The BRIC Context in a Globalized World and Foreign Direct Investment in Brazil

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THE BRIC CONTEXT IN A GLOBALIZED WORLD AND FOREIGN DIRECT INVESTMENT IN BRAZIL

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I. INTRODUCTION

In order to achieve their objectives, emerging countries develop their own strategies to attract foreign investment, which allows them to cope with economic growth, whether in industry, commerce, or agriculture. To do this, the emerging countries seek out new technologies in different fields, with an emphasis on information technology. During the twentieth century, there were great advances in information technology and this has provided a platform for emerging countries to approach growth and globalization with ever-increasing speed.

After the 1980s, the world economy acquired a new shape—it began the transition from the third world to emerging countries, including countries with high economic growth, namely Brazil, Russia, India, and China (BRIC). The BRIC countries are rich in culture and have different stories, but all have a goal of positioning themselves among the largest countries in the world by advancing their economies.

It is important to determine the reasons as to how emerging countries, in such a short period of time, managed to take over the processes that were historically performed by developed countries, that stood out as major world economies, such as the United States, Japan, Germany, the United Kingdom, Canada, France, and Italy, also known as the G7.

Despite other ways of discussing it, the globalization process can also be seen as the creation of new opportunities and the bringing together of countries in the international economy.

1. It started as BRIC (Brazil, Russia, India, and China). More recently, South Africa has joined the group (now named BRICS). This paper does not take account of the inclusion of South Africa. The BRICS is not a formal organization. But, Brazil, India, and South Africa have formed a more formal group, with regular meetings and technical working groups called IBSA (India, Brazil, and South Africa).
This paper analyzes the role of foreign direct investment (FDI) in the BRIC context, with the main focus on Brazil.

II. THE ROLE OF THE EMERGING COUNTRIES IN A GLOBALIZED WORLD

A. Globalization

Globalization is defined as a set of transformations in global, political, and economic order that has been occurring in recent decades. The focus of change is the integration of markets in a global village, exploited by large international corporations. This process has rapidly advanced because of technology and modern vehicles of communication, such as television, telephone, and the Internet, with the addition of large cable and satellite communication networks. Through innovative technologies, such as fiber optics, the costs of international communication are a fraction of what they were a hundred years ago.

These aspects of globalization allow capital to flow easily between countries twenty-four hours per day, and even instantly, through the mercantile and stock exchanges. It also makes all sorts of goods and knowledge available in all markets worldwide. It is also important to point out the significant changes in the production form of goods. Aided by the ease of communication and movement, transnational corporations (TNCs) build their plants where they have the best tax advantages, low-cost manpower, and cheaper raw materials. Production of goods is also facilitated by means of modern transportation via air, sea, and land. In this process of global integration, it is common for states to use mechanisms for minimizing or eliminating tax burdens in order to attract investment and business activities to their respective territories.2

The world is facing a dynamic process of change involving major transformations in countries and in people’s lives. This economic, social, and political phenomenon has no borders.3

Thus, “since the early 1990s the world economy has surpassed paradigm toward a market economic policy, carefully designed to overcome barriers in international trade.”4 It is about the creation of a new market structure, marked by openness, adaptability, and responsibility. According to Vibha Mathur, the distinguishing points of globalization are: “a)

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2. See generally Avi Nov, The "Bidding War" to Attract Foreign Direct Investment: The Need for a Global Solution, 25 VA. TAX REV. 835 (2006) (discussing tax strategies (tax incentives) to attract foreign direct investment, concluding that it is harmful, and proposing a global solution); Marcos Aurélio Pereira Valadão & Lauriana de Magalhães Silva, Concorrência Tributária Internacional e Soberania [International Tax Competition and Sovereignty], 3 REVISTA DE DIREITO INTERNACIONAL ECONÔMICO E TRIBUTÁRIO 41 (2008).


breach of national barriers; b) international expansion of trade, finance and production activities, and; c) growth of the power of transnational corporations and of international financial institutions.\(^5\)

Eduardo Felipe P. Matias defines globalization "as the acceleration in trade of goods, services, contracts, information, international travel and cultural exchange, or as the largest integration of countries and people of the world."\(^6\)

Globalization, according to Anthony McGrew, implies a structural unfolding process with changes on the scale of human, economic, and social organization, organized in a transnational manner or on a global scale.\(^7\)

To convey the idea of globalization, we tried to summarize here the globalization process formalized by McGrew:

(a) Events, decisions, social, political, and economic activity through boundaries of a region of the world can have individual or community significance in different regions. Examples include civil war in the poorest regions of the world and illegal immigration for influential countries.

(b) The advancement of interconnectivity in different stages from social existence, economy, and ecology. From Microsoft’s activities to the spread of harmful microbes, such as the SARS virus. From the world trade to the dissemination of weapons of mass destruction.

(c) The accelerated pace of global interactions and processes as the development of global systems of transport and communication, the speed that ideas, news, goods, information, capital, and technology moves around the world. Routines of banking operations in the United Kingdom are handled by call centers in India in real time.

(d) The speed of global interaction is associated with profound local and global interconnectivity of local events, events that have global consequences, and global events that can lead to serious local consequences, creating a progressive collective knowledge or knowledge of the world as a social space, so that the idea of globalization is incorporated into many world languages, from Mandarin to Gaelic.\(^8\)

Fernando Henrique Cardoso describes globalization in a very particular way: "short century – once it would have lasted since the First World War (1914 - 1918) to the end of 1980: Age of extremes; century of globalization: long century; age of turbulence and so on."\(^9\) In fact, economic globalization can be seen as the acceleration in trade of goods, services, contracts, information, international travel and cultural exchange, and the

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5. Id.
8. Id.
increase of financial flows between nations.\textsuperscript{10}

Matias notes that the International Monetary Fund (IMF) has acknowledged that globalization is not a new phenomenon. Highly integrated markets have contributed to the rapid growth of trade and production from the Gold Standard Era and before the First World War. Further, the liberalization of trade and financial flows over the past fifty years has gradually resulted in a level of similar integration at the beginning of the century.\textsuperscript{11}

With the advent of the microprocessor in 1971, personal computers became common in the 1980s; but it was only in the 1990s that companies began the widespread use of networked computers in real time. According to Paul Krugman, this led to “a sharp acceleration in the growth rate of U.S. productivity—the amount an average worker produces in an hour,” which increased the productivity of companies.\textsuperscript{12}

To better understand this evolutionary process, it is necessary to go back to the post-war period on which the new world economic order was built.

\section*{B. The New World Order}

The scenario post-Second World War boosted the world economy. The reconstruction of countries and the search for peace began a new international economic order based on integration, especially in Europe, which was hit hardest by the effects of war.

In response to countries weakened by war, the United Nations, the Bretton Woods institutions, and the General Agreement on Tariffs and Trade (GATT) were created. The intention was to help and give guidance to the process of international trade and international development, also taking into consideration the emergence of transnational corporations.

As initially proposed in the 1970s, the New International Economic Order under the United Nations aimed to increase the potential for solidarity among nations in order to reduce the growing inequalities among peoples and nations. This policy was abandoned on the behalf of open markets, free trade, and regulation. Developing countries, increasingly dependent on foreign aid, could no longer defend the principles formulated before.\textsuperscript{13}

In this path of globalization, one consequence is the rupture of hierarchical structures of the modern state, leading to profound institutional changes, such as de-politicization and autonomy of the financial and pro-

\begin{itemize}
\item \textsuperscript{10} Matias, supra note 6, at 107.
\item \textsuperscript{11} \textit{Id.} at 109.
\item \textsuperscript{12} Paul Krugman, \textit{The Return of Depression Economics and the Crisis of 2008} (2009), translated to Portuguese in \textit{A crise de 2008 e a economia da depressão} 147 (Afonso Celso da Cunha Serra trans., 2009).
\item \textsuperscript{13} Claudia Perrone Moisés, \textit{Direito ao desenvolvimento e investimentos estrangeiros} 2 (1998).
\end{itemize}
ductive systems. Moreover, there is structural unemployment and degradation of living conditions of those excluded from the formal labor market. Also, according to José Eduardo Faria, "from the 1980s, under the legal thinking, it is about controversy far from being conclusive. As to the empirical level, one can equally not identify which main features of legal institutions in the global economy appeared to stay."\(^\text{14}\)

Theotonio dos Santos states that, in these times of emerging markets, it was emphasized in the "beginning of the twenty-first century the loss of the dynamic of central capitalism, of institutions that sustain it and its conditions of organizer of the global economy . . . new powers emerge in the global setting determining increasingly effective changes."\(^\text{15}\)

In this context of uncertainty provided by the global crisis, countries turn to movements of state interference in the economy by investing directly in companies seeking the stability of world markets. According to Theotonio dos Santos, the "new world system . . . will be clearly governed by a strong state capitalism, whose joint action will seek to regulate trade, the movement of capital and services as well as the labor movement worldwide."\(^\text{16}\) According to Jomo K. Sundaram, the "globalization that has occurred recently served primarily the interests of multinational companies (MNCs) that are considered now to account for two thirds of the international trade."\(^\text{17}\)

The development of new emerging countries opens new horizons to be studied. These new emerging countries have been adopting reforms capable of attracting foreign capital and new technologies. These aspects will be verified below.

C. THE CENTURY OF NEW TECHNOLOGIES

The last century was a period of time marked by the American hegemony in the political dispute with the socialist regime of the former Soviet Union. In the same century, there was the fragmentation of the Soviet state, and there was also the formation of numerous sovereign states around the world. This was a century in which the world became globalized and interconnected by the modernization of new communication technologies. Accordingly, it can be argued that "the emergence of computer networks has an effect on the form of organizing production and marketing of goods, contributing to the acceleration of economic globalization."\(^\text{18}\) Trade became the power that leverages global development.

