might plausibly be attributed to the political regime change. We explore three sectors chosen to represent diverse moments in Brazil's overall trade profile. Sugar-ethanol is a traditional primary product export sector with a long history of significant contributions to the balance of payments, and politics characterized by privileged access for farmer-entrepreneurs. Computers and information technology (IT) constitute a newer sector virtually created by the import-substitution incentives provided by military rule in the past. Lastly, intellectual property in pharmaceuticals is one of the 'new trade' issues being pushed by the advanced industrial countries in global trade fora. There were no a priori reasons to anticipate that any of these sectors would be especially susceptible (or resistant) to post-democratization changes in participation, process, or the articulation of goals – instead, they were chosen to represent the gamut of trade: a traditional sector, a modern sector, and a 'conditions of FDI' issue. In all cases, the article presents policy histories drawing on news reports, government documents, and academic trade analyses.

Trade Policymaking since the Democratic Transition: an Overview

We begin with the intriguing fact that analysts unselfconsciously debate Brazil's *trade policy* – which is never conceptualized as a series of unrelated, decentralized decisions. This alone suggests that Brazil's trade choices did, and still do, result from a reasonably centralized and, probably, executive-branch led process. The 'before' scenario clearly fits the centralized policymaking model. Under successive presidents during both Brazil's postwar populist democracy (1945–1964) and subsequent military regime (1964–1984), trade policy was primarily an instrument of industrial policy. Ministers explicitly set broad sectoral goals for import-substituting industrialization, employing tariffs, import licenses, and foreign exchange rationing as complements to direct subsidies and preferential government procurement. With the 1973–1974 world petroleum price shock, they added credit and tax incentives to promote exports, attempting to relieve balance of payments pressures.[19] These policies created macroeconomic distortions, but they raised manufactures' share of exports dramatically, from one per cent in 1955 to 66 per cent by 1985.[20] Policy implementation fell to mid-level civil servants in CACEX (Carteira de Comércio Exterior, or Bureau of Foreign Trade), housed in the public sector Bank of Brazil. CACEX functionaries negotiated detailed incentive packages with firms and sectoral business associations. During four decades, trade policymaking was centralized, politically insulated, and technocratic. Civil society participation was limited to large private businesses who dealt directly with their sectoral ministries or with CACEX. Brazilian import-substitution policies were reasonably effective in terms of their stated goals, while nonetheless offering numerous rents to insiders.[21]

Brazil re-democratized with the indirect election of a civilian president, José Sarney (1985–1990), whose top priority, like that of his also new civilian counterpart in neighbouring Argentina, Raúl Alfonsín, was to establish civilian authority over the military. Both presidents favoured creating stronger cross-border political links that would prevent any future attempt in either country to justify authoritarianism in terms of an external threat.[22] This political incentive motivated negotiations for what would eventually become MERCOSUL (Common Market of the South), a preferential trade area ostensibly evolving toward a true common market. In other words, trade policy was subsumed into a larger process of political normalization, both domestically in each country, and bilaterally between Brazil and Argentina, soon also involving Uruguay and Paraguay. President Sarney's office handled Brazil's side of the discussions, aided by diplomats from the Foreign Ministry, known by the name of its Brasília headquarters: Itamaraty (Palace). Both Sarney and Alfonsín had expected support from private business, which instead was initially indifferent and then somewhat hostile, though more so in Argentina, whose entrepreneurs had more to fear from Brazilian competition. However, MERCOSUL went forward despite its hazy commercial support, and the Brazilian public endorsed it as a matter of national pride.[23]

Fernando Collor (1990–1992), Brazil's first directly elected president in nearly three decades, had campaigned on an anti-corruption, pro-market reform platform. He made significant institutional changes affecting trade policy, including closing CACEX and dividing its responsibilities between a revamped Trade and Industry Ministry and Itamaraty. Collor's battle with Brazil's four-digit annual inflation also had an impact. His economic team attacked it with a package of policy 'shocks', including unilateral tariff and non-tariff barrier (NTB) reductions, intended partly to exert downward price pressure on domestic producers. Also during these years, Brazil signed the Treaty of Asúncion (1991), which officially launched MERCOSUL and made Brazilian tariff reductions permanent and automatic, as they now had the status of treaty obligations. Finally, Brazil participated in the Uruguay Round trade negotiations (1986–1994), and was present at the 1992 Miami Summit of the Americas when US President George H. W. Bush launched the Initiative for the Free Trade Area of the Americas (FTAA). By the end of Collor's truncated term, the substance of Brazilian trade policies had changed dramatically. Average Brazilian tariffs on all goods dropped from 51 per cent in the late 1980s to 14 per cent in the early 1990s, while the share of imports subject to NTBs fell from over a third to less than 10 per cent.[24]

Trade liberalization and trade growth both slowed thereafter. When a corruption scandal forced Collor out of office two years before the official term ended, his Vice President, Ítamar Franco (1992–1994), assumed office. Franco's economic management inclinations were largely populist and quixotic, contributing to his rotation through five finance ministers in two years. Yet because trade policy was being run from a politically insulated bureaucracy – Itamaraty – it continued along the course of gradual liberalization set under Sarney and Collor.

Under President Fernando Henrique Cardoso (1995–1998 and 1999–2002) trade policy continued to lead Brazil's overall foreign policy, in the pattern established by Sarney, but became gradually more open to participation from political actors outside the federal executive. Cardoso had been Ítamar Franco's finance minister and leader of the economic team that designed the *Real* Plan. The popularity of this long awaited, viable, inflation-stabilization policy helped elect Cardoso president in 1994, and thereafter consolidating stabilization was the crucial thread running through all economic policy decisions.[25] The *Real* Plan included a quasi-fixed exchange rate until early 1999, as well as tight monetary policy, which together stimulated foreign capital inflows and modest currency overvaluation, hurting exporters and those in import-competing sectors. Brazil's traditional trade surplus disappeared, but reappeared after the currency was allowed to float in early 1999 (see Table 1).[26] Though the overall economic policy orientation was painful for some business sectors, opportunities for them to express their trade views to policymakers were plentiful and incrementally more institutionalized than they had been in the past. In 1995 Cardoso established CAMEX (Câmera de Comércio Exterior or Board of Foreign Trade) as an inter-ministerial coordinating body within the Ministry of Development, Industry, and Trade (MDIC).[27] Cardoso also pursued an active role for Brazil as a leader of the global 'South' via participation in three separate international trade fora: MERCOSUL, the FTAA, and the WTO (World Trade Organization), the latter coming into being in 1996 with Brazil as a founding member. Thereafter, each separate international negotiation process (MERCOSUL, FTAA, and WTO) acquired at least one intra-governmental coordinating secretariat with an explicit opportunity for societal participation. In some, particularly those associated with MERCOSUL, business, and even union representation became quasi-permanent. Working group discussions have been increasingly transparent, and fairly extensive documentation is available on the web. In others, private sector representatives have had to be invited as guests of one or more permanent ministry participants, leading some to complain that their role is to legitimate government positions rather than help formulate them.[28]

