

BRAZIL

In 1997, the U.S. trade surplus with Brazil was \$6.3 billion, an increase of \$2.3 billion from the U.S. trade surplus of \$3.9 billion in 1996. U.S. merchandise exports to Brazil were \$15.9 billion, an increase of \$3.2 billion (25.3 percent) from the level of U.S. exports to Brazil in 1996. Brazil was the United States' eleventh largest export market in 1997. U.S. imports from Brazil were \$9.6 billion in 1997, an increase of \$868 million (9.9 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1996 was \$26.2 billion, an increase of 10.4 percent from the level of U.S. FDI in 1995. U.S. FDI in Brazil is concentrated largely in the manufacturing, financial and banking sectors.

Overview

The process of economic liberalization initiated in 1990 has produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports have increased as a result of generally lower tariffs and reduced non-tariff barriers, as well as the strength of the Brazilian currency relative to the dollar. Imports are composed of a wide range of industrial, agricultural and consumer goods. Despite some restrictive measures adopted during 1996 and 1997 to slow mounting trade deficits -- measures which the Government of Brazil maintains are temporary -- access to Brazilian markets in a significant number of sectors is generally good, and most markets are characterized by competition and participation by foreign firms through imports, local production and joint ventures.

Although the Brazilian Government has initiated large-scale programs to privatize its parastatals, it still dominates certain sectors of the economy, such as the telecommunications, petroleum, and electrical energy sectors, thereby limiting trade, investment and procurement opportunities. However, the federal government is in the process of opening cellular telephone service to private investors and foreign firms and has submitted a bill to Congress to regulate privatization of remaining phone services. In addition, the Sao Paulo metropolitan area sold its "Band B" cellular concession to a U.S. company in 1997 and additional auctions in other regions of the country are being planned. Several Brazilian states have worked with the national development bank to develop privatization plans for state-controlled electric companies and five of these companies were sold in 1997. The government has introduced legislation and regulations to implement the constitutional amendments eliminating the government monopoly in the petroleum and telecommunications sectors, approved by the Brazilian Congress in 1995.

IMPORT POLICIES

Tariffs

Tariffs, in general, are the primary instrument in Brazil for regulating imports. For 1997, the average tariff was 13.8 percent and the median tariff rate was 14.0 percent.

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Brazil and its Southern Common Market (MERCOSUR) partners, Argentina, Paraguay, and Uruguay, implemented the MERCOSUR common external tariff (CET) on January 1, 1995. In response to an import surge and the resulting large monthly trade deficits in late 1994 and early 1995, in March 1995 the government raised import tariffs significantly on a range of consumer durable goods, including automobiles, motorcycles and toys. The new tariff levels, as high as 70 percent on some products, were to remain in effect until April 1996. However, in 1996 the government decided to maintain high tariff levels for both autos and toys until the year 2000.

In November 1997, after consulting with its MERCOSUR neighbors, Brazil implemented an across-the-board increase on all tariff items (inside and outside the CET), raising the ceiling from 20 to 23 percent. Only energy inputs such as coal and petroleum and agricultural inputs such as seeds were exempted. While the tariff increases have nominally affected capital goods, which constitute approximately 40 percent of U.S. exports to Brazil, the government's "ex-tarifario" regime has traditionally exempted capital goods. This regime expired at the end of 1997. The Government of Brazil issued a new regime exempting capital goods not available domestically, effective January 1, 1998. The new regime reduces tariffs as high as 20 percent down to 5 percent. Industry reports that tariffs remain high on certain food and chemical products.

The CET currently covers approximately 85 percent of 9,000 tariff items; most of the remaining 15 percent will be covered by 2001, and all will be covered by 2006. The CET levels range between zero and 23 percent, with the exception of tariffs on telecommunications equipment, computers, some capital goods, and products included on Brazil's national list of exceptions to the CET, such as shoes, automobiles and consumer electronics. These tariffs are generally higher. For products covered by the CET, the maximum Brazilian tariff is 23 percent, the most commonly applied tariff is 17 percent, and the average CET tariff is 14.7 percent.

In December 1995, the government issued regulations establishing investment incentives for the automobile sector that do not appear to conform to Brazil's WTO obligations. These measures require firms to invest in Brazil and maintain specified levels of local content in order to qualify for lower duty rates on imports of vehicles, parts and materials. The United States and Japan requested WTO consultations on this issue in August 1996, contending that the regime did not comply with WTO obligations. In October 1996, the United States initiated a Section 301 investigation into Brazil's practices. In March 1997 the United States and Brazil signed an agreement settling the dispute. Brazil committed to terminate the regime by December 31, 1999, to accelerate the deadlines for companies to apply under the regime and not to extend the trade-related investment measures to Brazil's MERCOSUR partners when they unify their auto regimes in the year 2000.