\(^{14}\) Faria, infra note 25, at 95.

\(^{15}\) Theotonio dos Santos, Globalização, o futuro do capitalismo e das potências emergentes, in PAÍSES EMERGENTES E OS NOVOS CAMINHOS DA MODERNIDADE 9 (Theotonio dos Santos et al. eds., 2008).

\(^{16}\) Id.

\(^{17}\) Jomo K. Sundaram, Estados desenvolvimentista frente a globalização: o sudoeste asiático numa perspectiva comparativa leste-asiática, in PAÍSES EMERGENTES E OS NOVOS CAMINHOS DA MODERNIDADE 83 (Theotonio dos Santos et al. eds., 2008).

\(^{18}\) Mattias, supra note 6, at 113.
Despite the fact that some authors do not share positive views on globalization, it is worth mentioning the position of Joseph Stiglitz, who conveys the idea that the great hope of globalization is that it will raise living standards around the world by engaging poor countries in foreign markets and allowing the entry of foreign investments. That will enable the manufacturing of new products at lower prices; opening new frontiers so that people can travel abroad to study, work, and send money home in order to help their families, and to finance new businesses, forming a cycle of opportunities. But the author believes that globalization was actually shaped by the advanced industrial countries in order to promote their own interests; the failure to create a set of rules that would promote the welfare of inhabitants of the poorest countries in the world is proof of that statement.

On the other hand, it must be argued that some industries have achieved significant progress and are now capable of providing developed societies with the advantage of flexibility of production mechanisms. This flexibility is boosted by new technologies of communication and information, facilitating the trading of goods and services, bringing together regions, and making international trade more open and based on rules of an integrated financial system.

Stiglitz argues that “about 80% of world population lives in developing countries, marked by low income and high poverty, high unemployment and low education.” The author cites the case of India, where there has been substantial progress in the economy, raising the living standard of 250 million people. But all these people live together with another 800 million Indians who live in poverty and have high illiteracy rates, with an average income of 2.7 dollars per day.

Since 1980, China has deployed a wide set of reforms and trade openness, opening up to capital and encouraging FDI attracted by the great potential of the Chinese market. According to Paulo Mansur Levy, Marcelo José Braga Nonnenberg, and Katarina Pereira da Costa, “stability and predictability of the macroeconomic policies adopted in China have represented an important element of stimulus to capital formation and to attraction of foreign investments.”

In discussing globalization, it is important to highlight the approach of José Eduardo Faria, who states “globalization is not a new phenomenon. It was already present, for example, in the ancient empires, causing successive outbreaks of economic, cultural and legal modernization.”

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20. Id. at 63.
21. Id. at 92.
22. Id.
24. Id. at 162.
Regarding this historical period, Faria focuses on the development of cartography, the era of navigation, and the evolution of scientific knowledge, up until the era of the great discoveries in the fifteenth century, especially in Portugal and Spain. Faria also focuses on the manufacturing centers in Italy (Florence, Genoa, Milan, Venice, and other cities in northern Italy). In those times, there was an emergence of "the formation of an international system of payments based on bills of exchange between bankers and businessmen, making possible the establishment of global trade routes."  

This was a period of dominance by the European civilization, which extended to the extremes of Asia, dominating the social and political environment and accumulating wealth on a global scale.

Among these historical facts, Faria reminds us about the trade flows in the seventeenth and eighteenth centuries, which led to the strengthening of the bourgeoisie in Europe. In the late nineteenth and early twentieth centuries, the gold standard provided convertibility of currencies and free exchange, increasing the flow of raw materials, final products, intermediary products, capital, and services beyond national borders.

We can conclude that globalization is a set of transformations in the political and economic order that has been occurring in the last decades. The central point of this change is the integration of markets and the development of economic blocks, generating a regional integration by interacting with the other economies in the world. All of this is a product of the modern technologies previously discussed, including the Internet, telephone, and television, which have become tools of instantaneous communication capable of integrating business, culture, and sports.

D. Other Aspects

The strengthening of the economy through new technologies has provided "an increased number of international rules and proliferation of international organizations." Further, "[b]oth aspects have the legal and political nature and contribute to the construction of a global society." Matias also states "legal globalization and international organizations for cooperation and regional integration create new norms and institutions with an international, transnational, and often supranational character." 

The current world is undergoing a process of easy communication between governments, which is essential to the exchange of information needed to cope with financial, tax, and political issues. Interdependence, therefore, can be seen as a positive element for development. Juan Luis Colaiacovo and Oscar Yciz Cendoya noted that "we are indeed going through a period characterized by an unprecedented internationalization"
and interdependence.” That is, “the world is becoming increasingly interdependent, the equivalent of saying that the events occurred in one of its units — in a state — have an increased capability to produce effects on another one.”

David Held, quoted by Matias, says “the effects of certain policies of a state can be felt by others, affecting interest rates and exchange of the latter and, through them, other variables such as production and prices.”

Thus, interdependence “creates a need for cooperation either internationally or regionally . . . and leads the states to internationally regulate areas that are of their common interest in a process that will be here denominated as legal globalization.”

In this context, “interdependence has traditionally been manifested in the international trade and the political and military alliances.” According to the arguments above, “it is easy to understand the importance of international law in seeking solutions to common problems of mankind.”

According to the author, states need to share interests and values, and for such purposes, it is necessary to establish common rules and create new international institutions.

Regarding the legal aspect of globalization, Faria points out that it: arose with the expansion of mercantile or competitive capitalism, with the institutionalization of political-legal forms of liberal-bourgeois state, with the rule of law over politics, with the integrative role of democratic citizenship and the affirmation of a national identity forged around a history, a language and a common culture, the dogmatic certainly constitutes what is most paradigmatic in the context of the modern legal thought.

The discussion of globalization involves different opinions, as seen in the debates of distinguished jurists. Alberto Nogueira, in his book Globalização, Regionalizações e Tributação: A Nova Matriz Mundial, identifies authors with a negative view of globalization. Ignácio Ramonet, in his book Geopolítica do Caos, describes the phenomenon regarding “conflicts and threats of all types.” Ramonet has another vision of globalization: “From the geopolitical, the world presents the aspect of a great chaos: on the one hand, multiplication of regional economic unions (European Union, NAFTA, MERCOSUR, APEC); on the other hand, revival of nationalism, rise of appeasement, divided states, minorities who claim their independence.”

In this framework, one can see the other side of globalization is marked by organized crime (e.g., prostitution, smuggling, drug trafficking, arms
sales, and nuclear power dissemination), great migrations, pollution, and the spread of new diseases. Given the complex situations created by new technologies and easy movement of people, "the cooperation between states takes shape with the emergence of international norms" in order to discipline and combat the illicit acts resulting from this globalized world.

This economic reality emerged from a historical process, making it necessary for countries to develop regulatory frameworks in order to assure a safer business environment to foreign investors. This evolution will be addressed in a more detailed way.

1. International Organizations

Some institutions that have had a significant role in forming rules and decisions that are contributing to the process of integration of the economies are mentioned here. The following are included within this process of international cooperation:

(a) The Rhine Commission, established in 1814, and the Commission of the Danube, established in 1856, both address the regulation of navigation on the Rhine and Danube rivers;

(b) In the nineteenth century, there were more than thirty international cooperation organizations, including the Universal Telegraphic Union (established in 1865), the Universal Postal Union (established in 1874), the International Bureau of Weights and Measures (established in 1875), the International Meteorological Organization (established in 1878), and the International Radiotelegraph Union (established in 1906);

(c) In the twentieth century, the IMF was created to monitor national economic policies and the currency market, and the World Bank was created as a tool for reconstruction of the economies affected by World War II. These were called the Bretton Woods institutions;

(d) In the economic field, there is the World Trade Organization (WTO), successor to GATT, also created after World War II;

(e) The Congress of Vienna, which established multilateral agreements between various countries, including the major powers of Great Britain, Austria, Russia, France, and Prussia;

(f) The Covenant of the League of Nations, signed in 1919, was created to pursue peace. It created the Permanent Court of International Justice, which began operating in 1922 in the city of Hague;

(g) In 1919, the International Labor Organization (ILO) was created; in 1923, Interpol; and in 1930, the Bank for International Settlements;

(h) The signing of the U.N. Charter in 1945, the aim of which has been to search for solutions to conflicts between nations, put emphasis

37. Matias, supra note 6, at 229.
38. Id. at 262-72.
on the role of the National Security Council, which may impose economic and military sanctions on member countries; the UN still has bodies such as the General Secretariat, the International Court of Justice (ICJ), and the Economic and Social Council;

(i) Major international bodies stand out, even within the UN, namely the Food and Agriculture Organization of the United Nations (FAO); the United Nations Educational, Scientific, and Cultural Organization (UNESCO), established in 1945; the United Nations Children’s Fund (UNICEF), established in 1946; and the World Health Organization (WHO), among others.

The most important international organizations have emerged in the post-war period through the UN, a fact that “demonstrates how the institutionalization of interdependence and international cooperation developed.”

E. THE INTERCONNECTIVITY AND COOPERATION AMONG PEOPLES

The world is currently experiencing an odd moment of connectivity and interdependence. Globalization, in all its aspects, clearly allows the government to dialogue in search of economic growth, integration, cooperation, and elimination of their social inequalities. All problems have become everyone’s problems and not just a local problem where the event occurred; everything is globalized.

Indeed, governments have realized that the problems, in one way or another, are the same for everyone, whether the problems are political, economic, social, or even environmental. The experiences gained around the world, while searching for solutions to critical issues, certainly can help to solve problems elsewhere, understanding that the appropriated portions will be applied to different realities. It is clear that the path is cooperation among nations.