Like his predecessors, Cardoso's hopes for MERCOSUL engaged larger political goals, including those of establishing Brazil's international leadership credentials. In the late 1990s, MERCOSUL began direct negotiations with the European Union and welcomed Chile and Bolivia as associate members, with free intra-bloc trade but not a common external tariff. Brazil repeatedly invited the US to negotiate on Brazil's terms via participation in a '4 plus 1' formula through which MERCOSUL's four founding members would collectively engage the US. But the US hoped instead to centralize hemispheric trade relations within the US-sponsored FTAA, and, as in NAFTA (North American Free Trade Area), to implement the US' larger 'new trade' agenda of enhanced private property protections, national treatment for multinational investors, and regulatory harmonization to Anglo-American 'best practices'. Brazil was dubious about the new trade agenda, insisting on agricultural trade liberalization first, and preferring to discuss the more contentious issues either in MERCOSUL or the WTO, where Brazil could ally with other large emerging market countries.[29] Differences in broad trade goals, as well as specific grievances, led Brazil and the US to clash repeatedly, especially during Cardoso's second term, following his reelection in late 1998.[30] Between 1979 and 2004, the US government brought 51 WTO anti-dumping cases (mostly concerning steel) against Brazil,[31] while Brazil won an important WTO case against US cotton subsidies.

Luiz Inácio 'Lula' da Silva (2003–2006, 2007–), former trade union militant and Workers' Party (Partido dos Trabalhadores, PT) leader, succeeded Cardoso. Many on the left, both within and outside Brazil, hoped Lula's victory would advance developing countries' trade interests, defined, often vaguely, as including opposition to US-promoted trade disciplines, such as accepting international rules governing the treatment of foreign investors and generous patent protection.[32] In September 2002, a month before his election, the Brazilian National Conference of Bishops (CNBB), other groups with ties to the PT, and several members of Congress sponsored a national but unofficial 'plebiscite', in which millions of Brazilians overwhelmingly rejected the FTAA.[33] Then in 2003 Lula notably invited the PT-affiliated union, the CUT (Central Única dos Trabalhadores), to join Brazil's official delegation to that year's Summit in Miami, part of the FTAA process, despite the CUT's strong opposition to the whole idea of trade liberalization. This was a pragmatic tactic, which gave Lula cover ('my constituents cannot accept this') for rejecting various US positions. It also gave the CUT a symbolic victory. Yet the big picture showed Lula continuing Cardoso's trade policies of incremental pro-market liberalization on the one hand, and attention to opportunities to enhance Brazil's international profile on the other.

In 2003 Brazil joined India and South Africa in forming the Group of 20 (G20) developing countries, which pressed the advanced industrial countries at the Cancún WTO Ministerial meeting to liberalize agricultural trade.[34] Brazil has allied with other 'BRIC' (Brazil, Russia, India, and China) countries against agricultural subsidies and many of the new trade issues favoured by the advanced industrial countries, contributing to recurrent stalls in the Doha round of the WTO. Stymied by Brazil in its attempt to create the FTAA, the United States instead pursued more limited trade agreements such as CAFTA (Central American Free Trade Agreement) with smaller Latin American countries. Brazil shifted focus to MERCOSUL, which since 1996 had enjoyed an arrangement with the Andean Community of Nations (CAN) and in late 2005 welcomed Venezuela's candidacy to full membership. The latter was still awaiting ratification by the Brazilian and Paraguayan legislatures in mid-2007. But Lula has been criticized for his government's apparent focus on MERCOSUL as a political project, rather than as an economic process to promote trade and growth.

TABLE 1
BRAZIL IN COMPARATIVE PERSPECTIVE MERCHANDISE TRADE/GDP (PER CENT)

	1980	1991	1995	2000	2005	Increase 1980–2005
Brazil	13	13	15	19	25	92
Mexico	18	23	61	60	58	222
Argentina	24	18	15	18	37	54
China	19	37	40	40	64	237
India	14	17	20	20	28	100
Russia	n.a.	n.a.	41	58	48	n.a.
South Africa	57	46	43	45	49	−14
Latin America	27	20	27	37	44	63
World	37	32	37	41	47	27

Source: *World Development Indicators*, various years.

How do we summarize Brazilian trade policies and politics following democratization? First, there has been substantial trade *liberalization*, though principally under President Collor, and trade has almost doubled as a share of GDP since 1980, much of it in the past decade. Nonetheless Brazil's overall trade integration is less than for most comparable countries, suggesting incremental rather than dramatic change (see Table 1). There also have been incremental though cumulatively large shifts in Brazil's trade profile. Although coffee constituted 59 per cent of merchandise exports as recently as 1959,[35] Brazil's trade today is diverse by both trading partners and products. Although the US remains Brazil's single most important customer (18 per cent of exports in 2006), North America's share of Brazilian exports was precisely equivalent to that of South and Central America (including Brazil's MERCOSUR partners): both were 23 per cent in 2006. The European Union and Asia bought 22 and 16 per cent of Brazilian exports, respectively.[36] Three-fifths of merchandise exports (recently down from three-quarters due to high world commodity demand, see Table 2) are manufactures, and among the top ten items (by total value) are sophisticated goods such as transportation equipment (including cars, trucks, and commuter jets), industrial chemicals, machinery, and electrical machinery. Of course, not everyone is satisfied. Although a swelling trade surplus has allowed the federal

TABLE 2
BRAZIL'S TRADE STRUCTURE (PERCENT)

	Exports/ GDP	Imports/ GDP	Trade balance/ GDP	Manufactures/ exports	Sophisticated manufactures/Exports
1985	7.7	4.7	3.0	n.a.	n.a.
1990	7.5	5.1	2.4	79.1	50.4
1995	8.2	10.0	−1.8	82.9	51.4
2000	10.3	10.6	−0.3	n.a.	n.a.
2002	12.0	9.1	2.9	78.4	49.3
2006	14.8	9.8	5.0	64.3	n.a.

