

# BRAZIL

## TRADE SUMMARY

The U.S. goods trade surplus with Brazil was \$11.4 billion in 2010, an increase of \$5.4 billion from 2009. U.S. goods exports in 2010 were \$35.4 billion, up 35.5 percent from the previous year. Corresponding U.S. imports from Brazil were \$23.9 billion, up 19.2 percent. Brazil is currently the 8th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were \$12.7 billion in 2009 (latest data available), and U.S. imports were \$4.8 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$24.1 billion in 2008 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$1.1 billion.

The stock of U.S. foreign direct investment (FDI) in Brazil was \$56.7 billion in 2009 (latest data available), up from \$44.5 billion in 2008. U.S. FDI in Brazil is led by the manufacturing and finance/insurance sectors.

## IMPORT POLICIES

### Tariffs

Brazil's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 11.6 percent in 2010. Brazil's average bound tariff in the WTO is significantly higher, at 31.4 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in Brazil's market because the government has the ability to raise applied rates to bound levels in an effort to manage prices and supply. Average applied tariffs in Brazil have risen by three percentage points since 2007, and are imposed on the vast majority of imports. These high *ad valorem* tariffs affect U.S. exports across diverse sectors including automobiles, auto parts, electronics, chemicals, plastics, textiles, and apparel.

Throughout 2009 and 2010, Brazil increased import tariffs on hundreds of industrial products, including electrical machinery, machine tools, automotive parts, telecommunications equipment, crane lorries, textiles and leather, and toys.

Brazil is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region that transit at least one MERCOSUR member before reaching their final destination. In December 2009, Brazil, along with the other MERCOSUR members, approved tariff increases for hundreds of products in the CET, including dairy, textiles, and bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the WTO bound levels.

Brazil is permitted by MERCOSUR to maintain 100 exceptions to the CET until December 31, 2015, and maintains higher tariffs than its MERCOSUR partners on certain goods, including cell phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, sardines, and mushrooms.

## **Nontariff Barriers**

Brazil applies federal and state taxes and charges to imports that can effectively double the actual cost of imported products in Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges to U.S. companies operating in Brazil.

A number of imports are prohibited, including foreign blood products and all used consumer goods, such as automobiles, clothing, and tires, as well as used medical equipment and information and communications technology products. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment) through onerous import licensing procedures. In general, Brazil only allows the importation of such goods if an importer can provide evidence that they are not or cannot be produced domestically. A 25 percent merchant marine tax on long distance freight at Brazilian ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals via mail and express shipment, which go through a simplified customs clearance procedure called RTS (simplified tax regime). Goods with a value of over \$3,000 cannot be imported using this regime.

## **Import Licensing/Customs Valuation/Trade Remedies**

All importers must register with the Secretariat of Foreign Trade (SECEX) to access Brazil's "SISCOMEX" computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement. However, the SISCOMEX system, updated in early 2007, has cut the wait time for import-export license processing almost in half. Fees are assessed for each import statement submitted through SISCOMEX. Brazil has both automatic and non-automatic import license requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to non-automatic import licensing procedures is available on the SISCOMEX system, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures can create additional burdens for U.S. exporters.

U.S. companies continue to complain of onerous and burdensome documentation requirements, which are required before certain types of goods can enter Brazil even on a temporary basis. For example, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes from three months to six months for new versions of existing products, but can take over six months to register products new to the market. Registration of certain pharmaceutical products can take over one year, since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug already has approval from the U.S. Food and Drug Administration.

U.S. companies have also complained that customs officials often apply a higher dutiable value based on a retail price rather than recognizing the company's stated transaction value.

In recent years, Brazil has become a more active user of trade remedies. In 2010, Brazil initiated AD investigations on U.S. exports of n-butanol, toluene diisocyanate, nitrile rubber and light weight coated paper. As of January 2011, Brazil has not issued its findings regarding whether or not to impose AD duties

on any of these products. In 2010 Brazil issued an affirmative final determination in the AD investigation of polypropylene resin from the United States, imposing AD duties of \$82.77 per ton (approximately 6%). Brazil also issued affirmative findings in 2010 in reviews involving the antidumping measures on ethylene glycol and polyvinyl chloride in suspension, maintaining AD measures on these products. Brazil presently has AD measures in force on U.S. exports of the following products: pre-sensitized aluminum plate; butyl acrylate; ethylene glycol; polyethylene terephthalate resin; phenol; polycarbonate resin, polypropylene resin; polyvinyl chloride in suspension and supercalendered paper.