Therefore, when it comes to the economy, there are an impressive number of economic and trade agreements between countries, conducted in unprecedented and historic manners. More and more countries have realized that opening their economies to the rest of the world is a likely gateway to future prosperity. With those changes, it is possible to visualize that integration now goes beyond economic, political, cultural, and sports integration, but has become mutual cooperation. This cooperation is exhibited in the integration of the European Union and the integration of NAFTA, involving the United States, Canada, and Mexico. In Latin America, cooperation is exhibited in the MERCOSUR, involving Brazil, Argentina, Paraguay, Uruguay, and Venezuela, in association with Chile and Bolivia. Regarding globalization, it is possible to say there is intensification of interdependence of states, and as a result, the local events suf-

39. Id. at 269.
40. PRAN TIKU, SIX SIZZLING MARKETS: HOW TO PROFIT FROM INVESTING IN BRAZIL, RUSSIA, INDIA, CHINA, SOUTH KOREA, AND MEXICO 52 (2008).
fer increasing influence of events in other places.\textsuperscript{41}

In these new times, “the international community has several institutions in the coordination of economic policy or exchange of information between states can be made.”\textsuperscript{42} Matias cites as an example the “meetings of G7 and G8, the regular meetings of the executive secretary of IMF, the OECD meetings and regular meetings of central banks’ representative at the Bank for International Settlements, BIS.”\textsuperscript{43}

It is relevant to emphasize in this paper the route of some countries, from the stage of “third world” to the stage where they started being recognized as emerging countries.

\textbf{F. The Third World}

Krugman, quoting Jawaharlal Nehru, says that “[t]he term ‘Third World’ was originally intended as a badge of pride . . . to refer to those countries that maintained their independence, allying themselves neither with the West nor with the Soviet Union.” But the economic reality led to the idea of regression, poverty, and underdevelopment.

The third world is associated with the export of raw materials and import of manufactured goods. Thus, with the advancement of the globalizing economy, one could observe the 1970s as a time where “cheap labor was not enough to allow a developing country to compete in world markets for manufactured goods.”\textsuperscript{44} In that decade, there was a “New International Economic Order . . . centered on attempts to increase the price of raw materials, rather than to bring Third World countries into the modern industrial world.”\textsuperscript{45}

The third world countries progressed due to a reduction of tariff barriers, improvement of telecommunications, and less expensive air and sea transport. Also, cheap labor attracted investment to third world countries.

But one factor that complicates life in third world countries is corruption and internal conflicts. Stiglitz argues that “political forces in developing countries . . . lead to persistent corruption and entrenched elites using natural resource wealth to increase their own wealth.”\textsuperscript{46} The author teaches that “[e]conomic policies can shape, or at least affect, political processes.” He cites Russia as an example of corruption, where “those who obtained wealth through illegitimate privatizations had little interest in establishing a rule of law conducive to investing.”\textsuperscript{47}

Antoine van Agtamael cites his 1974 experience as a banker for Bankers Trust Company in New York, when the vice-chair of the fiduciary

\begin{itemize}
\item \textsuperscript{41} Matias, supra note 6, at 203.
\item \textsuperscript{42} Id. at 212.
\item \textsuperscript{43} Id.
\item \textsuperscript{44} Krugman, supra note 12, at 25.
\item \textsuperscript{45} Id.
\item \textsuperscript{46} Stiglitz, supra note 19, at 255.
\item \textsuperscript{47} Id. at 152.
\end{itemize}
department of the bank had bluntly stated: “There are no markets outside the United States!” But the author believed in the potential growth of the emerging countries and was:

fascinated with the fate and fortunes of what was then known disparagingly as ‘The Third World.’ Later, as a graduate student in Russian and East European studies at Yale in the late 1960s, I realized that central planning and communist ideology had little future, and longed to find out how foreign investment might help or hurt Third World development.

The following countries are in this new stage: Brazil, Russia, India, and China, the so-called BRIC. These countries are deemed “emerging countries,” whose trajectory will be described below.

G. THE Creation of the Terms: BRIC and Emerging Countries

The “acronym [BRIC] was created by [Goldman Sachs’] chief economist, Jim O’Neil, to designate the four emerging powers (Brazil, Russia, India and China)” because of their economic performances on the world stage. The studies were based on “projections of GDP growth, per capita income and the financial transactions” of the countries involved.

The term BRIC “was first used by the consulting firm Goldman Sachs in a study on global economic prospects 2050.” Brazil, Russia, India, and China account for “more than 20% of the land area, 40% of the planet’s inhabitants and a GDP exceeding more than fifteen trillion dollars;” therefore, “the BRIC countries should play a decisive role in the global economy in coming decades.” A study on the BRIC countries, published in October 2003, predicted that by 2039 the economies of Brazil, Russia, India, and China could surpass the economies of the United States, Britain, France, Germany, Italy, and Japan.

The word “emerge” means “to rise from an obscure or inferior position or condition.” The term “emerging markets” was first used by Mr. van Agtmael to replace the term “third world.” In 1979, Mr. van Agtmael joined the International Finance Corporation (IFC), the World Bank’s private sector, to encourage investment in emerging economies.

In 1981, when Mr. van Agtmael launched the “Third World Equity Fund” initiative to a group of investment managers at the headquarters of Salomon Brothers in New York, Francis J. Finlay (from J.P. Morgan) observed, “[t]his is a very interesting idea you’ve got there, young man, but you will never sell it by using the name ‘Third World Equity Fund!’”

49. Id. at 9.
51. VAN AGTMAEL, supra note 48, at 4.
52. Id. at 5.
After some reflection, Mr. van Agtmael reached the following conclusion:

Racking my brain, I at last came up with a term that sounded more positive and invigorating: Emerging Markets . . . “Emerging Markets” suggested progress, uplift, and dynamism . . . . From now on, we would consistently refer to our Third World database as the Emerging Markets Data Base and the first index we created for emerging markets would be the IFC Emerging Markets Index.53

The idea prospered based on observations in Asia that focused on companies providing goods and services. According to Mr. van Agtmael, in later years there were negotiations with governments, investment bankers, and investors, thus creating several investment funds for the emerging markets.

The competitive business environment among companies of the 1980s changed after the traumatic crises of the 1990s that occurred in Mexico and Asia.54 Companies gave new directions to their operating strategies, achieving fantastic results, and becoming multinationals. According to Mr. van Agtmael, “these firms have found niches others ignored and have conceived innovative strategies others disdained but that are, in fact, better suited to an interconnected world and volatile new markets.”55

Mr. van Agtmael teaches that the economies of emerging countries continue to grow at rates nearly two times faster than most of the economies of their richer neighbors, leading to a second industrial revolution.

III. BRAZIL IN THE CONTEXT OF EMERGING COUNTRIES

Carlos de Meira Mattos, quoted by Alberto Nogueira, gives the following warning about Brazil and globalization:

In addition to the national or regional concerns, we must consider that in countries like Brazil, the danger of accepting the weakening of an international system that morally sustains the principle of equality among States, on the other hand, given our techno-scientific delay and our lack of capital, can probably condemn us to the situation of colony of powerful states and scientific and financial conglomerates, more apt to benefit from globalization.56

In this context, it is necessary to address the political opening and the trade liberalization policy of Brazil. Regis Bonelli and Armando Castelar Pinheiro stated that “the Brazilian economy, especially its manufacturing sector, has been protected for decades from foreign competition by a set of trade policy instruments that included high tariff and nontariff protec-

53. Id.
54. Id. at 6.
55. Id.
tion, in addition to control . . . of foreign currency.” For more than half a century, Brazil had forty-two special import regimes in order to allow the exemption or partial reduction of fee payments. The system allowed Brazil to protect specific economic sectors from international competition.

Motivated by the democratic opening and seeking development in a more globalized world, after the Brazilian Constitution of 1988, Brazil started a process of trade liberalization in order to improve efficiency of capital allocation through foreign trade competition.

According to Bonelli and Pinheiro, the process of trade opening was made through three steps of tariff reductions from 1988-89, from 1991-93, and in 1994. In the reform of 1988-89, the average tariff rate decreased from fifty-one percent to thirty-five percent. The second round of tariff reductions, which began in 1990, was comparatively more radical than the former one and had profound and lasting effects on the Brazilian economy. These effects are still felt today.

Based on the analysis of the economic policy implemented by the Brazilian government, one can say that the main objective of trade liberalization was to modernize the industrial sector and, at the time, to reintroduce some differentiation in the protection of the redundant economic activity.

The positive impacts of the trade opening were felt gradually over time. From the analysis presented by Bonelli and Pinheiro, the conclusions are that the tariff reform had the following effects:

(a) regulated the domestic supply and price controls;
(b) increased productivity from innovation and from competitive pressures;
(c) companies started to import more modern capital goods with more technological content;
(d) the agricultural sector modernized and become more globally competitive;
(e) strengthened commercial ties with other countries, especially with neighbors.

Now that Brazil’s economy has opened, new paths and difficulties will arise. Brazil, through established regulatory frameworks, seems more secure in facing economic crisis and, therefore, is more attractive for foreign investment within the current economic reality.

58. Id.
59. Id.
60. Id. at 98.
61. Id. at 101.
62. Id.
A. The Brazilian Economy Overcoming the Crisis

Throughout the 1970s, 1980s, and 1990s, there were big institutional, political, organizational, business, and technological transformations. During this time, there was the explosion of the U.S. federal debt and trade deficit and structural and conceptual changes to the IMF and the GATT. The situation was further aggravated by the high cost of raw materials and a loss of competitiveness of industrialized countries to developing countries. In this transformation process, some converging factors must be highlighted.

