

BRAZIL

In 1998, the U.S. trade surplus with Brazil was just over \$5 billion, compared to \$6.3 billion in 1997. U.S. merchandise exports to Brazil in 1998 were \$15.2 billion, down \$755 million from 1997. Nevertheless, Brazil again was the United States' 11th largest export market in 1998. U.S. imports from Brazil were \$10.1 billion in 1998, an increase of \$500 million from 1997.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1997 was approximately \$36 billion, an increase of 24 percent from the level of U.S. FDI in 1996 and double the 1994 FDI stock. U.S. FDI in Brazil is concentrated largely in the manufacturing and finance sectors. Investment in the power and telecommunications industries has risen rapidly in recent years due to the country's ongoing privatization program.

Overview

The economic liberalization initiated in 1990 and accelerated with the Real Plan in 1994 has produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports increased as a result of these policies, as well as the strength of the Brazilian currency relative to the dollar during the 1994-98 period. The Brazilian Government imposed some restrictive measures, in part to slow mounting trade deficits, between 1996-1998. Nevertheless, most markets are characterized by competition and participation by foreign firms through imports, local production and joint ventures. The devaluation of the Real and the subsequent move to a floating exchange rate regime in early 1999 will certainly impact Brazilian trade flows.

Although the Brazilian Government has initiated large-scale programs to privatize its parastatals, it still dominates certain sectors of the economy, such as the petroleum and electrical energy sectors, thereby limiting trade, investment and procurement opportunities. However, the federal government has opened cellular telephone service to private investors and foreign firms and privatized remaining phone services with the July 1998 auction of the national monopoly provider Telebras. The Sao Paulo metropolitan area sold its "Band B" cellular concession to a U.S. company in 1997 and additional auctions have been completed since then. In early 1999, the Brazilian Government was preparing to auction operating rights for so-called "mirror" telephone operations across the country. Several Brazilian states have worked with the National Development Bank to develop privatization plans for state-controlled electric companies. Five of these companies were sold in 1997 and several more in 1998. Brazilian Government officials have indicated an interest in expanding sales of government-owned firms in the financial and the electricity sectors during 1999.

IMPORT POLICIES

Tariffs

While this is changing, tariffs historically have been the primary instrument in Brazil for regulating imports. In 1998 the average tariff under the common external tariff (CET) was 17 percent. This is a

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three percentage point increase from 1997, due to MERCOSUL's decision in November 1997 to raise the CET by this amount. Brazil currently maintains no applied tariff rates in excess of 35 percent, but does have safeguard measures in place for some imports such as toys. Some imports are banned altogether, such as re-manufactured auto parts.

Brazil and its MERCOSUL partners, Argentina, Paraguay and Uruguay, implemented the MERCOSUL CET on January 1, 1995. 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. Exceptions to the CET include telecommunications equipment, computers, some capital goods and products included on Brazil's national list of exceptions to the CET, such as footwear, powdered milk, wine and consumer electronics. In November 1997, after consulting with its MERCOSUL neighbors, Brazil implemented the aforementioned three-percentage point increase on all tariff items (inside and outside the CET), raising the CET ceiling from 20 to 23 percent. Energy inputs such as coal and petroleum and agricultural inputs such as seeds were exempted. The tariff increases also affected capital goods, which constitute approximately 40 percent of U.S. exports to Brazil, exempting only capital goods not available domestically and reducing tariffs as high as 20 percent on these items down to 5 percent.

On January 1, 1999, Argentina and Brazil took further steps towards intra-MERCOSUL's free trade by reducing tariffs on a final list of 224 Argentine products and 32 Brazilian products to zero. Therefore, with the exception of sugar and autos, trade between Brazil and Argentina is now free. However, the Governments of Brazil and Argentina have been engaged in discussions on how best to handle the bilateral trade impact of the devaluation of the Real, and a number of policy options are under consideration. The U.S. Government is closely following these discussions to ensure that the implementation of such policy options does not prejudice U.S. interests and is fully consistent with both countries' WTO obligations.

Import Licensing/Customs Valuation

In January 1997, the Secretariat of Foreign Trade implemented a computerized trade documentation system (SISCOMEX) to handle import licensing. As of January 1, 1999, SISCOMEX charged a fee of R\$30 per import statement and R\$10 per product added to the statement. An increasing number of products no longer qualify for automatic licensing. In addition, beginning in October 1998, Brazil issued a series of administrative measures that required additional sanitary/phytosanitary (SPS), quality and safety approvals from various government entities for products subject to non-automatic licences. In December 1997, the government had already reduced the list of products receiving automatic licenses by over 300 products and required various ministry approvals prior to import. The October measures and the use of minimum price lists have been characterized by Brazil as a "deepening" of the existing import licensing regime and ostensibly as part of a larger strategy to prevent under-invoicing. However, the use of minimum price lists raises questions about whether Brazil's regime is consistent with its obligations under the WTO Agreement on Customs Valuation, and these practices have proven to be a barrier to U.S. exports.

