

Applying the WTO to Developments in International Law and New Global Challenges

Jorge Eudoro Romero Oviedo¹, Lenin Stalin Fuentes Gavilanez¹,
Miriam Elizabeth Freire León², Cintya Lisbeth Tello Nùñez¹

¹*Universidad Nacional de Chimborazo*

²*Sin institución*

Email: eudoro.romero@unach.edu.ec

A documentary review was carried out on the production and publication of research papers related to the study of the WTO and International Law variables. The purpose of the bibliometric analysis proposed in this document was to know the main characteristics of the volume of publications registered in the Scopus database during the period 2018-2023 by Latin American institutions, achieving the identification of 38 publications. The information provided by this platform was organized through graphs and figures categorizing the information by Year of Publication, Country of Origin, Area of Knowledge and Type of Publication. Once these characteristics have been described, the position of different authors regarding the proposed theme is referenced through a qualitative analysis. Among the main findings made through this research, it is found that Brazil, with 24 publications, was the country with the highest scientific production registered in the name of authors affiliated with institutions in that nation. The Area of Knowledge that made the greatest contribution to the construction of bibliographic material related to the study of the WTO and International Law variables was Social Sciences with 35 published documents, and the most used Type of Publication during the period indicated above were Journal Articles with 42% of the total scientific production.

Keywords: WTO, International Law, Global Challenges, Economy.

1. Introduction

In the process of development and evolution of the International System, they have been marked by innumerable events that have marked the history of humanity, shaping its current world scenario. In this sense, it has been necessary to structure a set of canons, or patterns of behavior between States. (Cancelado, 2007)

Although States are the main actors in the International System, they remain the only ones capable of establishing these patterns of action or behavior that seek to regulate their relations,

that is, to create Law. In other words, the state is the creator of International Law, as well as its main beneficiaries. According to "International law exists because it is a social necessity, whose virtuality has been shaped by historical experience, international jurisprudence and the practice of the founding states of international society" (Brotons, 1982)

On the other hand, the World Trade Organization (WTO) has represented a figure of evolution present in the face of International Rights, especially within global trade. In accordance with this, the WTO has been in charge of regulating rules that allow a trade relationship between States, thus reflecting a complexity of economies worldwide.

According to the principles of International Law, regarding the settlement of international disputes by peaceful means, we find the application of several sections of the WTO treaty:

Most Favored Nation (MFN), equality for all. This agreement states that: Under the WTO Agreements, countries cannot normally discriminate between their various trading partners. If a country becomes aware of a special advantage (e.g., a reduction in the tariff rate applicable to one of its products), it must be done with the other members of the WTO.

Another principle of international law refers to the fulfilment in good faith of the obligations contracted by the States, which establishes that:

The agreements and related legal instruments "Multilateral Trade Agreements" are part of the integration of the Agreements and are binding on all members."

WTO regulations and the principles of international law have not only been essential to the functioning of the Foreign Trade System. In addition, it allows emerging challenges in sectors such as the economy, international trade and other entities to be addressed at a global level. For this reason, this article seeks to describe the main characteristics of the compendium of publications indexed in the Scopus database related to the variables WTO and International Law, as well. Such as the description of the position of certain authors affiliated with institutions, during the period from 2018-2023.

2. General Objective

To analyze, from a bibliometric and bibliographic perspective, the preparation and publication of research papers in high-impact journals indexed in the Scopus database on the WTO and International Law variables during the period 2018-2023 by Latin American institutions.

3. Methodology

This article is carried out through a mixed orientation research that combines the quantitative and qualitative method.

On the one hand, a quantitative analysis of the information selected in Scopus is carried out under a bibliometric approach of the scientific production corresponding to the study of the WTO and International Law variables. On the other hand, examples of some research works published in the area of study indicated above are analyzed from a qualitative perspective, based on a bibliographic approach that allows describing the position of different authors

regarding the proposed topic. It is important to note that the entire search was carried out through Scopus, managing to establish the parameters referenced in Figure 1.