## **EXPORT SUBSIDIES**

In October 2007, Brazil restored tax breaks to exporters with the enactment of Law 11529, the stated intention of which was to help industries hurt by the strengthening of the national currency, the real. This law allows certain Brazilian industrial sectors (textiles, furniture, ornamental stones, woodworking, leatherworking, shoes, leather goods, heavy and agricultural machinery manufacturers, apparel, and automotive – including parts) and some agricultural products (including cattle semen and embryos, horticultural and fruit products, eggs, seeds, wheat and wheat flour, day-old chicks, fluid and pasteurized milk, cheeses, whey, blends for bakery products, fertilizers, and pesticides) to apply tax credits under the social integration (PIS) and social security (COFINS) programs to the purchase of capital goods, both domestic and imported, to be used for manufacturing finished products. The law also expands the government's program for exporting companies purchasing capital goods. To be exempt from paying the 9.25 percent PIS-COFINS tax on these purchases, companies normally must prove they derive at least 70 percent of their revenues from exportation. This benchmark was lowered to 60 percent for companies in the sectors covered by the legislation.

The government of Brazil offers a variety of tax, tariff, and financing incentives to encourage production for export and the use of Brazilian-made inputs in domestic production. For example, Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several different programs. The interest rates charged on this financing are customarily lower than the prevailing market interest rates for domestic financing. One BNDES program, FINAME, provides financing for Brazilian firms to purchase Brazilian-made machinery and equipment and capital goods with a high level of domestic content. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) suspends PIS and COFINS taxes on goods and information technology services imported by companies that commit to export software and information technology services to the extent that those exports account for over 80 percent of their annual gross income. The Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments, and equipment imported by companies that commit for a period of at least three years to export goods and services such that they account for at least 80 percent of their overall gross income for the previous calendar year. As of November 2010, 241 companies benefit from RECAP.

## **GOVERNMENT PROCUREMENT**

U.S. companies have found it difficult to participate in Brazil's public sector procurement unless they are associated with a local firm. Without a substantial in-country presence, U.S. companies regularly face significant obstacles to winning government contracts and are often more successful in subcontracting with larger Brazilian firms. Regulations allow a Brazilian state enterprise to subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms.

### **FOREIGN TRADE BARRIERS**

Brazilian government procurement policies apply to purchases by government entities and state-owned companies. Brazil has an open competition process for major government procurements. Until 2010, Brazilian law forbade distinctions between domestic and foreign-owned companies during the tendering process, although it allowed a preference for Brazilian goods and services when two equally qualified vendors were considered and price was the overriding factor in selecting suppliers. However, in July 2010, then President Lula signed a provisional measure (MP 495) giving preference to Brazilian-owned firms that fulfill certain economic stimulus requirements such as generating employment or contributing to technological development, even when their bids are up to 25 percent more expensive than competing foreign-owned firms. In early December 2010, both houses of the Brazilian Congress passed MP 495. With the enactment of the new law, companies interested in pursuing government procurement contracts in Brazil may need to consider fulfilling the requirements to be a Brazilian company as defined by the new law.

The procurement of certain parastatal companies is subject to simplified procedures designed to make those companies more competitive with their private sector counterparts. With the end of the oil monopoly in 1997, the Brazilian government issued Law Decree number 2745/98, which regulates the procurement of services, construction works, and the acquisition of goods and equipment. Pursuant to Law Decree number 2745/98, Petrobras may issue tenders through invitation letters, electronic auctions, or national or international bids. From time to time, however, suppliers have found that Brazil's federal Attorney General will question procurement conducted pursuant to these simplified procedures resulting in delays in tenders from Petrobras. In May 2009, the Brazilian government extended the same simplified procurement procedures to the parastatal power company Eletrobras and its subsidiaries through Law 11.943/09.

Brazil's regulations regarding the procurement of information technology goods and services require federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix. However, Brazil permits foreign companies that have established legal entities in Brazil to compete for procurement-related multilateral development bank loans.

Through direct bidding or participation in consortia, most government procurement is open to at least some form of international competition. However, many of the larger bids (*e.g.*, military purchases) can lead to unilateral single source procurement awards. The value of current pending military procurements exceeds \$1 billion.