The first factor was the crisis of the global monetary standard, which emerged from the end of the Gold Exchange Standard, because of an independent decision by the United States. The loss in the gold standard parity, erosion of the dollar, and consequent disruption of the regulatory system created in the 1940s by the Bretton Woods Agreement prompted the opening of domestic markets in developed economies to industrial goods from the third world. The second factor was the oil crises of 1973-74 and 1978-79, with abusive increases of up to five times the value of a barrel, aggravating interest rates, and causing instability of exchange rates and significant indebtedness of developing countries.63 History repeated itself with the increase of oil prices to stratospheric levels of $140 in the years 2007-08, and then a return to levels of $60 per barrel because of the global crisis that worsened in 2008.

Moreover, these economic crises have an impact on the productive industrial, and commercial sector, recently making the global community resume the search for a new international regulatory system capable of providing global economic stability.

The world was shaken by the U.S. sub-prime crisis that hit the housing and financial markets in 2007-08. In this new reality, the world economy is affected and the United States, which controls twenty-five percent of the world’s economy, suffered the most from the impact of the crisis. The main consequences were unemployment and the bankruptcies of large enterprises. Demands to the U.S. government to interfere in the economy resulted in assistance to banks and car manufacturers in efforts to help them out of bankruptcy.

In this context of uncertainty, compared by most economists to the crisis of 1929, Brazil was the last to be hit by the crisis and the first to come out of it. Countries retracted their investments, their economies, and, consequently, in a domino effect, all were hit.

In Brazil, the situation was mitigated by consolidation of the Brazilian banks, managed through strict control by the Central Bank of Brazil and the country’s fiscal balance. The country has been governed under the so-called Fiscal Responsibility Law, which provides for a regulatory legal framework able to hold governments and public companies under strict legal control, controlled fiscal balance, and accountability.

63. Faria, supra note 25, at 63.
The Brazilian economy, after a troubled start in the twenty-first century, has faced crises and managed to overcome them by having a solid and diversified industrial sector and one of the world’s largest agriculture and livestock sectors, in addition to a domestic market capable of addressing the decrease in exports.

Another important factor in coping with the crisis was the Brazilian exportation of soybeans and iron ore to China and the general strengthening of trade relations with Asia and Africa.

Brazil has also achieved, in recent years, the consolidation of its public finances and inflation control. There was a consensus among the political class and the business sector about the direction of the macroeconomic policy. As a negative factor, there is still the prevalence of the need for structural reforms.

Highlighted is the importance of government policy, inflation targets, floating exchange rates, primary fiscal surpluses, the release of the public debt regarding the dollar, and the accumulation of reserves in foreign currency to lessen the country’s external vulnerability.

The Central Bank has played an important role in driving the inflation control and the monetary and exchange policy more actively. The banks Banco do Brasil S.A. (BB) and Caixa Econômica Federal (CEF) began to offer credit lines for the population and the Brazilian Bank for Economic and Social Development (BNDES) did the same for companies of different economic sectors. The domestic industry has also played an important role in diversifying production and searching for new markets in order to overcome the decline in demand from OECD countries.

Also, the 2009 rise in the risk rating for investors, promoted by the risk assessment agencies S&P, Fitch, and Moody’s, has attracted long-term investors and triggered a framework for growth in Brazil.64

IV. THE GROWTH OF RUSSIA AMONG THE EMERGING COUNTRIES

To better understand the current Russian context, it is important to remember part of its past. According to Pran Tiku, “to understand the position and role of Russia in the global economy, both now and in future decades, requires considering the scope and meaning of a national history that has no parallel anywhere else.”65

The demand for Russia’s integration with Europe is an old one, evident as early as 1700, when “Peter the Great imposed the European culture and knowledge on a recalcitrant population. He invited engineers, architects and craftsmen from Europe to conduct his modernization projects, while Russians were sent to Europe to receive education and training.”66

65. Tiku, supra note 40, at 57.
66. Id. at 58.
In the economic aspect, Russia stands out in the nineteenth century as one of the largest producers of iron ore and ammunition. In the twentieth century, it was still eighty percent agricultural, without competitiveness with Europe.

According to Pran Tiku, Russia suffered defeats in the past—due to its inferiority in military technology and its civilian infrastructure—in clashes with England and France in the Crimean War, from 1854 to 1856, and subsequently in the Russian-Japanese War in 1905.

It is noteworthy that, politically, Russia had experiences with totalitarianism, as one can see from the overthrow of the monarchy by the Bolsheviks led by Vladimir Lenin. In 1918, the new Bolshevik government concluded a peace treaty with the Central Powers, ceding most of the Russian Territory. In 1923, the new rulers formed the Union of Soviet Socialist Republics (USSR), a multinational federation of former imperial regions, of which Russia was the largest republic. During the Second World War, the Soviet Union moved forward with its expansionist idea, invading and occupying Finland and the sovereign Baltic states of Estonia, Latvia, and Lithuania.

In June 1941, the USSR faced Germany when the Germans besieged Leningrad, now St. Petersburg, where a third of its inhabitants died of starvation. After World War II, the USSR and the United States engaged in a bipolar geopolitical system of competition during which tension and conflict between the East and West pushed them to the brink of total war.

According to Pran Tiku, “the Soviet economy began to show signs of weakness in the early 1980s, a trend that continued until the end of the decade.” With the recession in full swing, Mikhail Gorbachev entered the Russian scene, leading Russia toward democratic openness and down new economic paths.

Angelo Segrillo, while providing an “overview of the 1990[s] and 2000[s],” said that “post-Soviet Russia went through two major periods: the Yeltsin era (1991-1999) and the Putin era (1999-2000 until today).” The transition from a socialist to a democratic system required shock treatment by the Russian authorities. In the words of the author, “a gigantic socialist system became dismantled in a few years and reassembled the capitalist molds.”

With the democratic liberalization in 1994 came the largest privatization in Russian history, with more than forty million Russians holding seventy percent of Russian industrial enterprises, after a scheme of preferential distribution of shares to employees and administrators of those

67. Id. at 60.
68. Id. at 61.
69. Id. at 63.
70. Angelo Segrillo, Rússia: Economia e Sociedade, in Conferência Nacional de Política Externa e Política Internacional: Brasil no mundo que vem af
84 (2008).
71. Id. at 85.
companies.\textsuperscript{72}

The Yeltsin era was considered a period of decline for the Russian economy. With Putin’s rise to power in 1999, Russia reached a level of growth of around five percent, with balanced public accounts. As a result, Putin began to be enshrined in his country.

Angelo Segrillo also states that Putin’s success stems from the following two reasons. First, Putin took power after the financial crisis of August 1998 that disrupted the Russian financial system, forcing him to reform the banking sector, which made the Russian economy safer and less volatile. Second, there was a strong rise in oil prices in 1999-2000.

The author argues that the crisis led the Russian government to take radical measures that made banking transactions more transparent and secure. In weighing the economic difficulties, Russia undoubtedly made progress in its democratic system with the establishment of a multiparty system, the abolition of censorship, free elections, etc.\textsuperscript{73} Lenina Pomeranz states that from “1999 to 2003 – changes were completed which allowed Russia to create the economic and political institutions for the country’s new economic and social system.”\textsuperscript{74} In 2003, the GDP increased from 4 to 7.3%, with investments’ growth from 2.5 to 12.5% since 2002. The most notable growth occurred in the energy sector.\textsuperscript{75}

Nowadays, Russia draws new boundaries in the geopolitical context by using the advantages of its energy sector, rich in oil and gas. This allows the country to carry out a broader strategy of economic and social development and a long-term competitive inclusion in the international economic scenario.\textsuperscript{76}

V. INDIA: DEMOCRACY AND THE CHALLENGE OF OVERCOMING POVERTY

India is another country that has emerged in the global economy in the twenty-first century. This country formed out of an ancient and multifaceted Asian civilization. It has a population of 1.2 billion people and is considered the world’s largest democracy. Its population consists of Hindus, Muslims, Sikhs, Christians, Buddhists, Jains, Zoroastrians, Jews, and Animists. There are twenty-two languages in India, with emphasis on English, a language spoken by 350 million people.\textsuperscript{77}

Mira Kamdar makes the following statement concerning globalization:

\textsuperscript{72} Id.

\textsuperscript{73} Id. at 95.


\textsuperscript{76} Pomeranz, supra note 74, at 107.

\textsuperscript{77} MIRA KAMDAR, PLANETA ÍNDIA: A ASCENSÃO TURBULENTE DE UMA NOVA POTÊNCIA GLOBAL 18 (Cristina Cupertino trans., 2008) (2007).
India’s goal is of an astonishing range: Even in an era of resource scarcity and environmental degradation, it aims to transform a developing country of over one billion people into a developed nation and a global leader by 2020.\textsuperscript{78}

In answering the question of how to provide economic growth with social equality in developing countries, Mukesh Ambani, chairman of Reliance Industries Limited, the largest company in India, states that “[o]ur biggest challenge that no one has yet solved is how to increase equity.” Can liberal democracies create global market economies that are environmentally sustainable while also reducing inequality?\textsuperscript{79} In this sense, even the United States, with the highest GDP and income per capita in the world, has not yet achieved equality of social classes.

