BRAZIL

TRADE SUMMARY

In 1999, the U.S. trade surplus with Brazil was $1.9 billion, compared to $5 billion in 1998. Part of the decline in the U.S. surplus with Brazil can be attributed to the devaluation of the Brazilian currency, the Real, in January 1999 and economic slowdown in Brazil. U.S. merchandise exports to Brazil in 1999 were $13.2 billion, down approximately $1.9 billion from 1998. Nevertheless, Brazil was the United States' 11th largest export market in 1999. U.S. imports from Brazil were $11.3 billion in 1999, an increase of $1.2 billion from 1998.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1998 was approximately $38 billion, an increase of 7.8 percent from the level of U.S. FDI in 1997 and more than double the 1994 FDI stock. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance, power and telecommunications sectors. U.S. FDI 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 produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports surged as a result of these policies. From mid-1994 to January 1999, under the former policy of a sliding exchange rate band, the Real lost competitiveness relative to the dollar due to higher inflation in Brazil than the United States. From time to time, the Brazilian Government has imposed trade restrictive measures to fight resulting deficits. That said, most markets continue to be characterized by competition and participation by foreign firms through imports, local production and joint ventures. A series of complicated, high taxes charged in Brazil, commonly referred to as the "Brazil Cost," is a common complaint of those doing business in Brazil. In January 1999, Brazil was forced to devalue the Real. The Brazilian trade deficit with the United States was halved in 1999.

The Brazilian Government has initiated large-scale programs to privatize its parastatal enterprises, and has realized approximately $100 billion in privatization revenues since mid-1994. However, the Government of Brazil still dominates certain sectors of the economy, including 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 telephone services with the July 1998 auction of the national monopoly provider Telebras. In early 1999, the Brazilian Government auctioned operating rights for so-called "mirror" telephone operations across the country. Several Brazilian states have worked with Brazil's National Development Bank to develop privatization plans for state-controlled companies in the energy, financial and transportation sectors. Since 1996, states have realized approximately $32 billion in sales revenues through privatizations. Brazilian Federal Government officials plan to expand sales of government-owned firms in the financial and the electricity sectors during 2000.

IMPORT POLICIES

Tariffs

In 1999, Brazil's average applied tariff was 14 percent. 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. A small number of imports are banned altogether, such as re-manufactured auto parts.

Brazil and its Mercosur partners, Argentina, Paraguay and Uruguay, implemented the Mercosur Common External Tariff (CET) on January 1, 1995. The CET covers approximately 85 percent of 9,394 tariff items. Most of the remaining 15 percent should be covered by 2001, and full coverage should be reached 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.

Since January 1, 1999, most trade between Brazil and Argentina has enjoyed duty-free status under the intra-Mercosur duty phase-out schedule. However, many sensitive sectors are still assessed customs duties. Mercosur had a difficult year in 1999, largely reflecting bilateral trade tensions generated by Brazil's devaluation of the Real and exacerbated by the group's lack of an internal safeguard mechanism. Mercosur's weak dispute resolution procedures and the growing tendency of individual Mercosur members to negotiate preferential trade agreements with third countries did not help matters. However, Mercosur closed the year with a Presidential-level meeting in Uruguay that re-affirmed the leaders' commitment to progress and unity in Mercosur. As a result, the Governments of Brazil and Argentina have deepened discussions, along with their Mercosur partners, on how best to strengthen the group. The Mercosur countries now monitor each other's macroeconomic policies more closely.

In November 1997, after consulting with its Mercosur neighbors, Brazil implemented a temporary three-percentage point increase on virtually all tariff items, both inside and outside the CET. The tariff increases also affected most capital goods, which constitute over half of U.S. exports to Brazil. However, Brazil exempted capital goods not available domestically, reducing tariffs as high as 20 percent on those items down to five percent under its so-called *ex-tarifario* regime. In January 2000, Brazil added 407 products to the *ex-tarifario* list, bringing the total number of items covered by the special regime to around 1,450 products. Brazil intends to end the *ex-tarifario* regime in 2001, at which time it plans to fold capital goods into the Mercosur CET and to apply a common 14 percent tariff on these items.