Brazil is not a signatory to the WTO Agreement on Government Procurement.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Brazil was listed on the Watch List in the 2010 Special 301 report. While Brazil has continued to make important progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audiovisual goods, some areas of IPR protection and enforcement continue to represent barriers to U.S. exports and investment. Key issues cited in the report include concerns regarding IPR enforcement, including the need to increase raids and seizures of pirated and counterfeit products and to increase actions against book and Internet piracy. Concerns also remain with respect to border enforcement and the lack of expeditious and deterrent sentences. The United States has also raised concerns regarding long delays in receiving patent protection for new innovations in the patent application process, and inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for human-use pharmaceutical products. In January 2011, the

Federal Attorney General reissued an opinion that the Brazilian Ministry of Health's National Health Vigilance Agency (ANVISA) does not have the authority to review patentability requirements when analyzing pharmaceutical patent applications. The United States will continue to monitor how the Attorney General decision is implemented by ANVISA and any changes affecting patent processing in Brazil.

## **SERVICES BARRIERS**

### **Audiovisual Services and Broadcasting**

Brazil imposes a fixed tax on each foreign film released in theaters, foreign home entertainment products, and foreign programming for broadcast television.

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. Brazilian distributors of foreign films are subject to a levy equal to 11 percent of their withholding taxes. This tax, called the CONDECINE (Contribution to the Development of a National Film Industry), is waived for the Brazilian distributor if the producer of the foreign audiovisual work agrees to invest an amount equal to 70 percent of the income withholding tax on their remittances in co-productions with Brazilian film companies. The CONDECINE tax is also levied on any foreign video and audio advertising.

Brazil also requires that 100 percent of all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Domestic film quotas also exist for theatrical screening and home video distribution.

Foreign ownership of cable companies is limited to 49 percent, and the foreign owner must have a headquarters in Brazil and have had a presence in the country for the prior 10 years. Foreign cable and satellite television programmers are subject to an 11 percent remittance tax. The tax, however, can be avoided if the programmer invests 3 percent of its remittances in co-production of Brazilian audiovisual services. National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels. Law 10610 of 2002 limits foreign ownership in media outlets to 30 percent, including the print and "open broadcast" (non-cable) television sectors. "Open broadcast" television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin and the Brazilian Congress is considering local content and Brazilian-company distribution requirements for pay television programming as well.

### **Express Delivery Services**

U.S. express delivery service (EDS) companies face significant challenges in the Brazilian market due to numerous limitations established by the Brazilian government, such as high import taxes, an automated express delivery clearance system that is only partially functional, and low maximum value limits for express export and import shipments.

The Brazilian government charges a flat 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. U.S. industry contends that this flat rate is higher than duties normally levied on goods arriving via regular mail, putting express delivery companies at a competitive disadvantage. Moreover, Brazilian Customs has established maximum value limits of \$10,000 for exports and \$3,000 for imports sent using express services. These limits severely

restrict the Brazilian express delivery market's growth potential and impede U.S. exporters doing business with Brazil.

### **Financial Services**

U.S. companies wanting to enter Brazil's insurance and reinsurance market must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. Market entry for banks may occur on a case-by-case basis.

### **Telecommunications**

Brazil's mobile termination rates (the rate a telecommunications operator must pay a competitor to deliver a call to one of the customers on that competitor's network) are among the highest in the region. ANATEL, Brazil's independent regulator, is seeking to address the issue by conducting a proceeding to review and establish reasonable rates. A regulation affecting mobile termination rates was released for public comment in late 2010, and is still under internal evaluation. In the meantime, U.S. carriers providing mobile services in Brazil will continue to face higher than average costs.

### **INVESTMENT BARRIERS**

There is neither a bilateral investment treaty nor a bilateral double taxation treaty in force between the United States and Brazil.

### **Civil Aviation**

Currently, foreign ownership in Brazilian airlines is capped at 20 percent. In May of 2009, Brazil's Civil Aviation Regulatory Agency (ANAC) proposed increasing that ceiling to 49 percent, but the proposal would require Brazilian Congressional approval and is still awaiting review.

### **Foreign Ownership of Farmland**

In August 2010, Brazil's federal Attorney General issued a revised interpretation of Brazil's 1971 land ownership legislation (Law 5709), strengthening existing language that limits foreign ownership to 25 percent of the farmland in any rural municipality. The revised interpretation also restricts the size of foreigners' land purchases, with the maximum size that may be purchased varying by state. It is unclear whether the new rule can be enforced without further action by the Brazilian Congress. The new rule was introduced at a time that an increasing number of U.S. and other foreign investors are considering investment in Brazilian farmland.