3.1. Methodological design



Figure 1. Methodological design

Source: Own elaboration

3.1.1 Phase 1: Data Gathering

Data collection was carried out from the Search tool on the Scopus website, where 38 publications were obtained from the choice of the following filters:

TITLE-ABS-KEY (wto, AND international AND law) AND PUBYEAR > 2017 AND PUBYEAR < 2024 AND (LIMIT-TO (AFFILCOUNTRY , "Brazil") OR LIMIT-TO (AFFILCOUNTRY , "Mexico") OR LIMIT-TO (AFFILCOUNTRY , "Colombia") OR LIMIT-TO (AFFILCOUNTRY , "Chile") OR LIMIT-TO (AFFILCOUNTRY , "Argentina") OR LIMIT-TO (AFFILCOUNTRY , "Peru") OR LIMIT-TO (AFFILCOUNTRY , "Ecuador") OR LIMIT-TO (AFFILCOUNTRY , "Cuba"))

- Published documents whose study variables are related to the study of WTO and International Law variables.
- Limited to the period 2018-2023.
- Limited to Latin American countries.
- Without distinction of area of knowledge.
- Without distinction of type of publication.

3.1.2 Phase 2: Construction of analysis material

The information collected in Scopus during the previous phase is organized and then classified by graphs, figures and tables as follows:

- Co-occurrence of words.
- Country of origin of the publication.
- Area of knowledge.
- Type of publication.

3.1.3 Phase 3: Drafting of the conclusions and final document

In this phase, the analysis of the results previously yielded is carried out, resulting in the determination of conclusions and, consequently, the obtaining of the final document.

4. Results

4.1 Word co-occurrence

Figure 2 shows the co-occurrence of keywords found in the publications identified in the Scopus database.

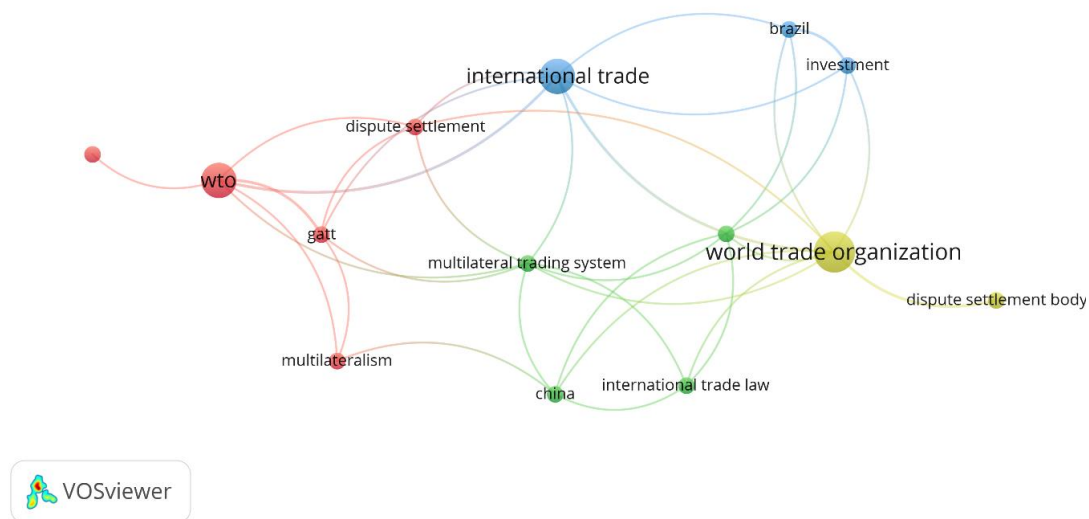


Figure 2. Word co-occurrence

Source: Own elaboration (2024); based on data exported from Scopus.

OMC was the keyword most frequently used within the studies identified through the execution of Phase 1 of the Methodological Design proposed for the development of this article. International Treaty is among the most frequently used variables, associated with variables such as International Trade Organizations, International Trade Law, Investment, Sustainable Development, and International Law. From the above, it is striking that in the international legal framework the WTO represents a fundamental body in the international scenarios, where trade between States must be governed by previously established rules and agreements. Therefore, the WTO has played a crucial role in shaping international law, as it must adapt to the changes and current global challenges that have arisen in an increasingly interconnected world. This correlation reflects the complexity of international relations and the need to adapt to changes, as well as to be able to provide a broader panorama of international systems and regulations.

4.2 Distribution of scientific production by year of publication

Figure 3 shows how scientific production is distributed according to the year of publication.