Import Licensing/Customs Valuation

In January 1997, the Secretariat of Foreign Trade (SECEX) implemented a computerized trade documentation system (SISCOMEX) to handle import licensing, and a wide variety of products are subject to non-automatic licensing. There are fees assessed per import statement submitted through SISCOMEX, and importers must comply with onerous registration guidelines, including a minimum capital requirement, to register with SECEX. Complete information on requirements for importing into Brazil is available only through SISCOMEX, which is only available to registered importers. 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.

A primary concern is the use of minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. It appears that the Government of Brazil is requiring some products to meet minimum prices for the issuance of import licenses and/or in order to receive normal customs processing. This would raise questions about whether Brazil's regime is consistent with its obligations under the WTO. In Brazil, imports falling below set price levels either do not receive licenses or are sent to what is known as the "grey line" for enhanced customs scrutiny. This process is opaque and burdens U.S. exports, particularly in the textile, steel and forestry sectors. The United States is considering pursuing WTO consultations to attempt to resolve these concerns, and in November 1999 actively participated as an interested third party in European WTO consultations on the issue. The Brazilian Government reportedly has modified its customs regime somewhat, but it has not codified these changes in a public document.

In addition, product registrations from the Ministry of Health will be required for imported processed food products and food supplement products effective March 1, 2000, with a reduced term of validity for registrations. Registration fees for these imports, as well as for medical and pharmaceutical products, are scheduled to increase significantly and increased several times over the course of 1999. The U.S. Government also has received complaints relating to Brazil's "law of similars," including that it leads to non-transparent preferences for Brazilian products in procurement bids for government and non-profit hospitals and prejudices against the import of refurbished medical equipment when domestically-produced "similars" exist. Implementation of such import measures continues to be poorly coordinated and not well publicized, magnifying the negative impact on U.S. exports.

Import Financing

In April 1997, Brazil imposed requirements which effectively eliminated supplier credit of less than 180 days for imports originating in countries that are not members of Mercosur while providing substantial disincentives for supplying credit terms of one year or less. In March 1999, the Government of Brazil relaxed the requirement considerably and in October 1999 abolished it completely. However, there are reports of "administrative restrictions" on import financing for certain sectors, such as toys.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some progress has been made in the area of SPS measures, illustrated by Brazil's authorization of hard red winter wheat imports from the United States in 1998. However, such measures remain significant barriers in many cases, in part driven by Brazil's implementation of the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE). The United States had reached an agreement with technical officials that other types of wheat do not pose a risk to Brazil, but approval of other types of wheat has not occurred. The U.S. Government will continue to work to resolve outstanding issues to obtain market access for all U.S. wheat.

Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The issue, however, should not be 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 produced with growth hormones.

On November 5, 1999, the Brazilian Government published a new measure requiring all shipments crated in wood or containing solid wood packaging materials to be accompanied by phytosanitary certificates from their country of origin stating that the wood packaging materials had been treated by heat or fumigation. Wood-containing packages without the certificate must be fumigated or incinerated upon arrival. The measure took effect on January 5, 2000, and was reportedly taken to avoid the potential introduction of the Asian long-horned beetle into Brazil. The measure applies to imports originating from the United States, China, Japan, North Korea and South Korea. U.S. officials are working with the Brazilian Government to review the requirement and to provide assurances that U.S. solid wood packaging material poses no pest risk.

Biotechnology

Brazil has an approval process for bio-genetically altered agricultural products which resulted in the approval of Roundup Ready soybeans in 1998. However, the Brazilian government subsequently withdrew its approval in response to a court ruling, citing the need for environmental impact studies on the product. To date, the Brazilian Government has still yet to re-approve Roundup Ready soybeans for use on the Brazilian market, while the issue remains in the courts.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement, and transparency in the procurement process could be improved. Remaining limitations on foreign capital participation in procurement bids can reportedly impair access for potential service providers, including in the energy and construction sectors. Brazilian federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy, and rules permit the government to provide preferential treatment in government procurement decisions to foreign companies with production facilities in Brazil. However, Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurements to international tenders. 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, such as that of steel. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export (drawback regime), 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. They 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 to remove these subsidies for exports destined for Mercosur, especially in light of the Real devaluation. The IMF has also indicated an interest in eliminating some of Brazil's export subsidies.