Also, according to Mira Kamdar, in spite of the technological advances in the United States, “the so-called Washington Consensus has promoted corporate interests over the welfare of average citizens and small businesses, aggravated the gap between rich and poor, and demonstrated an astonishing disregard for the environment.”\textsuperscript{80}

The author argues that the globalization process stimulated by technological advances has placed billions of dollars in the hands of few, while billions more are living in poverty. China’s rise in the market economy and new terrorist threats have led Mira Kamdar to question whether liberal democracies can give to all citizens, including the poor, freedom to fulfill their human potential.\textsuperscript{81}

The Indian author believes that for China and India, it would not be appropriate to follow the American model to cope with their social problems of extreme inequality and with environmental and health crises. In her view, the European model has a better balance between wealth and welfare, as it is guided by health for all, employment, and other benefits.\textsuperscript{82} Europe, after two world wars, has achieved lasting peace in the twentieth century, and despite its problems of unemployment, has integrated twenty-seven countries in the context of European Community.

VI. CHINA: THE GIANT OF THE EMERGING COUNTRIES

Among the emerging countries, China is the most prominent. Lee Hsien Loong, describing China in the global context, states that “the explosive growth of China is the most important event of our times. It is China’s participation in the global economy that increases competition, presses the industry and the states, and still dictates the world intensity of change and restructuring.”\textsuperscript{83} The size of China ensures that it will have a

\textsuperscript{78} Id. at 19.
\textsuperscript{79} Id.
\textsuperscript{80} Id. at 20.
\textsuperscript{81} Id.
\textsuperscript{82} KAMDAR, supra note 77, at 21.
\textsuperscript{83} Lee Hsien Loong, Integração em uma nova Ásia: como a ascensão da China modifica a arquitetura internacional, in CHINA POR TODA PARTE 103 (Eberhard Jochem et al. eds., Konrad Adenauer 2006).
major impact on world order with the growth of its economy, but the Chinese system diverges from that of the nations that value democracy, freedom of expression, and a vibrant press.84

The participation of China in the global economy is shifting the center of gravity of the world economy towards Asia. Lee Hsien Loong argues that China has grown faster than any country of its magnitude in history and has benefited from foreign capital, investments, technology, and access to foreign markets. In the opinion of Loong, “China will have to obey international rules and regulations, whether they are trade regulations or guidelines of control of banking systems or business administration.”85 For this purpose, the country still has to play an important role in the decisions of multilateral bodies.

Before making a comparison between emerging countries, it is important to add that the cause of the “slower growth of India compared to China in the 1980s and 1990s may result from the fact that the Indian saving rate was only half of the Chinese.”

The ASEAN, a union of ten Asian countries encompassing a population of 550 million and accounting for ten percent of the world population, forms the third largest GDP in Asia. According to Lee Hsien Loong:

The ASEAN countries have realized how China and India are changing and are about to intensify the connections among them in order to take advantage from/of both. ASEAN countries have also strengthened cooperation amongst themselves so that individual members become more effective partners of China and India instead of being pushed to the margin with the momentum of those countries . . . . However, they do not want this to be an exclusive partnership. They want an independent foreign policy that advances in several directions, while growing economic and political ties with other major countries.86

Loong argues that “due to the participation of China in the global economy, the center of gravity of the world economy has shifted towards Asia. China’s growth alters the relative power of the major powers and, little by little, also the global strategic balance.”87

The intelligence and strategy of China “takes advantage of the energy of the multinational groups for its own purposes, accessing the expertise they have . . . . As an additional factor, China is likely to have a phase of economic expansion longer than Japan.”88 In the view of Frank Sieren, China’s development will take place two times faster than Japan because China makes use of foreign know-how, an outcome which may reach 150

84. Kamdar, supra note 77, at 21.
85. Loong, supra note 83, at 104.
86. Id. at 111.
87. Id. at 104.
88. Frank Sieren, Regime de concubinato: o que a ascensão da China significa para um país como a Alemanha, in CHINA POR TODA PARTE 31, 89 (Eberhard Jochem et al. eds., Konrad Adenauer 2006).
years of growth.\textsuperscript{89}

According to Prem Shankar Jha’s book \textit{India and China: The Battle Between Soft and Hard Power}, containing an October 2003 study on the BRIC countries, it is possible that by 2039, the GDPs of Brazil, Russia, India, and China (BRIC countries) will exceed that of the United States, Great Britain, France, Germany, Italy, and Japan.\textsuperscript{90}

The progress of the economies of the emerging countries has much to do with investments from MNCs. Consequently, we must focus on strategies adopted by these companies in emerging markets.

Indeed, the growth of foreign investment enterprises in China was the key for the development of Chinese international trade. It is affirmed that FDI has become the main element driving Chinese foreign trade growth.\textsuperscript{91}

\section*{VII. THE WORLD OF THE NEW EMERGING COUNTRIES}

In these new times, states are required to play a leading role in creating favorable conditions for the promotion and development of enterprises by promoting an interaction between businesses and governments, thus creating a favorable environment for investment. Therefore, the private sector initiates economic development, with trade being a crucial instrument in the international context.

Globalization has transformed states and global regions so that the world is facing the need for multilateral agencies to regulate international economy through legal frameworks capable of dealing with a real revolution in capital markets, which until now have been subject to economic rules of the “free market.” In today’s globalized economy, multilateral agencies, like the IMF and the WTO, may represent a predominant role in the issuing of rules and dispute resolution.

In this context of competition and uncertainties, third world countries with available raw materials and cheap manpower, combined with growing industrial sectors and capital markets, have started to implement legal frameworks, including tax advantages, in order to attract foreign investments and modern technologies and to be more competitive in the international market. In this environment, emerging countries escape out of the third world with development rates above the world average.

Growth in these countries can be achieved by implementing fiscal policies, investments in infrastructure and stable political systems, and most importantly by strengthening local productive sectors and boosting companies that have now become transnational.

Referring to the emerging countries, Arnaldo Sampaio de Moraes Godoy mentions the lessons of Fernando Herren Aguilar with the follow-

\begin{footnotesize}
\textsuperscript{89} Id. at 59.
\textsuperscript{91} Jian Li & Alan Paisley, \textit{Transfer Pricing Audits in China} 14 (2007).
\end{footnotesize}
ing statements: "[I]t all depends almost equally on emergency funding resources to combat the volatility of financial markets exposed to the international race of capital."92 Such markets are held hostage by large investors moving their capital to countries where interest rates are more attractive. Therefore, "the interest rate policy practiced by economically powerful countries is decisive for the orientation of public policies at the periphery of the capitalist system."93

Concerning the analysis of the emerging markets, Antoine van Agtmael states:

We learned that companies in many emerging markets were often heavily protected by their local governments, not very competitive, and all too quick to take on crippling loads of debt. The traumatic crises of the 1990s in Mexico and Asia changed all of that. Leading companies were forced to become competitive not just in their domestic markets, but on the global stage. . . . The survivors in this struggle for survival of the fittest became better, leaner, more finely focused, [and] less dependent on debt.94

Otto von Bismarck, quoted by Antoine van Agtmael, already described very well the context saying, "[w]orld history, with its great transformation, does not come upon us with the even speed of a railway train. No, it moves in spurts but then with irresistible force."95

VIII. STRATEGIES OF MULTINATIONAL ENTERPRISES IN EMERGING MARKETS: FDI IN BRAZIL

The world is experiencing a new era, and the main characteristics of world trade include a new model of international affairs, based on a world of regional trade agreements, with a strong role of TNCs trading in the globalized world economy; all this implicates the weakening of national and international frontiers and countries' sovereignty.

MNCs are playing a key role in globalization. They are standing out as "organizations of enormous scope" able "to bring together the markets, technology and capital of the developed countries with the production capacity of developing countries."96

Undoubtedly, changes in the productive sector and the shift of capital have encouraged direct investment in third world countries, changing the direction of the global economy. As one can see through the progress of MNCs, according to data from UNCTAD:

About 77,000 multinational companies, from which we can note a growing participation of companies coming from developing countries: from 1998 to 2006, the number of multinational companies in

92. ARNALDO SAMPAIO DE MORAES GODOY, GLOBALIZAÇÃO, NEOLIBERALISMO E DIREITO NO BRASIL 72 (2004).
93. Id.
94. VAN AGTMAEL, supra note 48, at 14.
95. Id. at 15 (internal quotation marks omitted).
96. STIGLITZ, supra note 19, at 197-98.
developed countries increased by 28%, compared to a 117% growth in developing countries and accounting now for 72% and 28%, respectively, of the total of multinationals in the world.97

According to José Eduardo Faria, beginning in the second half of the twentieth century, “a complex and intense phenomenon of transnational companies interactions, where gradually private companies replaced the state as a principal actor, creating something qualitatively different . . . regarding socio-economic order and political-legal regulation.”98

These companies are characterized by political strategies and well-established disciplines described by Antoine van Agtmael as “focus on core activities, outsource noncore activities; become the market leader in major economies; keep costs low and product quality high . . . invest in R&D; hire the best and brightest and keep them motivated; build a strong brand.”99

To overcome the intense competition, they have learned the “best practices” and developed new business models, in addition to several strategies with a special twist of the emerging market.100

Among the strategies for acquisition, merger, or incorporation adopted by large multinationals, there are also important acquisitions by large emerging companies. For example, the Chinese company Lenovo, that produces low-cost computers, bought out the traditional computer division of IBM. Another example, cited by Antoine van Agtmael, was the bid of state-owned China National Offshore Oil Corporation (CNOOC) to acquire the U.S. Unocal operation, which was completed because of contractual and national security issues. In this case, the strategy of Chinese companies has been to acquire resources and celebrated brands in the United States.101 Also, according to Mr. van Agtmael, despite some setbacks, the offers for acquisitions, which were triggered by resources from higher prices of commodities, technology, brands, or projects, have still grown steadily over the past few years.102

Jomo K. Sundaram affirmed that during the 1990s, mergers and acquisitions (M&As) were responsible for most of the FDI. While M&As alone do not add anything to the productive capacity, they contribute to the growing international integration of production.103

According to the World Bank, the ease for a foreigner to open a company in a country is measured by the following criteria:

(a) restrictions on the composition of the board of directors or appointment of managers;

97. CARDOSO, supra note 9, at 30.
98. FARIA, supra note 25, at 62.
99. VAN AGTMEL, supra note 48, at 12.
100. Id. at 56.
101. Id. at 23, 30.
102. Id. at 25, 32.
103. SUNDARAM, supra note 17, at 83.
(b) requirements forcing the use of a local third party (counsel, notary, investment promotion agency) during the establishment process;
(c) possibility of expediting establishment procedures through an official channel (availability of fast-track procedures);
(d) requirement of an investment approval (nature of investment approval requirement, possibility of appeal, minimum required amount of investment, period of validity);
(e) business registration process;
(f) restrictions on holding a foreign currency bank account;
(g) minimum capital requirements; and
(h) availability of electronic services (online laws, regulations, documents, and registration).\textsuperscript{104}

In these new times of national economic development, led by the growth of a globalized economy, Brazil has its place of prominence among the emerging markets. In this framework of growth, the emerging countries create structural facilities to attract foreign direct investors.