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While importers have needed to register with the Foreign Trade Secretariat (SECEX) since 1995, they now must follow new registration guidelines that are far more onerous than in the past, including a minimum capital requirement. Product registrations are also now required for imported food products and food supplement products, and the period of validity for these registrations has been reduced. In addition, the processing fees for these products has increased exponentially, and further increases are under consideration. Implementation of all of these measures continues to be poorly coordinated and less than transparent, magnifying their negative impact on U.S. exports.

Import Financing

Since April 1, 1997, Brazil has imposed requirements which appear to effectively eliminate supplier credit of less than 180 days for imports originating in countries that are not members of MERCOSUL, while providing substantial disincentives for supplying credit terms of one year or less. In February 1999, the Government of Brazil extended the MERCOSUL exception for this measure until June 30, 1999, and doubled the maximum value of MERCOSUL shipments exempt from the regulation to \$80,000. The U.S. Government has raised its concerns bilaterally with the Brazilian Government regarding the WTO-consistency of this policy and joined as a third party observer in the March 1998 WTO dispute settlement consultation between the European Union and Brazil on this issue. The Government of Brazil is reportedly considering repealing this measure.

STANDARDS, TESTING, LABELING AND CERTIFICATION

While progress has been made in the area of SPS measures, as illustrated by Brazil's authorization of hard red winter wheat imports from the United States in 1998, they remain significant barriers in many cases. The United States has evidence that other types of wheat do not pose a risk to Brazil and will continue to work to resolve outstanding issues to obtain market access for all U.S. wheat. In addition, Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The issue, however, is not reciprocity, rather, the fulfilment of WTO obligations regarding sanitary and phytosanitary decisions, which dictate that such determinations shall be based only upon sufficient scientific evidence. Brazil also bans the importation of beef products containing growth hormones and live ostriches from the United States. The ostrich ban is due to the alleged isolation of viscerotropic velogenic disease (VVND) from a dead bird that was part of a 1997 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 of VVND. The U.S. and the Brazilian Governments have discussed establishing a Consultative Committee on Agriculture (CCA) to provide a bilateral mechanism for addressing SPS issues. Brazil maintains the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE), composed of Brazil, Argentina, Uruguay, Paraguay and Chile.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the GATT Agreement on Government Procurement. Brazilian federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy,

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which provides preferential treatment in government procurement decisions to companies with production facilities in Brazil. However, Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurement to international tenders. Discriminatory government procurement practices have been particularly harmful to U.S. interests in the computer hardware and software sectors. 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. To illustrate, in 1998 when the Government of Brazil reviewed fiber optic products solely on their merits, U.S. fiber optic cable was certified for sale in Brazil.

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, the law's implementing regulations allow consideration of non-price factors, give preferences to certain 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.

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. The Government of Brazil has proposed tax reform, which would alter the value-added tax, thus modifying some of these incentives. In addition, Brazil is under extreme pressure from Argentina to remove these subsidies for exports destined for MERCOSUL, in light of the Real devaluation.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing and to directly finance production of tradeable goods. Revisions to PROEX were announced most recently in 1998. The revisions expanded the size of the program and authorized coverage of additional export sectors. In 1998, \$1.4 billion was budgeted for PROEX, with \$903 million slated for equalization and \$500 million for direct financing. However, only \$616 million was actually spent last year on equalization, while \$210 million went to financing. Historically, PROEX never used more than 30 percent of its allocated budget, but in 1998 utilized over 50 percent of its allocated resources for the first time. The Government of Brazil is reportedly considering a modification of this program, which has been under review in Geneva.

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LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents and Trademarks

Brazil's industrial property law took effect in May 1997. The law improves most aspects of Brazil's industrial property regime, providing patent protection for pharmaceutical products and processes, agrochemical products and other inventions. However, some problems remain, such as the TRIPS-inconsistent provision that prohibits importation as a means of satisfying the requirement that the patent be "worked" in that country. The Government of Brazil reportedly is planning to submit a bill to the Congress in early 1999 that would bring the data confidentiality provisions of the industrial property law in line with TRIPs.

"Pipeline" protection is provided for inventions not previously patentable in Brazil because of limitations on patentable subject matter (e.g., pharmaceutical and agrochemical products) if these inventions were patented in another country and not marketed in Brazil. While Brazil's patent office, the National Institute for Industrial Property (INPI), has attempted to address its enormous backlog of both pipeline and regular patent applications, the resources and support necessary to effectively and consistently manage patent processing have been lacking. The Brazilian Government, however, has begun to computerize the patent and trademark offices.

The new industrial property law also added provisions for the protection of "well-known" trademarks, but contains a long list of categories of marks that are not registrable. The U.S. industry has expressed concern with the continued high level of counterfeiting in Brazil.

A law on protection of layout designs of integrated circuits, introduced in April 1996, has not been enacted. The Government of Brazil reportedly intends to submit new legislation on integrated circuits in order to meet Brazil's TRIPs obligations in a timely manner.

Copyrights

A copyright bill that included amendments to bring Brazil into compliance with the Berne Convention and TRIPs was signed by President Cardoso in February 1998. A software law was signed by President Cardoso that same month, thus protecting computer programs as "literary works," increasing the term of protection to 50 years, and making software infringement a fiscal, as well as an intellectual property, crime.