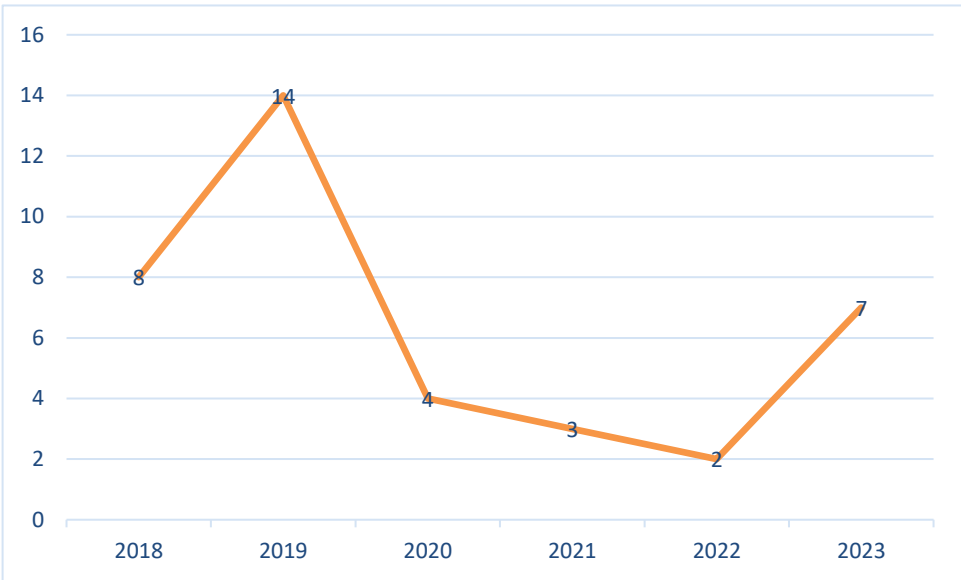


Figure 3. Distribution of scientific production by year of publication.

Source: Own elaboration (2024); based on data exported from Scopus

Among the main characteristics evidenced by the distribution of scientific production by year of publication, an increase in the number of publications registered in Scopus during the years 2019 is notorious, reaching a total of 14 documents published in journals indexed on this platform. This can be explained thanks to articles such as the one entitled "China's foreign trade policy within the GATT-WTO: Parallel or shadow institutionalism?" This article analyzes the underlying reasons why this country, despite its late insertion into the Multilateral Trading System, has a relevant influence today. In fact, this influence of China has generated a scenario of regionalism both in Asia-Pacific and with other strategic partners. All this, in addition to also evidencing a progressive "shadow institutionalism". Thus, all this previous situation means that there is a real primacy achieved by China in today's world that also tends, in certain circumstances, to tarnish and even undermine the role of the GATT-WTO paradigm and its logic of multilateralism. Consequently, this implies a particular scenario that suggests a whole parallel model of authority that affects the dynamics of international relations.(González-Parías, 2023)

4.3 Distribution of scientific production by country of origin.

Figure 4 shows how scientific production is distributed according to the nationality of the authors.

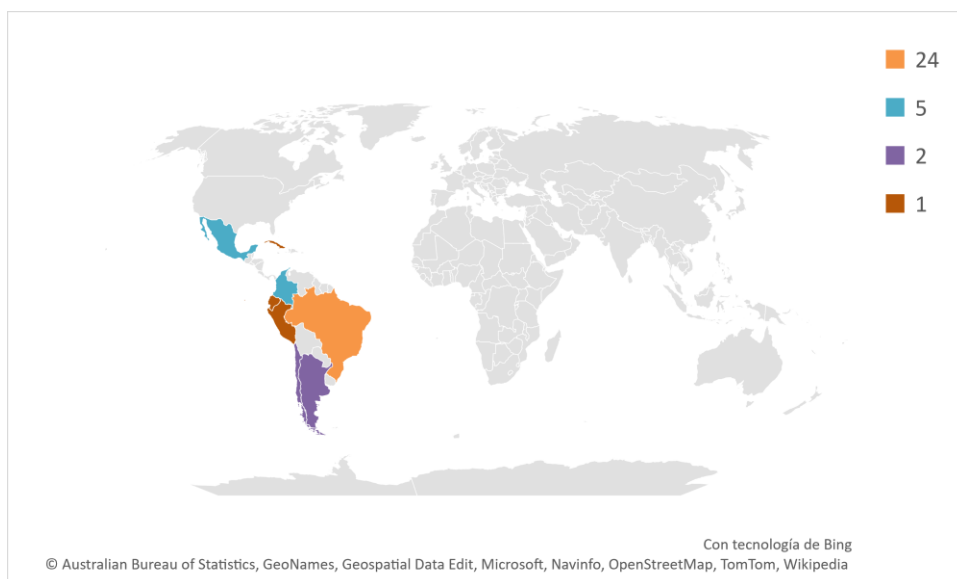


Figure 4. Distribution of scientific production by country of origin.