Source: From data in Sebastián Sáez, 'Trade Policy Making in Latin America: A Comparative Analysis' (Santiago: ECLAC, January 2005), pp. 8–9; and Ministério de Desenvolvimento, Indústria e Comércio Exterior, *Balança Comercial Brasileira* (Brasilia: Janeiro-Dezembro, 2006).

government to reduce external debt and build up foreign exchange reserves (see Table 2) Brazilian manufacturers grumble about the 'Dutch disease', referring to commodity price-driven overvaluation, since 2001. Some argue that Brazilian growth would be higher if its trade/GDP ratio were as high as China's, while others worry that increased reliance on trade may be unwise, especially since recent trade competition from lower-wage China has imposed downward pressure on wages and profits throughout Latin America.

Second, trade *diplomacy*, the close intermingling of trade and traditional foreign policy, new since democratization, has been mostly successful. If one understands MERCOSUL's principal goal as liberalizing and expanding trade among members, then it has been only a moderate success. Trade with the rest of the world has grown faster than intra-bloc trade, particularly since Brazil's forced devaluation and decision to float the *real* in early 1999, which caused its intra-bloc partners to erect barriers against Brazilian goods, while expanding demand elsewhere. If, however, one views MERCOSUL from a longer term, geostrategic perspective and argues that the growth of intra-continental trade and political ties intrinsically benefit South Americans (perhaps especially Brazilians) then one may judge more favourably Brazil's recent presidents' apparent preference for MERCOSUL and the G20 over the FTAA and WTO.

Third, executive branch domination of trade policymaking, predicted to diminish by Hypothesis 1, remains, though, as we noted from the beginning, this sector is a hard case. Yet all is not as it was. Trade policy has gone from being an adjunct of industrial development policy to being one of the key thrusts of Brazilian foreign policy, with the locus of trade policymaking shifting laterally within the executive branch. Although inter-ministerial policymaking bodies have long characterized Brazil, today's combination of competitive and partisan democracy, an avid and well-informed press corps, a well-honed tradition of strategic leaks, and the ubiquitous internet makes the inner workings of such bodies look reasonably to remarkably transparent.

Congress intermittently exerts itself to become more involved, mainly when some news items cry out for reaction from deputies and senators. For example, in response to repeated public scolding by Venezuelan President Hugo Chávez over its alleged slowness in ratifying Venezuela's entry into MERCOSUL, most recently in July 2007, Brazil's Congress has become even more reluctant to move, holding up Venezuela's accession process.[37] While this level of involvement is hardly equivalent to either that in the US, where the legislature plays a loud and lively role in trade policymaking, or even to Congress' involvement in other Brazilian policy arenas such as fiscal policy and pension reform, it is noteworthy that trade policy in Brazil has come to be seen as a political policy arena, not merely a technical one. This shift in perception indicates a likely trend toward more transparent discussion of trade policy throughout the national government.

Moreover, as Brazilian trade policy comes to be conceptualized more as *foreign* policy (rather than just a means of promoting domestic industry or meeting balance of payments targets), the Brazilian legislature's incrementally greater advisory role post-democratization becomes more notable. In most contemporary democracies the executive branch retains authority for foreign policy. Thus article 84, section 8, of Brazil's 1988 constitution gives the President 'exclusive' jurisdiction to make international treaties and conventions, 'subject to the National Congress's referendum', while article 49, section 1, says that Congress has the 'exclusive competence' to 'definitively decide' international treaties, conventions or acts that involve 'serious' obligations for the 'National Patrimony'.[38] Congress's treaty powers are both secondary to the president's and circumscribed. Not surprisingly, the Congress, which is moreover notoriously divided and slow, has trouble exerting influence over trade legislation.

Fourth, civil society is somewhat more involved, as would be predicted by Hypothesis 2. Brazil's business organizations, long judged among the more fragmented in Latin American, today are somewhat more united, although it is unclear whether we should attribute this shift to democratization.[39] Previously, business had been represented in negotiations with the government mainly by either CNI (National Industrial Confederation) or FIESP (Industrial Federation of São Paulo), which brought together firms in Brazil's industrial heartland. In the mid-1990s the CNI pushed for the founding of the CEB (Coalizão Empresarial Brasileira, or Brazilian Business Coalition), which for the first time included service sector enterprises and agribusiness, along with manufacturing firms.[40] The CEB's website posts detailed position papers across a full range of trade issues. For example, the CEB demands that any FTAA should include 'safeguards' against regulatory competition amongst members to attract foreign direct investment – about whose expansion these national capitalists are ambivalent in any case.[41] Business leaders also worry that their government's increasing orientation to the developing world will cause them problems with the US and EU, still Brazil's most important foreign markets.[42]

Brazilian labour unions also have been labelled weak and/or fragmented, though many voters expected Lula to advance labour's policy agenda. Also novel for Brazil are the new sectoral associations that unite both entrepreneurs and unions.[43] Originally founded in 1991 under Collor to discuss wage-price control guidelines, they have become regular participants in Brazil's debates over trade and regulatory reform. Both CUT and other smaller union federations are *formal* members of MERCOSUL's Consultative Forum (FCES), and participate on an ad hoc basis in working groups for the various other international trade negotiations.

Perhaps most surprising has been the stimulus provided by the FTAA negotiations for alliance among initially disparate civil society organizations (CSOs). Brazilian CSOs have organized largely via the internet – its wide usage in Brazil at least partly a spin-off from the military government's IT policies, discussed below. For example, the broad coalition of anti-globalization groups that organized Brazil's 2002 'plebiscite' on the FTAA was unprecedented. Like the CUT labour union, several Brazilian civil society groups, vehemently opposed to almost any new trade agreement, attended the 2003 Miami Summit as part of President Lula's official delegation. REBRIP (Rede Brasileira pela Integração dos Povos or Brazilian Network for Peoples' Unity), founded in the late-1990s, today speaks on behalf of some 35 civil society groups, including several smaller trade unions. REBRIP also networks with other national alternative-to-globalization organizations through the

Hemispheric Social Alliance (HSA), for which it provides the secretariat.[44] Overall, it might be said that the emerging representation of interest groups in Brazilian trade policymaking, especially under Lula da Silva, is coming to resemble that of a Western European-style *democratic* corporatist model, in which civil society organizations (CSOs) certainly participate more in national trade debates. Business participation is somewhat more transparent, and non-traditional civil society actors, often for the first time, regularly have expressed their views in high places. Nonetheless, many CSOs have been bitterly disappointed that the broad thrust of trade policy remains steady.

