

BRAZIL

TRADE SUMMARY

The U.S. goods trade deficit with Brazil was \$9.1 billion in 2005, an increase of \$1.8 billion from \$7.3 billion in 2004. U.S. goods exports in 2005 were \$15.3 billion, up 10.4 percent from the previous year. Corresponding U.S. imports from Brazil were \$24.4 billion, up 15.5 percent. Brazil is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Brazil were \$5.0 billion in 2004, and U.S. imports were \$1.9 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$12.3 billion in 2003 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$384 million.

The stock of U.S. foreign direct investment (FDI) in Brazil in 2004 was \$33.3 billion, up from \$31.7 billion in 2003. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance, and banking sectors.

IMPORT POLICIES

Brazil's average applied tariff rate was 10.73 percent in 2005. Brazil is a member of MERCOSUL, a customs union comprised of Argentina, Brazil, Paraguay, and Uruguay. Full common external tariff (CET) product coverage scheduled for implementation in 2006 may be delayed. CETs range from zero percent to 35 percent *ad valorem*, with a number of country-specific exceptions. Currently, Brazil maintains 100 exceptions to the CET, with tariffs reaching as high as 55 percent on peaches.

High CETs significantly impede increased imports of U.S. agricultural products, distilled spirits, and computer and telecommunications equipment. Brazil applies additional import taxes and charges that can effectively double the actual cost of importing products into Brazil. High tariffs on information technology products and components as well as high taxes have led to a large gray market in personal computers. One safeguard measure is in place against toy imports. A number of imports are prohibited, including foreign blood products, all used consumer goods such as machinery, automobiles, clothing, refurbished medical equipment, and other consumer goods. A 25 percent merchant marine tax on freight at certain ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUL products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime).

Import Licensing/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access the SISCOMEX computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement. In addition, fees are assessed for each import statement submitted through SISCOMEX. Most imports into Brazil are covered by an "automatic import license" regime. Brazil's non-automatic import licensing system includes 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 published on the Brazilian Ministry of Development, Industry and Trade website, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. These measures have made importing into Brazil less transparent and more cumbersome for U.S. exporters.

U.S. companies continue to complain that Brazil employs a variety of customs-related non-tariff barriers including onerous and burdensome documentation requirements and inconsistent interpretations of the law. Also, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported processed food products and food supplement products. Currently, the registration process at ANVISA takes about 90 days for new products. On March 1, 2000, the term of validity for such a registration was shortened. Registration fees for these imports, as well as for medical and pharmaceutical products, have increased significantly. Implementation of such import measures continues to have a negative impact on U.S. exports, especially given the high tariffs on medical equipment.

The United States has raised a concern with Brazil that the state of Rio de Janeiro administers the ICMS tax (a value-added tax collected by individual states) in a way that provides a preferential tax advantage to a Brazilian soda ash supplier located within the state. Similarly, some U.S. companies have raised concerns about the arbitrary application of various quotas and non-automatic import licensing procedures, such as authorizations from the Federal Police and the Nuclear Regulatory Agency. For example, Brazil maintains extremely restrictive import quotas and requires non-automatic import license approval for imports of lithium compounds, including lithium carbonate and lithium hydroxide, citing the potential nuclear applications of these products. These products, however, are widely available without restriction in global markets. The United States has raised this issue with Brazil on several occasions, both bilaterally and in the WTO.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

While some progress has been made in the area of sanitary and phytosanitary measures, significant issues remain that restrict U.S. agricultural and food exports. For example, due to concerns about bovine spongiform encephalopathy (BSE), Brazil restricts U.S. exports of low-risk beef without scientific justification and contrary to international standards. Brazil continues to prohibit the import of poultry and poultry products from the entire United States. Brazil has indicated that these restrictions are based, in part, on an alleged lack of reciprocity. Brazil's ban on durum and white wheat from the states of Washington, Oregon, Idaho, California, Nevada, and Arizona due to phytosanitary concerns remains in place. While the United States understands that some of these SPS measures are being rewritten, the ban continues to adversely affect U.S. agricultural exports.

Biotechnology

Brazil's National Congress approved on March 2, 2005 the so-called Biosafety Bill, which replaced the previous legal framework in use since 1995 under which agricultural biotechnology was developed in Brazil. Brazil's President signed the Biosafety Bill, converting it into Law 11,105, on March 24, 2005. This law, which also includes provisions for stem cell research, became effective on March 28, 2005 after its publication in Brazil's official registry (Diario Oficial). Implementing regulations for the law were issued by presidential decree on November 23, 2005.