A. **NEW FLOW CYCLE OF FDI IN BRAZIL AND THE PARTICIPATION OF TNCs**

This approach is designed objectively to make a brief reference to direct investments in Brazil aimed at the productive sector, which has been standing out as a growing market.

The recovery of FDI in Brazil from 1995 must be a result, at least in part, of a combination of favorable factors such as economic and political stability (Real Plan), reduction of regulation on private investment, regional integration, and privatization.\textsuperscript{105} There is no doubt about the fact that these factors have been predominant in attracting foreign investments. The amount of FDI is related to the positive rates of the economic growth and is normally related to long term planning.

Besides the “profitability” object of its empirical analysis, the increase of FDI in Brazil is connected to the following factors:

(a) economic stability provided by the Real currency plan;
(b) reduction of regulations on private investment;
(c) process of regional integration through MERCOSUR; and
(d) privatizations.

TNCs seek profits in expanding markets taking into consideration the demand for goods and services, infrastructure, level of industrialization, and in particular, the country’s size and degree of regional integration.

Another point that must be emphasized is that political instability has a negative effect on FDI flows; however, the ideology factor is insignificant according to the observations of Schneider and Frey (1985), as stated by


\textsuperscript{105} OROZIMBIO JOSÉ DE MORAES, INVESTIMENTO Direto Estrangeiro no Brasil 80, 145 (Aduaneiras, 2003).
Moraes.\textsuperscript{106} It is necessary to understand, in this analysis, the fact that there is no obstacle in attracting investment to a communist ideology driven country such as China, the largest receptor of FDI among the emerging countries. In this case, it is weighted against the stability of the regime, the regulatory framework, its strategic position in Asia, cheap manpower, and the huge Chinese market.

When installing new plants, TNCs seek facilitation and favor from local governments, \textit{i.e.}, promotion of FDI strategies and tax incentives. To face these challenges, TNCs are increasingly computerized and standardizing their products worldwide, thus obtaining the lowest possible cost (\textit{e.g.}, Ford, Toyota, Nissan, etc.). But it is not just the production and market that are integrated; the headquarters adopt a centralized control, ensuring a seamless integration among the subsidiaries. This centralization includes policies for financing, pricing, technology, R&D, the search for components and raw materials, sales and distribution, product design, production layout, site selection, and human resources policies—with variations between policies. Decisions about the present and the future of these companies, therefore, are determined outside the host countries.\textsuperscript{107}

To achieve their goals quickly, TNCs seek strategies such as M&As abroad, focused on the rising sectors in line with the market or region reality. Antônio Corrêa de Lacerda states that:

Developed countries remain having the biggest part of inflows (U.S. $1.2 trillion), led by the U.S., with U.S. $232.8 billion. In developing countries, FDI received recorded the highest level in history (U.S. $500 billion), an increase of 21\% compared to 2006. Among Latin American countries, Brazil ranked first last year, followed by Mexico and Chile. The high prices of oil and raw materials stimulated the growth of FDI in Latin America and in the Caribbean. For the region, FDI increased 36\% in 2007 compared to the previous year and stood at U.S. $126 billion.\textsuperscript{108}

Brazil has become more reliable for foreign investors because it has a stable democracy and a big internal market opened to new investors. Besides, Brazil has an outstanding regional leadership in the MERCOSUR (Argentina, Uruguay, Paraguay, and more recently Venezuela, and having also as associated members Chile, Bolivia, and Colombia); therefore, it is a thriving continental market with constant growth which has attracted large international companies. Data on FDI in Brazil are from the Central Bank of Brazil and its first Capital Census was in 1995. As one can see from the chart presented by Orozimbo José de Moraes, representing the evolution of foreign capital, FDI began to intensify after 1995.\textsuperscript{109}

\textsuperscript{106.} \textit{Id.} at 154.
\textsuperscript{107.} \textit{Id.} at 134.
\textsuperscript{109.} \textit{See} MORAES, \textit{supra} note 105, at 31.
As it was put by Moraes, the first cycle started during the post-war period corresponding to the classical process of "import substitution industrialization" (ISI). The second cycle occurred with a FDI explosion in the years 1967-73 that was known as a period of the economic Brazilian "miracle," during the implementation of the "Strategic Development Program" (PED) of the Ministry of Planning in 1967. The third cycle began with the implementation of the Second National Development Plan (II PND), launched in 1974, for the adjustment of the Brazilian economy to the two oil crises from 1973 to 1980. The fourth cycle started in 1995 with an expressive wave of FDI. The flow of FDI from 1996 to 1998 exceeded the stock of FDI in 1995, already discounting the value of the inflows from the mass "privatization" of state companies held simultaneously during the period.110

As it can be seen, there was a gap of time from 1964 to 1995, a long period of dictatorship (1964 revolution) and the transition to the democratic regime. The regulations from 2000 are directly connected with the resumption of growth of the national economy and the need to attract foreign capital to meet the new reality of the country.

Brazil has sought to follow the reality of the competitive and globalized world by protecting free competition and suppressing violations against the economic order, as can be seen in the constitutional provisions. Initiatives can be legally taken in order to suppress the abuse of economic power to dominate markets, eliminate competition, and to arbitrarily increase profits. In this vein, the federal government acts in a preventive and repressive manner by means of control mechanisms and legal prac-
tices against the violation of the economic order through regulatory agencies.

There is a consensus that Brazil has become a more business-friendly market, especially compared to China and Russia (other large markets). One may say that the other consensus on Brazil is that there is a strong need for infrastructure improvements, without disregard for institutional structure (legal and tax systems).\footnote{111}

With the growth of world economy and the exponential growth of China in the decade spanning from 2000 to 2010, Brazil became reliable for foreign capital for the following reasons: (i) by paying high interest rates of bonds of the National Treasury, (ii) by having huge reserves of natural resources and increasing scale production of agricultural products, (iii) by instilling political stability, (iv) by increasing growth of its international reserves, and (v) through the use of tax incentives, thus guaranteeing the confidence of international investors. Within this reality, Brazil joins other emerging countries, becoming an open field for FDI.

According to the table depicted below, the emphasis on FDI began in 2000 with the privatization policy of the federal government. The decrease in 2003 occurred with the first year of President Lula’s government, where there was concern among investors regarding the rise of a leftist government. With the confirmation of political stability and continuity of the economic policy, foreign investors returned to invest in Brazil.

The decrease in the percentage of FDI in 2009 occurred as a result of the global crisis of 2008. Brazil, which had its banking system regulated, overcome the crisis quickly. The response was the growth of the economy in 2010, reaching seven percent while FDI reached 48.5 billion.

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<th>FDI BY YEAR (IN $ BILLION)</th>
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Source: Central Bank of Brazil

The figures show the rapid growth of inflows of foreign capital in Brazil. With a more active foreign policy of the government of President Luiz Inácio Lula da Silva and the progress of China’s economy, Brazil has become an attractive field for further foreign investment. In this new environment of the global economic policy, China surpassed Japan’s economy, jumped to the second position, and became the main trading partner of Brazil, followed by the United States and the European Community.

\footnote{111. Liam Denning, *An Amazonian Opportunity for Indonesia*, WALL ST. J., June 20, 2011, at C8.}
According to Professor Lacerda, in an article published in 2006, UNCTAD released a survey conducted among 226 large TNCs on the intentions of future investments. In that survey, Brazil appeared as the fifth preferred destination for TNCs, only behind China, India, the United States, and Russia.\(^{112}\) In 2008, the UNCTAD Report depicted Brazil as the ninth global recipient of FDI, the third in terms of developing countries, overcoming India (12th), but still behind China and Russia.\(^{113}\) Brazil jumped to the fifth position the first semester of 2011, setting a historical record of FDI, with investments in diverse sectors.\(^{114}\)

In terms of economic sectors, FDI in Brazil, in 2010 had the following figures:\(^{115}\)

(a) Agriculture, livestock, and mineral extraction: 34.5%
(b) Industry: 36.8%
(c) Services: 28.7%

On the other hand, since 2004, the Brazilian economy has substantially increased direct investments abroad, and except for in 2009, the investment amount between 2006 and 2010 was between twenty-nine and thirty-five billion dollars per year.\(^{116}\) These numbers show that Brazilian companies are also becoming multinational.