Fifth and finally, it is hard to decide if the public interest is better served by post-democratization trade policy, as suggested by Hypothesis 3. One political economy tradition blithely assumes that trade liberalization benefits the median voter, particularly in a relatively poor and thus presumably labour-abundant economy.[45] In sharp contrast, a preponderance of Latin Americanists are profoundly suspicious of economic globalization. Their mental model of trade derives not from Ricardian visions of comparative advantage but instead from concrete examples of multinationals behaving badly. A common judgment is that the 'neoliberal reforms that did away with the statism of the past ... have been followed by markedly increased levels of poverty and inequality'.[46] Much therefore rides on the analyst's characterization of economic globalization. Another approach is to argue that freer trade makes Southern *consumers* better off and is thus genuinely popular.[47] We judge ourselves unable to evaluate whether the substance of trade policy is more public-regarding merely by inquiring into the extent of trade liberalization, and therefore consider the trade policymaking process itself as an outcome. Is a markedly more transparent and somewhat more participatory policy process thereby more 'public-regarding'? Our concluding comments follow the case studies.

A Traditional Export Reinvented: Sugar-Ethanol

Sugar has been a mainstay of Brazilian trade since the 16th century. Even today, Brazil is the world's largest producer and exporter of sugar, sugar cane, and ethanol.[48] In 2005, Brazilian production of these commodities constituted 19, 34, and 37 per cent respectively of the world's total,[49] and in 2006, Brazil accounted for half of global ethanol exports.[50] Brazil is also a very efficient producer, both in terms of cost and environmental impact. It makes ethanol, for example, with only a seventh of the fossil-fuel consumption used by the US' corn-derived alternative.[51] And unlike most competing countries, Brazil has plenty of land available to expand production. Naturally, the Brazilian government encourages such expansion, given the current large and growing demand for ethanol fuel, both within Brazil and internationally.

Since democratization, political changes in the sugar-ethanol sector have been significant. After heavy government regulation during the military period (and before), sugar policies have become increasingly market oriented post-democracy. Prior to 1990, the state-controlled Institute of Sugar and Alcohol (Instituto do Açucar e do Álcool or IAA),[52] founded in 1933, controlled domestic production and sales, as well as exports.[53] After 1975, the IAA also managed the government's National Alcohol Programme (Programa Nacional do Álcool or Proálcool), which subsidized ethanol production and promoted ethanol-powered automobiles so that Brazil could reduce oil dependence.[54] A turning point came in the 1980s, when President Sarney tried unsuccessfully to eliminate the Proálcool programme. Then in 1990 President Collor abolished the IAA and accelerated Brazil's trade liberalization programme, including in the sugar sector. Before liberalization, sugar was the seventh most protected sector in the Brazilian economy, but between 1987 and 1999 the effective tariff for sugar declined from 83.8 to 20.0 per cent, reaching a low of 9.5 per cent in 1994.[55] Cardoso's administration continued the market-oriented trend, eliminating export taxes on sugar and ethanol in 1997 and deregulating prices for both between 1997 and 1999.[56] The Lula government has largely maintained this policy orientation.

Despite dramatic trade liberalization, however, the Brazilian government has continued since democratization to intervene in the sugar sector, and distributive politics have not disappeared completely. The sugar sector benefits to some extent from the government's general agricultural support policies.[57] It is also subject to a regional equalization policy, in which cane producers in northern and northeastern states receive a subsidy to compensate for their higher production costs.[58] There are environmental regulations that affect sugarcane growers. In particular, law 10.547 of 5 March 2000 limits the burning of fields at harvest time and provides assistance for mechanization.[59] Finally, a series of government policies affect ethanol. These include fixing the mandatory percentage of ethanol in regular gasoline at between 20 and 25 per cent; providing subsidies for purchasers of ethanol and flex-fuel cars; requiring official vehicles to be replaced by vehicles that run on renewable fuels; authorizing funds from the CIDE ('contribution for intervention in the economic domain') tax to subsidize the price and transport of ethanol fuel; and the 2002 Ethylic Alcohol Fuel Stock Financing Programme (PFEAEC), which is designed to ensure adequate domestic supplies of sugar and ethanol.[60]

Nevertheless, these government interventions in the sugar-ethanol sector are qualitatively different from those of the military years. Rather than allocating quotas to individual producers or directly setting prices, government policies today are more general, and they are driven increasingly by concerns for macroeconomic responsibility, a stable domestic supply, and environmental impact.[61] They are also smaller in scale, as evidenced by the much lower degree of effective protection enjoyed by the sector post-democracy, as well as by the price liberalization and export tax cuts mentioned above. Since the early 1990s, moreover, Brazil's government has tried to encourage agricultural exports, and has done so less by means of direct production subsidies, or even export financing, than by pressing trading partners for more market access. Brazilian trade negotiators have been particularly keen to promote non-traditional, often semi-processed, primary products, like soybeans, chicken, beef, frozen orange juice and, more recently, ethanol. In 2004, for example, Brazil won a case in the WTO against EU sugar subsidies. Brazil has lodged several disputes in the MERCOSUL forum to defend Brazilian sugar from Argentine trade discrimination.[62] Finally, Brazilian policymakers have been actively promoting ethanol abroad, both for profit-making and environmental reasons. In a gesture fitted to its self-image as a rising power, Brazil has even agreed to help some other poor countries such as Jamaica and India to develop their own self-sustaining ethanol industries.[63]

Do we see a shift in sugar sector *politics*? And, if so, is there any plausible link to democratization? Hypothesis 1 contends that democratization will promote more checks and balances within the state itself. If we take this to mean greater Congressional involvement, change has been positive but incremental. After the IAA's demise, different executive ministries took responsibility for the sector. Today it is the Inter-Ministerial Council for Sugar and Alcohol (CIMA), first created in 1997 by presidential decree, which formulates sugar and ethanol policy. CIMA includes representatives from the Ministries of Agriculture, Livestock, and Food Supply (MAPA); Mines and Energy (MME); Finance (MF); and Industry, Development, and Foreign Trade (MDIC). Policy implementation is the responsibility of the Ministry of Agriculture's Sugar and Alcohol Department (DAA). The Foreign Ministry and CAMEX make any foreign trade policy decisions affecting the sector. Thus, the executive branch controls sugar policy formulation and implementation, both domestically and internationally.