Source: Own elaboration (2023); based on data provided by Scopus.

Within the distribution of scientific production by country of origin, records from institutions were taken into account, establishing Brazil as the country of that community, with the highest number of publications indexed in Scopus during the period 2018-2023, with a total of 24 publications in total. In second place, Mexico and Colombia with 5 scientific papers, and Chile and Argentina in third place presenting to the scientific community, with a total of 2 papers including the article entitled "Improving the Effectiveness of the WTO Dispute Settlement System and Monetary Compensation" This article examines the effectiveness of the suspension of concessions or other obligations taking into account the interpretation of the objectives of such a measure by WTO doctrine and jurisprudence. To understand whether the suspension of concessions contributes to the effective implementation of the decisions and recommendations of the WTO DSB, the article adopts the theoretical concept of technical efficiency. On the basis of an argument based on WTO doctrine and an analysis of cases decided by the WTO DSB in which the measure was applied, the study demonstrates that suspension of concessions is only partially effective for DSB compliance proceedings. In this regard, it is suggested that the DSU adopt the institution of reparation, present in Public International Law, aiming to establish the obligation to compensate for the damages caused throughout the dispute settlement procedure, due to the continuation of the illegal practice by the transgressor. member. The article concludes, therefore, with a proposal to include retroactive monetary compensation in the DSU, to strengthen its compliance procedure and to make the WTO's DSS more effective.(de Oliveira, brasil)

4.4 Distribution of scientific production by area of knowledge

Figure 5 shows the distribution of the preparation of scientific publications based on the area of knowledge through which the different research methodologies are implemented.

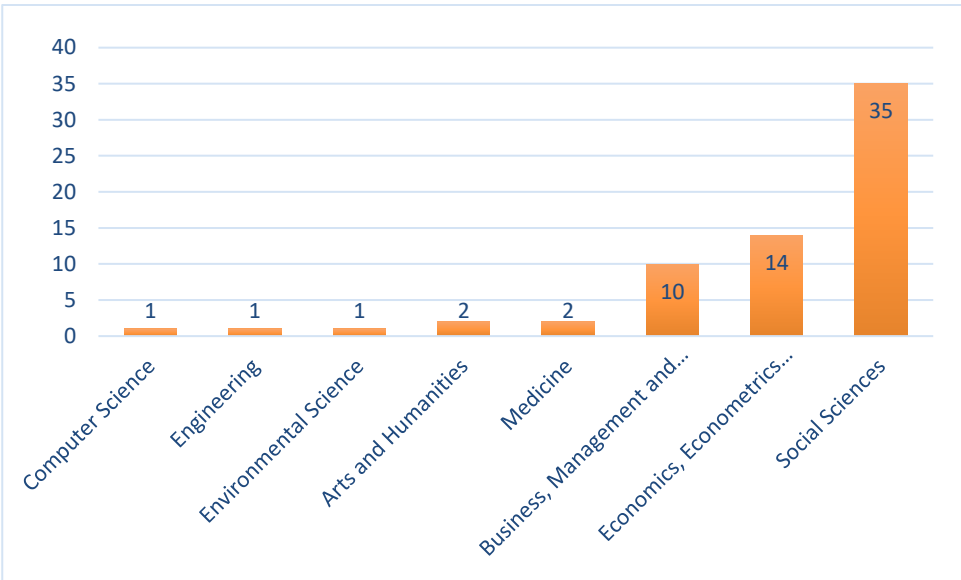


Figure 5. Distribution of scientific production by area of knowledge.

Source: Own elaboration (2023); based on data provided by Scopus.