**IX. LEGAL FRAMEWORK RELATED TO FDI IN BRAZIL**

**A. CONSTITUTIONAL FRAMEWORK**

The Brazilian Constitution provides in Article 5, items XXII to XXIXX, a guarantee for property rights. In general, property cannot be taken (expropriation) with proper compensation. Additionally, the situations in which the State can request or take private property are very limited within the scope of the Constitution; however, it states that property shall fulfill its social function. There are also constitutional guarantees for intellectual property rights and other dispositions related to property as follows:

Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

XXII - the right of property is guaranteed;

XXIII - property shall observe its social function; . . .

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112. See Lacerda, *supra* note 108.
116. *Id.*
XXIV - the law shall establish the procedure for expropriation for public necessity or use, or for social interest, with fair and previous pecuniary compensation, except for the cases provided in this Constitution;

XXV - in case of imminent public danger, the competent authority may make use of private property, provided that, in case of damage, subsequent compensation is ensured to the owner;

XXVI - the small rural property, as defined by law, provided that it is exploited by the family, shall not be subject to attachment for the payment of debts incurred by reason of its productive activities, and the law shall establish the means to finance its development;

XXVII - the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish;

XXVIII - under the terms of the law, the following are ensured:
   a) protection of individual participation in collective works and of reproduction of the human image and voice, sports activities included;
   b) the right to authors, interpreters and respective unions and associations to monitor the economic exploitation of the works which they create or in which they participate;

XXIX - the law shall ensure the authors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, property of trademarks, names of companies and other distinctive signs, viewing the social interest and the technological and economic development of the country.

The Constitution in Article 170 provides for the free market and free competition principles among other important economic principles, as follows:

Article 170. The economic order, founded on the appreciation of the value of human work and on free enterprise, is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice, with due regard for the following principles:

I - national sovereignty;
II - private property;
III - the social function of property;
IV - free competition;
V - consumer protection;
VI - environment protection, including by means of different treatments in accordance to the environmental impact of products and services and their respective production and rendering;
VII - reduction of regional and social differences;
VIII - pursuit of full employment;
IX - preferential treatment for small enterprises organized under Brazilian laws and having their head-office and management in Brazil.

Sole paragraph - Free exercise of any economic activity is ensured to everyone, regardless of authorization from government agencies, except in the cases set forth by law.
Article 171 of the 1988 Constitution was revoked by Amendment n. 6 (1995). The revoked text of article 171 would privilege enterprises that were constituted under Brazilian law (Brazilian companies), when the capital was under national control. After Amendment n. 6, there was no distinction between a national and foreign company, except for small enterprises as stated in the aforementioned Article 170, item IX. Article 173 of the Constitution states that “[w]ith the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest, as defined by law.”

Additionally, Paragraph 2 of Article 173 establishes that publicly controlled companies may not enjoy fiscal privileges which are not extended to companies of the private sector.

These constitutional principles are regulated by other laws and regulations that comprise the Brazilian legal framework. In line with Article 173, the Constitution also states that some activities are restricted to government monopolies, foreign ownership, and restricts investment of foreign capital in some businesses. These restrictions are often for national security reasons. For instance, investment of foreign capital in nuclear energy is prohibited (Constitution, Article 21, item XXIII and Article 177, item V); the foreign ownership share of newspaper companies, sound broadcasting companies, and sounds and images broadcasting companies is limited to thirty percent (Constitution, Article 222). There are some restrictions to land acquisition, remarkably in border zones. There was prohibition for foreign vessels to operate coastal and internal navigation for transportation of goods (Article 178), but that was abolished by Constitutional Amendment n. 7 (1998).

Some activities, such as mining mineral resources, the hydrocarbon industry, and passenger transportation are subject to governmental concession, and other businesses, such as financial and insurance companies are subject to specific regulations, which may impose restrictions on foreign investors.

Despite some reasonably few restrictions, the Brazilian constitutional framework is very broad in terms of granting a business-friendly environment, which eases foreign capital to flow to the Brazilian market.

B. FOREIGN BUSINESS IN BRAZIL AND LEGAL FRAMEWORK

This paper does not consider portfolio investments or commercial representation as direct investment. FDI is considered as such only when the foreign investor establishes a Brazilian subsidiary, acquires participation on a pre-existent enterprise (equity acquisition), enters into a consortium with a Brazilian enterprise, or establishes a commercial partnership.

In Brazil, there are different types of legal entities defined by the Civil Code, and companies may operate in various business sectors observing the aforementioned restrictions. In general, a foreign enterprise or for-
eign person (individual) can establish a business in Brazil, and to do so he or she has to be registered as a legal person (juridical entity) with the Trade Boards located in all Brazilian states, or in the Civil Registry of Legal Entities depending on the case. Some activities (e.g., banking) have other specific requirements. Other forms of enterprise organizations are regulated by the Civil Code.

When direct investment is made through a legal entity, the Brazilian Civil Code provides for several forms of legal entities that may perform economic activities. The most common are:

(a) Limited liability partnership (LTDA): This commercial company, which is formed as a partnership, has its capital divided into quotas, and each quota holder is liable only up to the value of his or her quota; however, the quota holders are jointly liable for the entire social capital up to the full payment of the subscribed capital. A LTDA is administrated by one or more persons holding a participation in its capital or not, as appointed by the articles of incorporation or a separated act. This is the most common type of company in Brazil.

(b) Joint stock company (SA): This type of company is in fact a corporation, whether private or public, has its capital divided into shares, and each shareholder is liable only for the issuing price of his or her shares. Non-resident shareholders must have a representative in Brazil (Law No. 6.404/76, article 119). A SA is managed either by a board of directors and administrative council or exclusively by a board of directors (Civil Code, articles 1088 and 1089; Law No. 6.404/76). The directors and members of the fiscal council must be residents in Brazil (Law No. 6.404/76, articles 145, 146, 157, 158, 162, and 163).

Another form of direct investment is made through the system of joint ventures, coming from the United States and spread to become common practice in international investment across the world, mainly in medium and small size businesses. In Brazil, joint ventures occur by the joining of foreign companies in partnership with Brazilian companies with local market knowledge. In these cases, it is common for the foreign companies to be involved with technology, brand recognition, and expertise. The local partner participates with local market knowledge, business practices, and local culture. This combination of businesses makes the new company more competitive in local market.

Establishing the purpose of the enterprise is relevant "because it is based on the corporate purpose that the specific applicable legal rules will be identified in the economic sector where the company acts." It is based

117. This registration is performed all over Brazil through the Public Registration of Commercial Companies – SINREM. Registration takes place at the Public Trade Registrar in each State of the Brazilian Federation. It is supervised by the Trade Registration National Department – DNRC, of the Ministry of Development, Industry and Trade – MDIC (Law No. 8.934/94, articles 4 to 6).
on the corporate purpose that the company will be subject to surveillance, according to what is determined by regulatory agencies and other government administrative entities, such as the ANEEL (Brazilian Electricity Regulatory Agency), the ANP (National Agency of Petroleum, Natural Gas and Biofuels), the ANS (National Health Insurance Agency), the ANTT (National Agency of Terrestrial Transport), the ANVISA (National Health Surveillance Agency), the ANATEL (Brazilian Agency of Telecommunications), and the BCB (the Central Bank of Brazil). It is affirmed that:

Among the activities with a more accentuated regulation by the Brazilian authorities we could name as examples: the oil and gas industry, the research and mining of mineral resources, health and general insurances, and the activities of banking institutions, telecommunications services, supply of electric power, the pharmaceutical and foodstuffs industry, and the railroad exploitation.

1. Legal Framework for Direct Foreign Investment

Foreign investment in Brazil is regulated by Law No. 4.131 of September 3, 1962, which regulates the application of foreign capital, the remittance of profits and capital abroad, and other measures.

This law regulates important issues, such as the non-discrimination clause, establishing that foreign investors allocating their resources in the country will have the same legal treatment given to national capital on equal terms (art. 2 of Law No. 4.131/62). It is clear that resources must be owned by individuals or legal entities resident, domiciled, or headquartered abroad through the ownership of shares or quotas of the capital of Brazilian companies, as well as the capital of foreign companies allowed to operate in Brazil.

For a better understanding, the following is a roadmap of the existing legislation:

(a) Law No. 4.131 of September 3, 1962 (Regulates the application of foreign capital and remittances abroad and provides other measures);
(b) Law No. 4.390 of August 29, 1964 (Amends Law No. 4.131 of September 3, 1962 and provides other measures);
(c) Law No. 4.595 of December 31, 1964 (Regulates Policy and Monetary, Banking and Credit Institutions and creates the National Monetary Council and other matters);
(d) Decree No. 55.762 of February 17, 1965 (Sets down regulations with regard to Law No. 4.131/1962, as amended by Law No. 4,390/1964);
(e) Resolutions (BACEN) No. 2689 of January 26, 2000;
(g) Official Circular (BACEN) No. 2.997 of August 15, 2000;

118. AMCHAM BRASIL, HOW TO ESTABLISH A COMPANY IN BRAZIL 13-14 (2010).
119. Id. at 14.
(h) Resolution (BACEN) No. 2.689/2000;
(i) Law No. 5.709 of October 7, 1971 (Regulates the acquisition of rural real estate by foreigners resident in the country or by foreign legal entities authorized to operate in Brazil and adopts other measures);
(j) Law No. 6.404 of December 15, 1976 (Regulates joint stock companies);
(k) Provisional Measure No. 2.224 of September 4, 2001 (Establishes fines related to the information on Brazilian capital abroad and provides other measures);
(l) Law No. 10.406 of January 10, 2002 (Establishes the Civil Code);
(m) Provisional Measure No. 315 of August 11, 2006 (Describes exchange operations, registration of foreign capital, payment in shops located in areas of primary port or airport, taxation of commercial lease of aircraft, and the novation of contracts);
(n) Law No. 11.371 of November 28, 2006 (Regulates exchange operations, registration of foreign capital, and other measures);
(o) Resolution (BACEN) No. 3.455 of May 30, 2007.120

It is worth mentioning that Article 1 of Law No. 4.131/1962 states that goods, machinery, and equipment entering Brazil, with no initial outlay of foreign currency, which are to be used in the production of goods and services, are to be considered foreign capital, as should the financial or monetary resources brought to the country for investment in economic activities, provided that in both cases, they belong to individuals or legal entities domiciled or with head offices abroad.