The president and his ministers also guide sugar legislation. Laws affecting sugar and ethanol typically originate in the executive branch, and many take force initially through presidential decree. From 1990 to 2005 the executive branch initiated 85 per cent of sugar/ethanol legislation.[64] Once decreed, the legislation usually is taken up by the Congress where months or even years may pass before it becomes regular law. For example, at least 14 decrees (six in 1998 and eight in 1999) covered material that eventually became a 1999 law aiming to secure domestic supplies of sugar and ethanol.[65] Meanwhile, Congress increasingly plays a democratic role as a source of information for the public and as an oversight agency. In 2003, for example, the Chamber of Deputies' Agriculture, Fishing, Supply, and Rural Development Committee (CAPADR) created a special commission to study the sugar and alcohol sector; held a seminar on the state of the sugar-alcohol trade and possibilities for revitalizing the Proálcool programme; and issued several requests to the Agriculture and Trade Ministries for information about Argentine tariffs on Brazilian sugar. Moreover, information about all of these activities is readily available on the Chamber of Deputies' website.[66]

With regard to the policy influence of societal actors – the subject of Hypothesis 2 – there have been incremental changes as well. On the one hand, large private producers continue to have significant influence, and they express their interests in much the same way that they did pre-democracy: through direct contact with the ministries involved. Integrated and mostly Brazilian-owned firms grow and process sugar cane, and they are concentrated in São Paulo state.[67] Their main association is UNICA (the Union of the Cane Agro-industry of São Paulo), an industry group very much like the one that worked with the IAA pre-democracy. Many of these same firms produce ethanol,[68] and they benefit from alliances with the powerful Brazilian automobile sector, also centered in São Paulo, and represented by ANFAVEA (The National Association of Automobile Manufacturers) and SINDIPEÇAS (The Automobile

Parts Association). The Brazilian government's granting of tax credits for flex-fuel cars, introduced in March 2003, was the fruit of such cooperation, with the automobile parts manufacturers doing most of the direct lobbying.[69] These groups' policy access may well have been enhanced by the fact that both Presidents Cardoso and Lula have strong roots in São Paulo and their parties are strong there.[70]

On the other hand, participation from other civil society actors is not absent, and may be increasing. The issues around which non-elite interests have rallied are inequality and environmental protection, both active popular concerns in democratic Brazil, though the underlying configuration of involved interests and their relationship to sugar-ethanol trade is complex. Environmental and consumer groups have united to pursue regulatory goals, some of which affect sugar production, processing, and ethanol use. For example, after the Cardoso administration approved a Monsanto request to test Genetically Modified (GM) seeds in 1996, the Institute for Defense of the Consumer (IDEC) joined with other NGOs and the Landless Rural Workers' Movement (MST), in the Campaign for a Transgenic-Free Brazil, which for several years blocked the sale of GM crops, including sugar cane.[71]

More recently, an international dialogue about Brazilian ethanol policy has arisen, partially as a spin-off from Brazil's strong presence in the World Social Forum and other civil society venues critical of corporate globalization. In the context of soaring world petroleum prices, President Lula da Silva has personally promoted ethanol as a clean and price-competitive alternative, signing a memorandum of cooperation with US President George W. Bush during the latter's visit to Latin America in early 2007. Alliance of any kind with the Bush administration is anathema to many or most Brazilians, but particularly so to the anti-FTAA activists that Lula's government has tried to woo. Venezuelan President Hugo Chávez, with whom many in Brazil would like very much to cooperate, began in early 2007 to proclaim the dangers of Brazilian ethanol, claiming that expanded production would remove arable land from staple food production, thus harming Brazil's poor. He also has alleged that Brazilian ethanol production has higher environmental costs than Venezuelan petroleum.[72] When Lula travelled to Brussels for an EU biofuels conference in July 2007, seeking foreign investment in the sector, he was obliged to respond to a Spanish Green Party deputy accusing him of 'leading Brazil down the road to unsustainability' and 'destruction of the environment'.[73] Thus far, CSOs have been more active than Brazilian political parties in interest-articulation on this issue, partly because Brazil's most successful leftist party, President Lula's PT, is itself deeply split on both expanding ethanol production and trade promotion more generally.

Finally, has sugar sector trade policy become more public-regarding, as Hypothesis 3 contends? If by this we mean less prone to capture by politically connected and not very competitive producers, at least as compared to the heyday of the IAA, the answer should be yes. Although large São Paulo producers continue to enjoy privileged policy access, individual producers are less likely now than under authoritarianism to achieve particularistic benefits. In addition, the more market-friendly and environmentally conscious character of today's sugar-ethanol incentives benefits ordinary Brazilians, being at the very least a lesser drain on the public purse.[74]

Nevertheless, sugar sector liberalization is over-determined: it occurred as part of a broad market reform process in Brazil and throughout Latin America whose relationship to democratization remains intensely contested.[75] Though the shift toward ethanol production has sometimes been presented as a noble endeavour, it may also be characterized as a response to a combination of national security concerns (especially under the military) and balance of payments considerations (especially today). Yet from the viewpoint of Brazil's median voter, each of these aims is an appropriate goal for the national government, especially by comparison with the clientelistic pay-offs that once dominated.

A Sector of Past Import-Substitution: Computers and Information Technology

If the story of sugar-ethanol is one of government withdrawal from many of its traditional promotional activities, the same is even truer of sectors of past import-substitution. As was the case for sugar-ethanol, there has been relatively little protest from once-favoured producers. The Collor administration (1990–1992) once again stands as the clear turning point.

The Brazilian computer industry began in the 1970s under the protection of a market reserve or 'greenhouse' policy regime. It resulted from the efforts of an obscure division of the Planning Ministry called the Commission for the Coordination of Electronic Processing Activities (or CAPRE), which was responsible for managing the government's data-processing needs. CAPRE also had help from officials in the Brazilian Navy and National Economic Development Bank (BNDE). The goals of the computer policy derived from a combination of '[e]conomic calculus, an abstract quest for national stature, and preoccupation with the technological side of military strength'.[76] Policymakers believed that an indigenous computer industry, with its technological sophistication, would spur industrial progress and autonomy in the rest of the economy, and the military recognized that it could have positive applications in the area of national security.