Social Sciences was the area of knowledge with the highest number of publications registered in Scopus with a total of 35 documents that have based its methodology WTO and International Law. In second place, Economics, Econometrics and Finance with 14 articles and Business, Commerce and Accounting in third place with 10. This can be explained thanks to the contribution and study of different branches, the article with the greatest impact was registered by Ciencias Sociales entitled "Article XXI of the GATT and aggression: towards an interpretation compatible with the unity of the international legal order" This article argues that the rules of the World Trade Organization (WTO) are affected by the seriousness of aggression and the consequences of its prohibition in international law. In this regard, Article XXI of the General Agreement on Tariffs and Trade (GATT), by permitting the adoption of measures necessary for the protection of the essential security interests of a State "in times of war", must be interpreted in the light of general provisions on aggression. This objective will necessarily lead us to consider whether the organs of the WTO dispute settlement system (DSS) are competent to understand, in a situation of aggression and, in general terms, what implications (mainly legal, but also institutional) and political implications the violation of jus cogens has occurred in a dispute before the DSS. To this end, this research explores the content and scope of Article XXI of the GATT and its interpretation, in particular, of the meaning of the term "war" in subparagraph b, subparagraph iii, and then considers the implications of its possible application in the light of international rules on aggression and the competence of SSD bodies in this regard. The article assesses the alternatives that a panel might face in the face of an invocation of Article XXI by an aggressor State and, rejecting the possibility of an isolated interpretation and application of the provision of the rules on aggression, explores possible solutions that the panel can enter, maintaining the balance between the effectiveness of the system and the unity of the legal order.(Pezzano, 2021)

4.5 Type of publication

In the following graph, you will see the distribution of the bibliographic find according to the type of publication made by each of the authors found in Scopus.

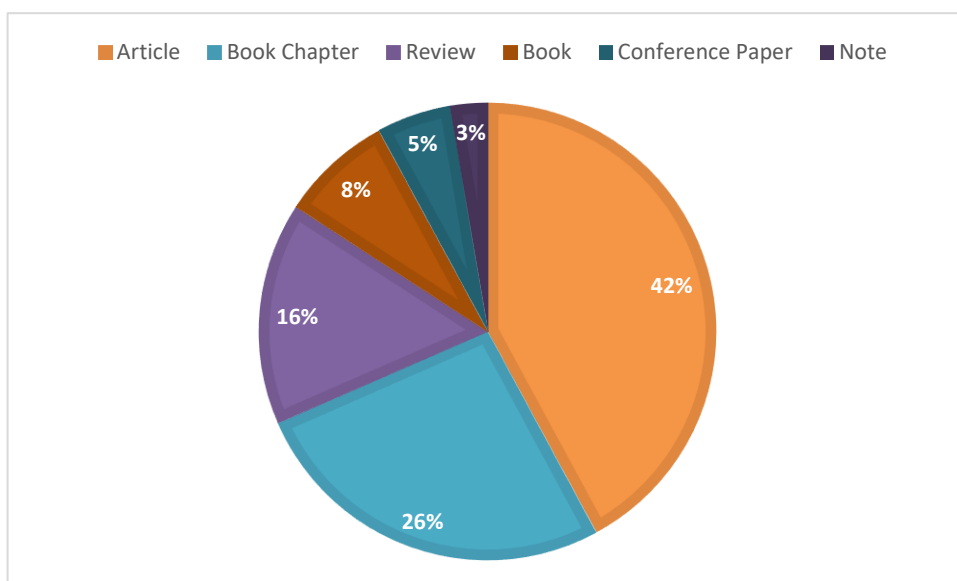


Figure 6. Type of publication.

Fountain: Own elaboration (2023); based on data provided by Scopus.

The type of publication most frequently used by the researchers referenced in the body of this document was the Journal Article with 42% of the total production identified for analysis, followed by Book Chapter with 26%. Journal are part of this classification, representing 16% of the research papers published during the period 2018-2023, in journals indexed in Scopus. In this last category, the one entitled "The role of public international law in the WTO: how far can we go?" stands out. How does the World Trade Organization (WTO) relate to the broader body of public international law? What, in turn, is the role of public international law in WTO dispute settlement? This article aims to resolve these two difficult questions. Simple answers to these cannot be found in WTO rules. However, answering them has important ramifications for both the WTO (is the WTO largely an "autonomous regime" or not?) and international law (is the future of international law greater fragmentation or greater unity?). This exercise will be carried out in accordance with the law as it is in force today, i.e., the law as it can currently be invoked before the WTO's "judiciary" (panels and the Appellate Body). Of course, WTO members (i.e., the WTO "legislator") could clarify or change the relationship between WTO rules and other rules of international law. However, such changes are unlikely to occur anytime soon. In Part I, I examine the general relationship between public international law and WTO law. I then assess, more specifically, the role of public international law in WTO dispute settlement in Part II and offer some conclusions in Part III. (Pauwelyn, 2017)

5. Conclusions

Through the bibliometric analysis carried out in this research work, it was possible to establish that Brazil was the country with the highest number of published records for the WTO and International Law variables. With a total of 24 publications in the Scopus database. In the same way, it was possible to establish that the application of theories framed in the area of Social Sciences, based on the results obtained through bibliometric analysis, it can be concluded that the knowledge of international norms, within the framework of relations between States, constitutes an essential tool in order to strengthen international systems; emphasizing the framework of the strengthening and rise of integration schemes that have Gradually eradicate functions from the states.