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 1999, expanding the program. In 1999, roughly $861 million was budgeted for PROEX, with $416 million slated for equalization and $446 million for direct financing. The full amount for equalization was spent, while $155 million was spent on financing through November 1999. Historically, PROEX has 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, and around 70 percent in 1999. During the first half of 1999, PROEX was used by 331 exporters in support of 2,700 transactions destined for 82 countries. Some 18.8 percent of the value of such exports was destined for the United States. Sectors supported included transportation (31 percent), agribusiness (28 percent), and machinery/equipment (18 percent).

In 1999, a WTO panel found PROEX interest equalization payments on regional aircraft to be a prohibited export subsidy. The WTO Appellate Body upheld this finding. The Government of Brazil states that it has modified PROEX so as to bring it into conformity with WTO subsidy rules, but Canada has challenged this position in the WTO. The United States intervened in this challenge as a third party and also has expressed some concerns about the adequacy of Brazil's implementation of the panel's findings.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents and Trademarks

Brazil's industrial property law, covering patents and trademarks, took effect in May 1997. The law improved 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 U.S. Government is considering pursuing resolution of this matter in the WTO.

The Government of Brazil reportedly is planning to submit a bill to the Congress in 2000 that would bring the data confidentiality portions of the industrial property law fully in line with TRIPS. On December 30, 1999, the Brazilian Government issued a *Medida Provisoria* that includes some problematic provisions, including a requirement for Health Ministry approval prior to the issuance of a pharmaceutical patent. This would appear to conflict with Article 27 of the TRIPS Agreement, and U.S. officials have raised this concern with their Brazilian counterparts.

"Pipeline" protection is provided for inventions not previously patentable in Brazil because of limitations on patentable subject matter, 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 somewhat to address its large backlog of both pipeline and regular patent applications, the resources and support necessary to effectively and consistently manage the processing of patent applications have been lacking. The Brazilian Government, however, has begun to computerize the patent and trademark offices.

The 1997 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. U.S. industry has expressed concern with the continued high level of counterfeiting in Brazil.

A law on the protection of layout designs of integrated circuits (required by TRIPS), 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 this area.

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 continues to be uneven. The U.S. industry reports that in 1998 its trade losses from copyright piracy in Brazil were over $900 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 and is the largest market for videos in the hemisphere. Vigorous industry anti-piracy campaigns have had a positive impact and general awareness among the populace has increased significantly. However, efforts in 1999 resulted in many prosecutions but few convictions of intellectual property rights violators. While anti-piracy actions in 1999 resulted in larger seizures of pirated CDs, the sound recording industry estimates that the piracy rate for CD's in 1999 was between 30 to 40 percent.

Much pirated material continues to enter Brazil from across the border in Paraguay. The Federal Government of Brazil to date has not given police adequate tools or 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 Brazil's courts and judicial system have complicated the enforcement of intellectual property rights. The Brazilian Government is working on a project to broaden criminal penalties and streamline the judicial process, and expects the draft bill to be submitted to Congress in 2000. The Government is also working to create an inter-agency IPR committee, coordinated by the Ministry of Justice, to improve anti-piracy enforcement.

Brazil has not yet ratified the WIPO Treaties on Copyright and Performances and Phonograms.

SERVICES BARRIERS

Brazil has not yet ratified either the WTO Basic Telecommunications Agreement, formally known as the Fourth Protocol to the General Agreement on Trade in Services (GATS), or the WTO Financial Services Agreement, formally known as the Fifth Protocol to the GATS, which is necessary to bring Brazil's commitments under the Agreements into force.