The legislation mentioned above has been the legal basis of guidance to investors in Brazil. Other changes were made to improve the legal environment, such as the new bankruptcy regulation by Law No. 11.101 of February 9, 2005. Another example is the revocation of Law No. 6.813/1980 that reserved exploitation of highway cargo transportation to autonomous Brazilian transport companies by Law No. 11.441 of January 5, 2007.

Starting January 1, 1996, remittance of profits and dividends abroad became tax-exempt, thus changing the traditional source taxation on those types of remittance (Law No. 8.249 of December 26, 1995).121

C. REGISTRATION OF FOREIGN CAPITAL IN BRAZIL

According to Law No. 4.131/1962 and the provisions of Circular 2.997/2000, all foreign investments in the Brazilian economy are subject to registration and verification by the BCB (declaratory registration filled out by the investor). This capital must be registered through the RDE - IED

120. GEORGE AUGUSTO NIARADI, INVESTIMENTOS ESTRANGEIROS DIRETOS NO BRASIL: CARTILHA – ANÁLISE DA LEGISLAÇÃO APLICADA 16 (2008).
121. Actually, the tax exemption is applicable also to dividend and profit distribution to residents. Law No. 8.249 of December 26, 1995 changed the corporate tax approach by eliminating the double economic taxation.
(Electronic Declaratory Registration - Direct Foreign Investment), which integrates the information system of the Central Bank (SISBACEN).

Registration is mandatory and regulated by Resolution 3.455/2007 of the Central Bank, combined with Law No 11.371/2006, regardless of date of entry of foreign participation in the capital of the Brazilian company receiving the investment. The repatriation of capital and remittance of profits and dividends depends upon registration.

In accordance with Article 6, paragraph 1, letter “a” of Resolution 3.455/2007, the person responsible for completing the registration form (legal agent of the Brazilian company and of the non-resident investor) is also responsible for registering data and maintaining documentation for five years from the date of the registration in the RDE module.

Therefore, before the beginning of any operation, the non-resident investor must appoint one or more representatives in the country and obtain registration with the Securities and Exchange Commission in accordance with Article 2, paragraph 1 of Resolution 20.689/00.

The BCB has the responsibility of promoting registration, covering the following topics:

(a) Investments in currency;
(b) Investments in assets, denominated as consisting of tangible or intangible assets, and import without exchange cover;
(c) Conversion, direct investments, and/or credits may be remitted abroad;
(d) Reinvestment by profits capitalization, interest on equity, and profit reserves;
(e) Capitalization of capital reserves and of revaluation;
(f) Reapplication of capital and FDI income existing in the country;
(g) Corporate reorganization resulting from incorporation, merger, and division; exchanges and conference of pieces of shares or quotas; allocation and remittance abroad of funds classified as return of capital arising from sale of shares of companies to residents in the country, reduction of capital to refund the member or liquidation of the company, or can be classified as dividends, profits, or interest on owned capital;
(h) Changes involving alterations in characteristics of FDI and/or equity of the company receiving the investment;
(i) Economic and financial information.

Any person or entity performing commercial and financial transactions with the foreign countries must be registered in SISBACEN through PEMPS500 code, and the consultation will be made by PEMPS600, as stipulated in Circular 2.997/00.

It is important to reiterate here that the registration of investments is electronically made with the BCB (SISBACEN); entering data and information through the representative(s) of the company receiving the foreign investment and the non-resident investor.

This registration requires the national company receive from the creditor and prospective investors the following:

(a) A statement previously setting the maturity of the installments and the respective amounts to be converted and, in case of interest and other charges, the period the taxes referred to and the calculations used; and

(b) An irrevocable declaration of the creditor agreeing to the conversion.

The aforementioned registration conducted by the beneficiary Brazilian company or by the representative of the foreign investor shall enter into force within thirty days from the closing of the exchange agreement (Article 5 of Law No. 4.390/64).

1. Reinvestment of Profits

The registration of FDI must be made in the currency of the country of origin, and the reinvestment of profits must be made in both national currency and in the currency of the country to which they could have been remitted under the applicable exchange rate. (Article 4 of Law No. 4.390/64). When it comes to investments carried out by funds from existing bank accounts in Brazil, the registration shall be made in national currency and updated at the RDE-IED module.

According to the wording in Law No. 4.390/64, the term "reinvestment" within Article 7 means the profits earned by companies established in the country and paid to resident and domiciled abroad and which have been reinvested in the same company from which they came or in another sector of the national economy.

It is also worth mentioning that in cases where the investor holds the registration, there will be no need for prior permission from the BCB, whereas for resources not registered in the RDE-IED system, investment must be subject to prior approval from the BCB’s Department of Surveillance of Illegal Activities and Supervision of Foreign Exchange and International Capital Flows (DECIC).

D. International Legal Framework

Brazil does not have bilateral investment treaties (BITs) in force, although some treaties are currently pending congressional approval.123

123. See Débora Bithiah de Azevedo, Os acordos para a promoção e a proteção recíproca de investimentos assinados pelo Brasil 4, 6-8, 12 (2001), available at http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/2542/acordos_promocao_azevedo.pdf?sequence=1 (discussing pending treaties with Germany, France, the United Kingdom, Switzerland, Chile, and Portugal); see generally Jeswald W. Salacuse & Nicholas P. Sullivan, Do BITs Really Work?: An Evaluation of
However, Brazil is part of twenty-nine bilateral double tax agreements, and four more have been negotiated and are pending congressional approval.

Dispute resolution is an important aspect that affects foreign investment. Below is a list of important conventions related to foreign investment and the Brazilian position:

(a) Convention on the International Centre for Settlement of Investment Disputes (ICSID). Brazil is not a party.
(b) Multilateral Investment Guarantee Agency (MIGA). Brazil is a party.
(c) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Brazil is a party.
(d) Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards. Brazil is a party.
(e) Inter-American Convention on International Commercial Arbitration. Brazil is a party.

Brazil is also part of the MERCOSUR (a multilateral economic integration agreement, which currently is a customs union comprised of Brazil, Argentina, Paraguay, Uruguay, and more recently Venezuela, the one country which is not yet fully integrated; Chile and Bolivia have the status of associated members). The MERCOSUR itself expands the potential market, thus working as an incentive to foreign investment in the region. MERCOSUR framework also uses dispute resolution mechanisms.

As a member of the WTO, Brazil is also part of the Agreement on Trade-Related Investment Measures (TRIMs), which is part of the international legal framework governing FDI related to production and trade of goods (it is not applicable to services).

X. FINAL REMARKS

The emerging countries set up policies to attract foreign investment in order to leverage their development. From the 1980s, the so-called “BRIC countries” began to use their economic growth—above the world average—to take a more relevant position in the international order and to increase FDI.

Some factors were crucial to the progress of the so-called “emerging countries.” It is noteworthy that large international corporations exploited the increasing integration of global markets because this changed the behavior of states, mainly in emerging markets. In turn, these states
started to use mechanisms to minimize legal barriers, building up a more secure business environment, and reducing the tax burden on such operations in order to attract foreign investment more efficiently.

As it was put by Eduardo Felipe P. Matias, legal globalization, international organizations for cooperation, and regional integration created new rules and institutions of an international, transnational, and often, supranational nature. The situation has increased security for investment by multinationals outside the developed countries, raising the potential for global insertion of the BRICs' economies.

In this context, Brazil made the decision to open the economy and pursue trade liberalization that resulted in some positive impacts: (i) the measures proposed by the tariff reform helped to regulate the domestic supply and price controls; (ii) productivity from innovation increased because of competition pressure; (iii) companies started importing more modern capital goods with more technological content; (iv) the agricultural sector has been modernized and become more globally competitive; and (v) closer trade ties developed with other countries, especially those neighboring.

The growth in these countries, not only in Brazil, still occurs through the implementation of tax policies, investments in infrastructure, stable political systems, and especially by the strengthening of local productive sectors and by the progress of national companies which are becoming transnational companies.

On the other hand, with the creation of the G-20, mutual cooperation and gradual political alignment between these groups of countries in major international negotiations has also strengthened the capacity of the BRIC countries to influence decision-making in international strategic forums.

The future and permanent challenge of this group of countries, with large territories and populations increasingly influential in the international order, is to be able to equate accelerated economic growth with income distribution, and respect for the environment. In the case of Brazil, Russia, and India, there are issues at stake regarding the ability of large democracies to guarantee to all their citizens, including the poorest ones, freedom to realize their full human potential.

On the other hand, China, with all the advantages of its low cost industrialization, progresses in an enviable growth, attracting investments from around the world. The Chinese dragon became the locomotive of the twentieth century. Now, Brazil should have the balance and the appropriate strategy to take advantage of its natural resources, modernize its industry, and ensure legal security to investors on their investments. In terms of FDI, Brazil is achieving its goals by continuously increasing such

126. Matias, supra note 6, at 196.
127. Id. at 101.
influx. It is noteworthy that economic stability and fiscal discipline play an important role in this performance.

The effects of the ongoing fiscal crisis of the developed economies in FDI for the emerging countries, namely the BRIC countries (now BRICS), are yet to be seen.