Respect in the application of the principles of international law is a fundamental requirement for an adequate interaction of States as the main subjects of law in the international arena.

The WTO faces a number of obstacles as it is forced to balance the interests of its various members, including both developing and developed economies. Likewise, the organization must comprehensively address emerging issues, such as the effect of e-commerce, environmental sustainability, and global distribution.

Therefore, the applications of these principles, in the context of supranational organizations such as the WTO, do not represent a loss of sovereignty for states. On the contrary, it must be the subject of analysis as a fact that evidences the transformations to which the state must be subject in order to be able to adapt to the imposed dynamics, and the volatilities found by the effects of globalization.

References

1. Brotons, A. (1982). Public International Law. Madrid: Tecnos.
2. Cancelado, H. (2007). The Networks of Power in the International System, Analysis from the Colombian Case.
3. de Oliveira, L. M. (Brazil). Improving the effectiveness of the WTO dispute settlement system and monetary compensation. 2023.
4. González-Parias, C. H.-R.-B. (2023). Chinese foreign trade policy within the GATT-WTO: Parallel or shadow institutionality? Colombia.
5. Pauwelyn, J. (2017). The role of public international law in the WTO: how far can we go?
6. Pezzano, L. (2021). Article XXI of the GATT and Aggression: Towards an Interpretation Compatible with the Unity of the International Legal Order. ARGENTINA.
7. World Trade Organization. (2017). News. [Online] February 22, 2017. [Cited on: January 13, 2020.]
8. https://www.wto.org/spanish/tratop_s/tradfa_s/tradfa_s.htm.
9. World Trade Organization. (2018). WTO. [Online]. [Cited on: January 13, 2020.] https://www.wto.org/spanish/thewto_s/whatis_s/tif_s/utw_chap3_s.pdf.
10. World Trade Organization. (2019). WTO. News. [Online] October 18, 2019. [Cited on: January 13, 2020.]
11. https://www.wto.org/spanish/news_s/news19_s/roi_18oct19_s.htm.
12. Osorio Arcilla, C. (1995). Dictionary of International Trade. Mexico: Grupo Editorial Iberoamérica. p. 48.

13. Quintana Adriano, E. (1989). Mexico's Foreign Trade, Legal Framework, Structure and Policy. Mexico: A. PORRÚA - UNAM.
14. RAMACCOTI, B. (1993). International Economic Law. Pontificia Universidad Católica del Perú. Lima: Fondo Editorial.
15. Pinelopi Koujianou Goldberg. (2019). The Future of Commerce. Policies can help shape the future of a system. Finance and Development. [Online] June 2019. [Cited on: January 12, 2020.]
16. <https://www.imf.org/external/pubs/ft/fandd/spa/2019/06/pdf/the-future-of-global-trade-goldberg.pdf>.
17. Bridge. (2018). Without the United States and China, countries discuss WTO reform. Analysis and Information on Trade and Sustainable Development for Latin America. [Online] October 26, 2018. [Cited on: January 13, 2020.] <https://www.ictsd.org/bridges-news/puentes/news/sin-estados-unidos-y-china-pa%C3%ADses-discuten-reforma-de-la-omc>.
18. Sampa G. (2009) N. G. International arbitration. Current issues. JM Bosh Editor.
19. Sarmiento González, R. and Vilches Vivancos. (2016). F. Administrative Legal Language. A language of specialty. 2nd ed. Madrid: Dyckinson
20. SELDON PENNACE. (1995). Dictionary of Economics. 4th ed. QUITO (ECUADOR): s.n.
21. SMITH H. & NISHIJIWA, S. (1997). Cooperation or rivalry? (regional integration in the Americas and the Pacific Basin), CIDAD (Center for Research for Development A.C.). Mexico: A. Porrúa. pp. 15.16
22. Torres R. (1987). Theory of International Trade, Mexico, Siglo veintiuno editores.
23. VANGRASSTEK, C. (2013). History and future of the World Trade Organization. Geneva: Service Concept