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 sometimes 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 still in the process of developing a new quality certification program. Further, ANATEL is considering which bands to allocate for PCS services, a determination that the United States hopes will lead to a technology-neutral, market-oriented environment. In addition, Brazil plans to limit competition with Embratel, the long distance and international carrier, to a duopoly arrangement until January 1, 2003.

Brazil maintains an array of practices designed to favor public procurement of domestic over imported telecommunications equipment. This system of preferences includes "equivalence provisions" that require service providers to give priority to Brazilian products and a tax program subsidizing domestics. 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. These policies disadvantage public sector entities by imposing higher equipment costs upon them than private sector service providers.

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, which we understand has not yet occurred. However, as noted, Brazil is overdue in ratifying the WTO Basic Telecommunications Agreement, which is necessary to bring these commitments on basic telecommunications services into effect.

Maritime

Actions taken by Brazil in late 1998 called into question Brazilian observance of the U.S.-Brazil Bilateral Maritime Agreement, which was signed by the Brazilian Government, but never ratified. In November 1998, the U.S. Government responded by lifting its exemption of tonnage tax and lighthouse money for Brazilian ships. In early 1999, the Brazilian Government addressed the U.S. Government's primary concerns and these exemptions for Brazilian ships were restored. The U.S. and Brazilian Governments signed a newly revised bilateral Maritime Agreement in October 1999, ending a period of tensions related to preferences afforded to certain classes of cargo. The new agreement must still be ratified by the Brazilian Congress. The 1996 cabotage law limits foreign participation in cabotage to countries that have reciprocal cabotage arrangements with Brazil, such as the United States.

Audio Visual 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. Further, a theatrical screen quota for local films was maintained at 49 days per calendar year for 1999. Potential quotas of domestic titles for video retailers and distributors, along with mandated local content requirements for cable television programming, are other potential burdens on commerce. On March 17, 1999, a bill was introduced that proposes a five percent tax on the box office admissions of foreign films, the proceeds of which would be used to finance the Brazilian film industry. The United States believes development of an even stronger Brazilian film industry is an admirable objective, but not if it comes at the expense of foreign film distributors. Another problematic bill was introduced that would increase a withholding tax increase, but only on remittances of funds generated by foreign audiovisual works.

Delivery Services

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 many 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 IRB is privatized. Until the market is open to competition, domestic reinsurance costs remain high for both domestic and foreign insurers. The Brazilian Government intends to privatize IRB in 2000 and a preparatory law to that effect was passed in December 1999. New regulations governing the privatized reinsurance market still maintain preferential treatment for the IRB and other local reinsurers for two years, and are structured in such a way that will limit reinsurance options for primary insurers and create higher prices for the domestic market. In addition, the Government of Brazil denies foreign 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.

Banking and Other Financial Services

Under the 1997 WTO Financial Services Agreement, which Brazil has yet to ratify, Brazil made commitments in almost all service sub-sectors for non-insurance financial services, including banking and securities services. The most significant shortcoming in these commitments is that Brazil reserved the right to approve, on a case-by-case basis and subject to non-transparent criteria, all new foreign entry or expansion in the non-insurance financial services sector. In practice, Brazil generally has approved foreign service suppliers' plans to enter the market or expand existing operations, including through branching or the acquisition of troubled financial institutions. Indeed, as of June 1999, foreign owned or controlled banks accounted for 23 percent of total bank assets, and over 10 U.S. financial service suppliers had established significant operations in Brazil. In late 1999, however, the Government of Brazil announced that until it completes the privatization of eight state-owned banks, the only method of market entry or expansion allowed for foreign banks will be the purchase of one of the banks up for privatization.

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 the auto sector, local content and incentive-based export performance requirements were introduced in 1995, but are due to expire consistent with a bilateral autos agreement between the United States and Brazil. Brazil is currently engaged in negotiations with its Mercosur partners to develop a common Mercosur auto regime.

Foreign ownership of land in rural areas and adjacent to national borders remains prohibited under Brazilian law. 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. There is no Bilateral Investment Treaty between the United States and Brazil.