The CAPRE *técnicos* (technocrats) had the opportunity to implement their ideas in 1974. After the first oil crisis, the inter-ministerial Foreign Trade Council (CONCEX) wanted to control computer imports – because they were straining the balance of payments – and so it gave CAPRE the duty of approving all requests to import computers. Since this authority included imports of components, the *técnicos* realized that CAPRE had also been given, unintentionally, de facto power over the local manufacturing of computers. At that time, multinationals such as IBM and Burroughs dominated the Brazilian market. But in 1976, when IBM requested import permissions to produce a minicomputer in Brazil, CAPRE denied them, and instead held a contest in which both foreign and domestic firms competed for the right to produce minicomputers. CAPRE chose Brazilian firms using licensed foreign technology as the winners.[77] Thus began Brazil's market reserve policy.[78]

Though the Secretariat for Informatics (SEI) replaced CAPRE in 1979, the import-substitution agenda continued. Support came from intelligence officers, who thought a local computer industry necessary for national security, as well as from the local firms who had benefited from the initial CAPRE contest. These were joined by several more Brazilian PC producers, employing thousands of well-educated Brazilians, who formed associations and constituted a pro-market-reserve policy lobby in the private sector. Later, with the political liberalization process, elected officials also emerged to support the market reserve, and it was they who succeeded in passing the 1984 National Informatics Law.[79]

By the end of the 1980s, however, the greenhouse policy's weaknesses were clear and opposition to it both domestically and internationally had grown strong. Brazilian firms were unable to match technological advances internationally and the SEI's institutional capacity limits made it unable to regulate the industry effectively. Computer purchasers complained that they were paying a premium for inferior local products, while some local PC firms alleged that others were profiting from pirated foreign technology and products. SEI hoped that involving more local capital in the industry would help overcome the technology gap, so it gave Brazilian banks, such as Itaú and Bradesco, incentives to develop data processing and computing divisions, which they did. But this move alienated smaller PC firms, which were already disaffected by SEI's bureaucratic red tape and inability to police free riders.[80] Finally, and most decisively, both the United States government and US firms thought the Brazilian computer policy constituted unfair if not illegal trading practices.[81] A lengthy dispute, lasting from September 1985 to October 1989, strained relations between the two countries, and was resolved only when the US threatened 'super 301' trade sanctions.[82] Brazil eventually liberalized and accepted intellectual property rules. In addition, the dispute with the US created new enemies for the greenhouse policy, particularly among Brazilian exporters. For these reasons, when President Collor abolished the SEI and decided not to renew the national informatics policy in 1992, he met with little resistance.[83]

As with sugar policy, Brazil's post-democracy computers policy has been more liberal than it was during the military years. It has aimed to preserve some of the gains made under the greenhouse policy (the Brazilian computer industry was worth more than US$4 billion by 1990), but it has also removed restrictions on imports, encouraged foreign investment and technology, and provided incentives for multinationals to locate production facilities in Brazil. Furthermore, through the Softex 2000 policy, the government has tried to develop a Brazilian software industry and to promote IT exports, particularly in niche markets like banking services and e-government, where Brazil is thought to be globally competitive.[84] To advance these goals, the government has used mainly tax breaks, especially on the industrial goods tax (IPI), as well as preferential procurement policy. In March 2004, for example, IT and software were two of four industries for which the Lula da Silva government announced tax and promotional incentives. Minister of Development Luiz Furlan made sure to emphasize, however, that the policies were fully WTO-compliant.[85] Firms that meet local content and quality standards and invest in research and development (R&D) receive the benefits.[86] There have also been some attempts to favour poor regions of Brazil in the distribution of R&D funds.[87] Management of these policies has been the responsibility of the Ministry of Science and Technology through its National Scientific and Technological Development Council (CNPq).

The executive branch thus has retained control of computers and IT policy. With respect to Hypotheses 1 and 2, there are few signs that either Brazil's Congress or non-elite societal groups possess increased influence post-democracy, although the policy process has become more transparent and widely reported on in the press. In both 2001 and 2004, when Congress passed IT legislation initiated by the president, there was significant debate among interested groups beforehand. In the case of the 2004 law, state governments and industry groups in less developed areas of Brazil tried unsuccessfully to exclude São Paulo from the regional distribution of R&D funds. There were also disputes over whether or not cell phones should be included in the list of products that benefit from tax breaks. Finally, groups and firms benefiting from production in the Manaus tax-free zone wished to limit fiscal benefits to companies operating in other regions.[88] However, the participants in these debates, which included state governments, regional government agencies such as SUDENE (the Superintendence for Development of the Northeast), and business associations like Abinee (Brazilian Association of Electrical and Electronic Industries), were all elite actors who had also had influence under the military government. In any case, their attempts to change the legislation originally submitted by the Lula government were largely unsuccessful.

Are sectoral policies more public-regarding, as predicted by Hypothesis 3? Significant changes occurred in the Brazilian computers sector post-democratization. The end of the market-reserve policy, which followed closely on the heels of Collor's election, substantially liberalized the domestic market, and shifted the focus of Brazilian production from hardware to software and services. These changes were in part driven by popular dissatisfaction with the greenhouse policy – dissatisfaction that was given greater opportunity for expression in a democratic environment – as well as by public revulsion against corruption. Yet allocating causation in policymaking for this specific sector between international pressures for market liberalization and domestic ones for superior products and greater political transparency is difficult. Although Brazil's elected officials today arguably pursue the broad concerns of previously marginalized actors rather better than before,[89] we have not identified many obvious channels via which this might influence computer/IT policies. The case provides only weak support for our three hypotheses.

A 'New Trade' Issue: Intellectual Property Rights in the Pharmaceutical Sector

Our final sectoral case concerns one of the 'new trade' – that is, regulatory and investment-related – issues that have risen to the top of the advanced industrial countries' trade negotiating agendas since the early 1990s. In this arena the involvement of non-traditional civil society organizations (CSOs) has been both unmistakable and consequential.