Copyright enforcement in Brazil is uneven. The U.S. industry reports that its annual losses from copyright piracy in Brazil are over \$821 million, the largest amount of losses due to copyright piracy in the hemisphere. Problems have been particularly acute with respect to sound recordings and video cassettes, and virtually all audio cassettes sold are pirated copies. Brazil accounts for over half of the sales market for sound recordings in Latin America. Vigorous industry anti-piracy campaigns have had a positive impact. However, 1998 resulted in many prosecutions but few convictions of intellectual property rights violators. While the number of judicial anti-piracy actions, seizures of CD's and

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indictments were all up in 1998 over the previous year, the sound recording industry estimates that the piracy rate for CD's in 1998 increased to a startling 30 percent.

Much pirated material continues to enter Brazil from across the border in Paraguay. Although efforts to patrol the border and ports have improved somewhat, these efforts have been inconsistent. The federal government has not given police the tools or the training to effectively enforce the law. Further, the penal code should be amended to provide higher fines that create a true deterrent to infringement, increase the effectiveness of the criminal enforcement system and decrease delays in the judicial process. The generally inefficient nature of the courts and judicial system have complicated the enforcement of intellectual property rights.

SERVICES BARRIERS

Brazil is overdue in providing to the World Trade Organization an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect..

U.S. service exports to Brazil are impeded by restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances and arbitrary application of regulations. Service trade opportunities in some sectors have been affected by limitations on foreign capital participation.

Telecommunications

Brazil's telecommunications sector has undergone significant liberalization in the past few years, although some limits remain on the level of foreign ownership. For example, 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 state-owned telephone system (Telebras) was sold in July 1998, with significant foreign participation. This privatization has presented regulatory challenges. ANATEL, the independent regulator, is in the process of developing a new quality certification program.

In addition, Brazil plans to limit competition with Embratel, the long distance and international carrier to a duopoly arrangement until December 2001, and Brazil does not require interconnection at cost-oriented rates. Interconnection with the incumbent carrier is allowed only at the local switch.

In the WTO negotiations on basic telecommunications services Brazil made commitments on most basic telecommunications services and committed to remove foreign investment restrictions on cellular and satellite services by July 20, 1999. Brazil is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring these commitments on basic telecommunications services into effect.

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Brazil maintains an array of practices designed to favor public procurement of domestic over imported telecommunications equipment, including a system of preferences and a tax program that subsidizes domestic products. As the telecommunications services sector becomes more competitive under Brazil's new telecommunications law, it is unclear whether discriminatory equipment procurement practices will remain viable, insofar as such policies disadvantage public sector entities by imposing higher equipment costs upon them than private sector service providers.

Maritime

The 1996 cabotage law limits foreign participation in cabotage to countries which have reciprocal cabotage arrangements with Brazil, such as the United States. In other cases, cabotage services are limited almost exclusively to Brazilian companies, although foreign-made ships may be rented or chartered on a limited basis. Foreign companies or crews may operate only with prior approval of the Brazilian authorities. Actions taken by Brazil in late 1998 called into question Brazilian observance of the U.S.-Brazil Bilateral Maritime Agreement, signed by the Brazilian Government, but never ratified. In response to these actions, the U.S. Government has lifted its exemption of tonnage tax and lighthouse money for Brazilian ships. Both sides are expected to review the bilateral agreement in 1999.

Technical Services

Brazil has a requirement that 100 percent of all films and television be printed locally. Importation of color prints for the theatrical and television markets is prohibited. The limited number of printing laboratories in Brazil has made this requirement particularly onerous. A theatrical screen quota for local films was increased from 35 to 49 days per calendar year in December 1997.

In addition, Brazil does not allow the use of electronically produced air waybills, preventing use of certain kinds of software for express shipments and slowing the customs processing of critical "just-in-time" shipments.

Insurance

Brazil is South America's largest potential insurance market, and premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital in this sector and a number of major U.S. firms have since entered the market, mainly via joint ventures with established companies. Brazil maintains a state-owned reinsurance monopoly, the 50 percent government-owned Brazil Reinsurance Institute (IRB). While a 1996 constitutional reform ostensibly eliminated this monopoly requirement, private reinsurers are precluded from operating in Brazil until implementing regulations have been completed. These regulations have been pending for three years. This practice effectively raises costs for both domestic and foreign insurers. The Brazilian Government has announced plans to privatize IRB in 1999 and made a WTO commitment in the financial services negotiations to allow foreign market access for reinsurance within two years of passage of implementing regulations in the sector. In addition, the Government of Brazil restricts import insurance to Brazilian

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firms by denying U.S. marine cargo insurers the 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, but will expire in December 1999. Brazil is currently engaged in negotiations with its MERCOSUL partners to develop a common MERCOSUL auto regime by that date.

Brazil's Congress passed constitutional amendments permitting foreign majority participation in direct mining operations, 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. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. investment stake more than doubling from 1994 to 1998.