At the request of the United States and other WTO member countries, the members of MERCOSUR agreed to the formation of a WTO working party to examine the WTO consistency of MERCOSUR. The first meeting of the working party took place in the fall of 1995 and the second in the fall of 1996. The United States will continue to encourage the reduction of trade and investment barriers, including tariffs, and the creation of a customs union that is open and consistent with the WTO, specifically GATT Article XXIV.

Import Licensing

On January 2, 1997, the Secretariat of Foreign Trade implemented a computerized trade documentation system (SISCOMEX) to handle import licensing. Although import licenses are required for virtually all products, licensing generally has not posed a barrier to U.S. exports. Licenses for most products are issued automatically. However, in a move that was presented as an attempt to reduce the high prevalence of under-invoicing, in December 1997 the government removed over 300 products from lists of products receiving automatic licenses and required various ministry approvals prior to shipping. These products included food and wine, chemicals, petroleum and energy products, tapes and CDs, some textiles and vehicles. Customs officials are also reported to be using a minimum price list to fight under-invoicing.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

While progress has been made in the area of fruit and vegetable regulations between the United States and Brazil, sanitary and phytosanitary measures remain significant barriers in many cases. Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The United States objects to the concept of reciprocity when legitimate health concerns based on scientific evidence should be the central issue. Brazil had previously granted conditional approval for U.S. exports which was withdrawn when the United States could not grant Brazil an exception to the standard U.S. approval process. In September 1997, Brazil banned the importation of live ostriches from the United States due to the alleged isolation of viscerotropic velogenic disease (VVND) from a dead bird that was part of a large shipment of birds from the United States. However, the United States is recognized by the International Office of Epizootics (OIE - the international standard-setting body for veterinary issues) as being free from VVND. The ban stands in the way of an estimated \$10 million worth of U.S. exports of live ostriches to Brazil over the next few years.

Brazil has officially adopted the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE). COSAVE is composed of Argentina, Chile, Brazil, Paraguay and Uruguay. In July 1996 the U.S. Department of Agriculture and the Brazilian Ministry of Agriculture reached a bilateral agreement which enables most U.S. fruit, grain and seed exports to meet the new phytosanitary requirements. However, U.S. horticultural products still frequently face difficulties at Brazilian ports and the two governments continue to work on complete implementation of the provisions of the bilateral agreement when problems of mutual interest arise. At the time of this report, there has been a resuolution to the technical issue within COSAVE which should allow U.S. exports of wheat to Brazil, but questions remain with regard to the timing of the implementation of the technical decision by Brazil. Onerous regulations on the import of wine which Brazil adopted in 1996 may also restrict access to the Brazilian market for U.S. wines.

GOVERNMENT PROCUREMENT

The federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy. Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurement to international tenders. Given the significant influence of the state-controlled sector due to its large size, discriminatory government procurement policies are, in relative terms, a substantial barrier to U.S. exports. For example, discriminatory government procurement practices govern the telecommunications, computer and computer software sectors. Though not currently applied, the rules permit the government to provide foreign companies with production facilities in Brazil preferential treatment in government procurement decisions.

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To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. Complete implementation of the constitutional amendments passed in 1995, opening the state telecommunications, petroleum and natural gas distribution monopolies to private (including foreign) participation, may also ease some of the barriers currently faced by foreign suppliers.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, regulations introduced in late 1993 allow consideration of non-price factors, give preferences to telecommunications, computer and digital electronics goods produced in Brazil, and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix. Bidders that meet one or more of the criteria for preferential treatment -- Brazilian-owned company, Brazilian technology or products, or minimum local value-added content -- are allowed a price differential of up to 12 percent over other bidders.

It is not possible to estimate the economic impact of these restrictions on U.S. exports, as there has been little application of these rules. However, free competition could provide significant market opportunities for U.S. exports. The United States seeks adoption of competitive procurement procedures, elimination of any measures favoring domestic producers, and provision of predictable, nondiscriminatory treatment for U.S. suppliers in Brazil's government procurement. Brazil is not a signatory to the GATT Agreement on Government Procurement.

EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export, excise and sales tax exemptions on exported products, and rebates on materials used in the manufacture of exported products. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing, as well as from the financial operations tax for deposit receipts on export products. Exporters are also eligible for a rebate on social contribution taxes paid on locally-acquired production inputs.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing. Revisions to PROEX were announced in 1995 and 1997. The revisions expanded the size of the program and authorized coverage of additional export sectors. In 1997, \$1.0 billion was initially budgeted for PROEX. As of November 1997, \$1.4 billion has been budgeted. In the past, PROEX has never used more than 30 percent of its allocated budget.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents and Trademarks

On May 14, 1996, a new industrial property law was approved; the law went into force in May 1997. This law improves most aspects of Brazil's industrial property regime, but some problems remain. Patent protection will now be available for pharmaceutical products and processes, chemical products and other inventions that were not patentable under the prior law. A law on the protection of plant varieties was passed in 1997, bringing Brazil up to the TRIPS standard, and protection will be available for man-made plants and animals (except for man-made microorganisms), once the implementing regulation is fully in place. However, certain isolated or purified forms of substances found in nature are not patentable subject matter. The term of patent protection was extended from 15 years from the date of filing to 20 years from the date of filing, but patents in force are not expressly extended to the new term as stipulated by paragraph 2 of article 70 of the TRIPS Agreement until January 1, 2000. "Pipeline" protection is provided for inventions that were not patentable in Brazil because of limitations on patentable subject matter (e.g., pharmaceutical and chemical products) if the inventions were patented in another country and not marketed in Brazil.

Domestic working of a patented invention is required unless it is not economically feasible. Failure to produce locally could theoretically result in forfeiture of the patent, however, there has been little application of this rule. Importation does not always satisfy the working requirement as ultimately required by the TRIPS agreement. The remedies for non-working are compulsory licenses and permission to parallel import.

There is a vast network of compulsory licenses. Compulsory licenses may be granted for abuse of rights, abuses of economic power, non-working in Brazil, failure to meet the needs of the market, working dependent patents, and in national emergencies or to meet the public interest. The new law added provisions for the protection of "well-known" trademarks, but also contains a long list of categories of marks that are not registrable. A law for the protection of the layout designs of integrated circuits, introduced in April 1996, has not been enacted.

Brazil's patent office, the National Institute for Industrial Property (INPI), has had a growing backlog in processing applications for patents. The agency faces serious management and administrative problems.

Copyrights

Estimated trade losses from the piracy of computer programs and entertainment software, motion pictures, sound recordings and musical compositions continued to increase in 1997 (estimated at \$666.2 million by U.S. industry), despite significant efforts by right holders to enforce their rights under the existing laws. Improved laws and more effective judicial procedures are needed to reduce these losses.

In the area of computer programs, in 1994 the government of Brazil committed itself to enact amendments to a 1987 software law by January 1, 1995. A software bill passed the Chamber of Deputies in January 1996, the Senate in January 1998 and was signed by President Cardoso in February 1998. Meanwhile, the government has used executive decrees to significantly improve protection for firms marketing computer programs in Brazil, abolishing the "law of similars," eliminating the software registration system and reducing the tax burden on remittances. The newly-passed legislation contains amendments that would introduce a rental right and increase in the term of protection to 50 years. A copyright bill passed the Senate in 1990, the Chamber of Deputies in December 1997, and was signed by President Cardoso in February 1998.

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Amendments to Brazil's copyright law were needed to bring it into compliance with the Berne Convention and TRIPS agreement, particularly to address parallel imports.

Enforcement

In the last two years, enforcement of laws against video and software piracy has gradually improved. Foreign firms have had some success in using the Brazilian legal system to protect their copyrights, and the government has initiated action to reduce the importation of pirated sound recordings and video cassettes. However, much pirated material enters Brazil from across the border in Paraguay. The government has not given police the tools or the training to enforce the law and confiscate pirated material. The penal code needs to be amended to provide higher fines that create a deterrent to infringement, increase the effectiveness of the criminal enforcement system, and decrease delays in the judicial process.

Provisions under the 1996 industrial property law establishing specialized intellectual property courts may provide some relief for copyright owners. The government is currently discussing how this provision would be implemented.

SERVICES BARRIERS

Restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances, and arbitrary application of regulations and laws limit U.S. service exports to Brazil. Service trade opportunities, particularly in the telecommunications, oilfield, mining and financial industries, have been affected by limitations on foreign capital participation in many sectors. The passage of constitutional amendments eliminating the distinction between national and foreign capital; opening the state telecommunications, petroleum and natural gas distribution monopolies to private participation; and permitting foreign participation in coastal and inland shipping should ease many of the current restrictions on foreign services providers. However, the degree to which some of these sectors are actually opened will depend on implementing legislation which, in most cases, has not yet been introduced.