Brazil's stance on intellectual property rights in the health arena is rooted in its successful domestic AIDS programme, which in turn was made possible by post-1985 democratic developments. The Brazilian government has been one of the first to recognize and respond to the AIDS scourge.[90] Although some of the reasons for Brazil's response were fortuitous (Brazilians' comparative sexual tolerance, for example, may have made it easier to discuss sexually transmitted diseases), Brazilian civil society first woke up to its potential for influencing public policy in the early 1980s via the '*Diretas Já*' (Direct Elections Now!) campaign that used mass street demonstrations to push the military regime into accelerating its timetable for the return of civilian rule. From 1986 to 1988, Brazil engaged in a broadly participatory process of writing a new, democratic constitution. This constitution gave all Brazilian citizens the right to health and healthcare, a provision that proved to be the legal opening civil society groups needed. One of these, ABIA (Brazilian Interdisciplinary AIDS Association), was led by Herbert de Souza ('Betinho'), a prominent sociologist, long time pro-democracy activist, and founder of the Rio de Janeiro think-tank and progressive advocacy centre IBASE (Brazilian Institute of Social Analysis and Economics). Betinho and his brother, 'Henfil', a much-beloved cartoonist who had pushed the bounds of political criticism under the military, were both haemophiliacs who had become HIV-positive through contaminated transfusions. ABIA and other CSOs began a campaign involving both lawsuits and street marches, with the goal of obliging the National Health Service to make AIDS a higher public health priority. Even the Catholic Church, despite moral discomfort with sexual issues, could see the association of acute poverty and many of the behavioural patterns that led to AIDS transmission. Eventually there would be over 40 Catholic social service NGOs providing services to affected individuals.[91]

By the early 1990s Brazil's programme, which received early and arguably critical World Bank funding,[92] already was a model for AIDS prevention and palliative care. But only in the mid-1990s was an effective treatment for AIDS, the so-called 'triple cocktail', developed, a finding first widely publicized at the 1996 Annual World AIDS Conference. Unfortunately, the drugs' annual cost per individual ran from US $10,000 to $15,000, leading most public health professionals to assume that only wealthy countries would be able to afford treatment, while developing countries would have to focus on prevention. But Brazil's already mobilized NGOs jumped on the new findings, refusing to let their government remain passive. Later in 1996, Brazil's Congress passed a law obliging the federal government to provide free anti-retrovirals to any patient who could not afford the treatment. The core challenge was, of course, the cost of the drugs, which were new and under patent by some of the world's top pharmaceutical firms, mostly based in the US, and eventually including Wellcome (maker of Zidovudin, or AZT), Roche (Nelfinavir), Abbott (Lopinavir/Rotonavir, also known as Kaletra), Gilead (Tenofovir), and Merck (Efavirenz).

Fulfilling domestic civil society's demand for free retrovirals thus required the Brazilian government to negotiate with these international pharmaceutical firms, a tough task given the firms' political and economic clout. Brazil is also subject to the Trade-Related Intellectual Property Rights (TRIPS) Agreement, which it accepted in 1996 as a condition of WTO membership.[93] For developing countries like Brazil, TRIPS means that they can access a new medicine only by purchasing either the drug itself or a licence to produce it from its original developer, at a mutually agreed price. Where the price elasticity of demand is low, as in the case of new, life-saving medicines, the pharmaceutical firm normally holds most of the negotiating cards. The TRIPS agreement does provide for a procedure known as a compulsory licence, which permits a country that has tried but failed to obtain a voluntary licence for a given medicine to reverse-engineer and manufacture its generic equivalent for the home market. However, pharmaceutical firms have tried to augment their WTO TRIPS guarantees by pressing the USTR to negotiate extended patent protections, such as ‘pipeline protection’, in regional trade fora like NAFTA.[94] The efforts of other developing countries such as Thailand to produce cheap generics under compulsory licence, as well as the involvement of foreign NGOs and international organizations such as the United Nations in the AIDS treatment debate, further complicate the situation.[95]

Faced with a mobilized civil society, the Cardoso government negotiated hard, particularly in its second term, and not without certain advantages. Brazil’s trade is diversified as to both merchandise and trading partners, as noted above. Brazil’s own pharmaceutical industry has the technological capability to produce patented medicines. There was only a weak risk of international sanctions, since the US did not wish to be shut out of Brazil’s large domestic market. Moreover, international CSOs such as Medicíns Sans Frontiéres and international health bureaucrats at the World Bank, United Nations Development Programme, and World Health Organization discreetly lobbied the US government on Brazil’s behalf.[96] Using the threat of production under compulsory licensc, Brazil obliged Roche to lower the price of Nefinvir/Viracept.[97]

The Lula administration was still more assertive. In June 2003 Brazil, India, and South Africa signed the Brasília Declaration, pledging cooperation in health access and agricultural trade. In 2005 Brazil threatened to produce Abbott Lab’s Kaletra under compulsory license. By June a price agreement had been reached, but before the deal could be finalized Lula’s minister of health lost his post in a cabinet shuffle over corruption allegations. The new health minister, representing more radical elements in the government coalition, reopened negotiations, ultimately securing a still lower price from Abbott in October. On 1 December 2005, World AIDS Day, Brazil’s Federal Prosecutor nonetheless accepted a civil suit brought by a growing list of Brazilian CSOs, including ABIA, against the Health Ministry, demanding immediate production of generic Kaletra, alleging that the approximately 30 per cent of its annual medications budget spent by the Health Ministry on Kaletra in 2005 was excessive and in violation of the constitutional rights of Brazilians. Also in 2005, amidst on-going and contentious negotiations with the firms Abbott, Gilead, and Merck, Brazil was instrumental in organizing health ministers from 11 Latin American countries to negotiate jointly with 26 drug companies in Buenos Aires.[98] Although Betinho passed away from the complications of AIDS in 1997, his contentious legacy lives on.