Telecommunications

In those areas where implementing legislation has been introduced, described below, the opening to foreign participation remains limited. The 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. The entire state-owned telephone system (Telebras) may be sold by the middle of 1998, with significant opportunities for foreign participation. In the recently concluded WTO negotiations on basic telecommunications services Brazil made commitments on most basic telecommunications services and will remove its foreign investment restrictions on cellular and satellite services, contained in its 1996 law, on July 20, 1999. Furthermore, Brazil committed to bind the outcome of future reform legislation by revising its WTO commitments to incorporate such reforms within one year of enactment, i.e., by July 10, 1998. The legislation grants discretion to the Brazilian president for determination of market-opening dates for domestic and international wireline services and also with respect to foreign investment limits.

Brazil is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998.

Maritime

The 1996 cabotage law limits foreign participation in cabotage to countries which have reciprocal cabotage arrangements with Brazil; otherwise, cabotage services are limited almost exclusively to Brazilian companies, although they may rent or charter foreign-made ships on a limited basis. Foreign companies or foreign crews may operate only with the prior approval of the Brazilian authorities.

Technical Services

Foreign companies, particularly construction engineering firms, are prevented from providing technical services in government procurement contracts unless Brazilian firms are unable to perform them. INP, which must approve all technical service contracts, has subjected foreign companies to substantial delays. However, Brazil has promulgated a concessions law (February 1995) and the law of electrical energy producers (July 1995) to promote a more transparent regulatory regime and provide a legal framework for concessionaires of public services.

Brazil restricts the private sector use of foreign-produced advertising materials through limits on foreign film footage (two-thirds of which must be produced in Brazil) and sound tracks (all of which must be produced in Brazil), limits on foreign capital participation, and requirements that the majority of the directors of a company must be Brazilian. Discriminatory government procurement practices further curtail the use of foreign-produced advertising material.

Foreign legal, accounting, tax preparation, management consulting, architectural, engineering, and construction firms are hindered by various barriers. These include forced local partnerships, limits on foreign directorships and non-transparent registration procedures. The Government of Brazil reserves the right to refuse entry of managers or executives associated with the provision of a service if they do not provide new technology, increase productivity in Brazil, or attract new investment.

Insurance

Brazil is South America's largest potential insurance market and premiums have been growing rapidly with the establishment of economic stability. In 1996, Brazil eliminated the distinction between foreign and domestic capital in this sector and a number of U.S. firms have since entered the market via acquisitions of existing firms or joint ventures with established companies. While eliminated in law in 1996, the reinsurance monopoly, the Brazil Reinsurance Institute (IRB), has yet to be ended in practice and raises costs for both domestic and foreign insurers. The government has announced plans to privatize IRB and made a WTO commitment in the

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financial services negotiations to allow foreign market access for reinsurance in less than two years after passage of implementing regulations in the sector. In addition, the Government of Brazil restricts import insurance to Brazilian firms through resolution number 3/71, which denies U.S. marine cargo insurers an opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian-owned brokerages.

INVESTMENT BARRIERS

In addition to restrictions on services-related investments, various prohibitions limit foreign investment in internal transportation, public utilities, media and other "strategic industries." In other sectors, Brazil limits foreign equity participations, imposes local content requirements, and links incentives to export performance. For example, there are equity limitations, local content requirements, and incentive-based performance requirements in the computer and digital electronics sector. In the auto sector, local content and incentive-based export performance requirements were introduced in 1995, and are expected to expire in December 1999.

Brazil's Congress passed constitutional amendments permitting foreign majority participation in direct mining operations and foreign investment in the health sector, but actual changes will not occur until the 1995 constitutional amendments are implemented through follow-up legislation. In August 1995, the government introduced a measure which permits foreign financial institutions to open new branches or to increase their ownership participation in Brazilian financial institutions. However, foreign ownership of land in rural areas and adjacent to national borders remains prohibited under law number 6634. A 1997 law allows for the state-owned oil company, Petrobras, to take a minority stake in oil ventures, something previously prohibited.

Investment restrictions are an important limitation for U.S. firms seeking to conduct business in Brazil. Despite these restrictions, U.S. and other foreign firms have major investments in Brazil. The United States will seek to ensure that implementing legislation for the constitutional amendments passed in 1995 will, in fact, lower barriers to U.S. business.