Yet another dimension of Brazilian assertiveness on intellectual property rights in pharmaceuticals has surfaced recently. Brazil has either initiated or endorsed international proposals for export of generic versions of essential medicines, including those produced under compulsory licence, to needy developing countries lacking the technological capacity and market size for domestic production. They fall under the ‘paragraph 6’ waiver to the TRIPS agreement, added in 2003, which allows exceptions to the TRIPS protocols for the sake of protecting ‘public health’. In this fight Brazil has taken what it considers to be a moderate position, finding some advanced industrial countries, notably Canada, on its side, while some other developing countries oppose patents on ‘essential medicines’ altogether.[99] Meanwhile, total pharmaceutical imports to Brazil have increased both absolutely and relatively, rising from 1.63 per cent of all merchandise imports in 1990 to 3.3 per cent in 2004.[100]

Our Hypotheses 1 and 2 both find clear support in this case. Checks and balances, or at least new loci of policy debate and initiative, located within the state have increased: Congress has passed new laws, and the judicial branch is being invoked to force the federal executive to adhere to the constitution. New CSOs led by ABIA to all appearances have altered Brazilian government policy, as it is unlikely that either Itamaraty or the Health Ministry would have chosen to fight over pharmaceutical patents. The process of formulating and negotiating Brazilian pharmaceutical trade policy has become messier with the addition of more actors, as well as more populist and less insulated, frustrating the multinational pharmaceutical firms – and sometimes also Brazil’s federal executive. At the same time, if Brazil is able to export generic drugs to poor countries under a paragraph 6 waiver, there will be a private business constituency for this. Finally, and with respect to Hypothesis 3, one could claim that the pro-generic-drug policy exemplifies public-minded policymaking: though opinions may differ, greater access to expensive but life-saving drugs may be understood as a public good that ought to be ensured by government in a contemporary democratic welfare state, which is something that Brazil aspires to become.[101]

Conclusions: Democratization and Brazilian Trade Policymaking

This article has examined Brazilian trade policymaking under democracy, first chronologically and then via three sectoral case studies, looking for evidence of greater checks and balances on executive power, perhaps arising from an enhanced policy role for Brazil’s Congress (Hypothesis 1), substantive civil society participation, including by non-elite or non-traditional actors (Hypothesis 2), and movement away from private-regarding, or rent-seeking, policies and toward new policies that provide greater benefits to the ordinary citizen or median voter (Hypothesis 3). With respect to the first prediction, the research finds that the executive branch continues to dominate the trade policy process, although incremental shifts have occurred in the direction of greater Congressional involvement. The main conceptual and institutional framing for trade policy has shifted within the federal executive, as ‘trade’ has gone from being an adjunct of industrial development policies to a key strand in Brazil’s new and self-consciously internationalist foreign policy. This shift began under Sarney, and has been continued by all of his successors, partisan differences among them notwithstanding. To the extent that trade policy is foreign policy, it may not be surprising to find that the president continues to set its broad priorities.

However, additional constraints can be expected to apply to the executive in the future. As would be predicted by the veto players literature, in a mass democracy policy becomes more stable, as more participants must agree to any change.[102] Increased public awareness of and symbolic identification with a given trade policy stance may render it difficult for elected incumbents to alter established policies. For example, in the past few years, Brazil's colourful array of loosely allied anti-globalization CSOs has been happy to demonstrate loudly against the FTAA, which conveniently coincided with the trade policy stances of President Cardoso and especially President Lula. However, should a future leader propose significant 'concessions' for the sake of restarting the WTO process, converting public opinion could be difficult. The likely result would be greater involvement of partisan and regional interests via Congress.

With respect to the second hypothesis, the research identified increases in civil society participation. Business groups remained most prominent, but their opinions and participation are today more institutionalized and thus relatively easier to observe than under the military, constituting an incremental but desirable shift. The national trade policymaking process, despite now being de facto overseen by the famously aristocratic and aloof Foreign Ministry, is notably more transparent and widely consultative than in several decades. The closest analogue in Brazilian economic history to today's proliferating consultative processes associated with each of Brazil's international trade negotiating venues – MERCOSUL, FTAA, and WTO – would be the well-known Executive Groups organized by the visionary and democratically elected President Juscelino Kubitschek in the late 1950s.[103] Today's trade working groups perform significant interest aggregation and dispute substantive policy positions. For the first time they include participation by independent unions and civil society issue advocacy groups, albeit unevenly. Moreover, in one of three sectoral cases (pharmaceutical patents), both legislative and judicial activism are in evidence, and in the other two there are interested societal actors reorienting their lobbying efforts away from exclusive focus on ministries and executive branch agencies and towards Congress.

Occasionally, the influence of non-business CSOs has been decisive, as the story of patent protection for AIDS drugs illustrates, although it should be noted that it is easier for activists to target foreign than national firms, that some Brazilian businesses (generic drug manufacturers) might be expected to make common cause with anti-AIDS campaigners, and that Brazil's comparative success vis-à-vis mainly US multinationals benefited from the support of Northern CSOs and international bureaucrats. In fact, the transnational aspect to incrementally democratized trade policymaking is particularly interesting, and may well play an increasing role in sugar/ethanol trade politics in the near future, particularly as Brazil works through its delicate hemispheric relations with both the US and Venezuela.[104]

What of the third hypothesis? Trade is now in most respects an adjunct of an outward-looking and aggressively internationalist foreign policy, rather than an inward-focused industrial development policy. As both orientations are plausibly 'developmental,' especially in Brazil's relatively cautious and nuanced versions, we will not presume to equate either import-substitution or neoliberal globalization with necessarily lower corruption, higher public regard, or superior protection of the median voter. Our personal judgment is that further Brazilian tariff and NTB reduction would be growth-promoting, and probably also good for equity, depending on accompanying policies. But trade liberalization, a complex set of policies in an international economy rife with second-best conditions, cannot be logically proven to be beneficial for ordinary Brazilians.[105]

Yet if we feel unable to label certain policy *outcomes* necessarily more democratic, it is significant that the *process* now embodies more checks and balances and has become more inclusive. The shifts in trade policymaking since democratization have been continuous and (excepting dramatic tariff reduction in 1990–1992) individually small, yet cumulatively are nontrivial. The trade policy process in the early 21st century strikes us as essentially democratic, albeit with interest representation closer to the continental European than the US model. Perhaps Brazil's penchant for policymaking incrementalism itself might be conceptualized as one means of more closely approaching the preferences of the hypothetical median voter, particularly within an issue arena as profoundly contested as that of trade.[106] As was the case for Brazilian inflation-stabilization (which succeeded in 1994–1995 only when the authorities approached it as a challenge of *political* negotiation as well as one of economic design), we suggest that in a mass democracy the optimal outcome might be defined as one in which significant public policy shifts are legitimized by having been adopted via an accepted and reasonably transparent policy process. This article has uncovered movement in this direction. Establishing greater democratic legitimacy for the trade policymaking process is itself a clear public good.

NOTES

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