Although Law 11,105 has improved the quality of public debate on biotechnology in Brazil and provided a frame of reference for judicial proceedings, there are still some outstanding issues. For instance, other concerns include the application of the labeling regulations for biotech products, marketing and transportation restrictions in some states, widespread use of pirated (biotech) soybean and cotton seeds, and a pending court case between Monsanto and environmental and consumer NGOs. Also, on June 22, 2005, the Federal Public Prosecutor filed a lawsuit in Brazil's Supreme Court called Direct Action of Unconstitutionality (ADIN) against the new Biosafety Law. ADIN is a legal instrument based on Brazil's constitution that allows a challenge in the highest court of any law that is considered to be unconstitutional.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement, and transparency in Brazil's procurement processes is at times lacking. The United States government has received complaints concerning lack of transparency and preferences for Brazilian products in tenders for government and hospitals, including for domestically produced medical equipment. Limitations on foreign capital participation in procurement bids reportedly impair access for potential service providers in the energy, construction, security and defense sectors. Brazilian federal, state and municipal governments, as well as related agencies and companies, in general follow a "buy national" policy.

Law 8,666 (1993), which covers most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders regardless of the nationality or origin of the product or service. However, the law's implementing regulations allow consideration of non-price factors, giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits.

Decree 1,070 (1994), which regulates the procurement of information technology goods and services, requires 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 to compete in any procurement-related multilateral development bank loans and opens selected procurements to international tenders.

EXPORT SUBSIDIES

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 capital financing to Brazilian companies for, among other things, expansion and modernization projects as well as acquisition or leasing of new machinery and equipment. One goal of this program is to support the purchase of domestic over imported equipment and machinery. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

On November 21, 2005, Brazil's President signed Law 11,196 which contains provisions originally included in Provisional Measures (MP) 255/2005 and 252/2005 (commonly referred to as MP do Bem) that provide tax benefits to qualifying exporters. The law's Special Regime for the Information Technology Exportation Platform (REPES) suspends PIS/PASEP and COFINS taxes on goods and 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 annual gross income. The MP's 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 exports goods and services such that they account for at least 80 percent of overall gross income.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Patents and Trademarks

Brazil's industrial property law (Law 9,279/1996) became effective in May 1997. Concerns continue about a provision in Brazil's industrial property law that prohibits importation as a means of satisfying the requirement that a patent be "worked" in Brazil. This issue was the subject of a U.S. dispute settlement proceeding at the WTO, which was terminated without prejudice in June 2001.

FOREIGN TRADE BARRIERS

The dispute was terminated based on Brazil's commitment to provide advance notice to, and hold consultations with, the United States should it deem it necessary in the future to grant a compulsory license for failure to work a patent.

Invoking TRIPS provisions, Brazil has at times threatened to issue compulsory licenses for anti-retrovirals used in treating HIV/AIDS if satisfactory supply agreements, including a reduction in prices, could not be reached with patent-holders. To date, Brazil has not issued such a license. Negotiations were successfully completed with one U.S. pharmaceutical company in 2005 and are on-going with two others.

Law 10,196 (2001) includes some problematic provisions, including a requirement that Health Ministry (ANVISA) approval be obtained prior to the issuance of a pharmaceutical patent. This raises a concern with respect to Article 27 of the TRIPS Agreement, which U.S. officials have communicated to Brazilian counterparts, and has contributed, to a backlog in patent issuance.

Although Brazil's National Institute for Industrial Property (INPI) received a \$10 million increase in its budget in 2004 and authorization to hire an additional 450 people over the next several years, including 300 patent examiners, INPI was unable to significantly expand its staff in 2005 due to bureaucratic delays. INPI is projecting that it will take another five to six years to work through patent and trademark application backlogs. Industry estimates the backlog to be 70,000 patents of which 21,000 are for pharmaceutical products and 600,000 trademark applications.

The United States government has also received complaints that unauthorized copies of pharmaceutical products have received sanitary registrations that rely on undisclosed tests and other confidential data, raising concerns of consistency with TRIPS Article 39.3.

Law 10,603 (2002) on data confidentiality covers pharmaceuticals for veterinary use, fertilizers, agROTOXINS, and their components and related products. The law does not cover pharmaceuticals for human use. If the product is not commercialized within two years of the date of sanitary registration, third parties may request use of the data for registration purposes.

Copyrights

Brazil's Law 9,610 (1998) on copyrights included changes intended to bring Brazil into compliance with the Berne Convention and TRIPS. A 1998 software law protects computer programs for 50 years as "literary works," and makes software infringement a fiscal and an intellectual property crime. Brazil is not a party to the World Intellectual Property Organization Treaties on Copyright, and Performances and Phonograms.

Piracy remains a serious problem. The International Intellectual Property Alliance (IIPA) estimated losses due to piracy of copyrighted materials in Brazil totaled at least \$ 858.5 million in 2005. The U.S. government has engaged intensively with the Brazilian government on copyright enforcement as a result of the review of Brazil's benefits under the Generalized System of Preferences (GSP) trade program, which was prompted by an IIPA petition charging that Brazil had failed to offer adequate protection to copyrighted materials.

Positive initiatives taken by the Brazilian government, in particular formation of a public-private National Anti-Piracy Council, development of a national action plan to combat piracy, and increased police actions, led to closure of the GSP Review in early January 2006. While the recent progress was significant in improving Brazil's institutional capacity to combat piracy, the Administration will continue to seek further improvements to reduce the piracy rate.

SERVICES BARRIERS

Telecommunications

The telecommunications sector was privatized following the passage of the 1997 General Telecommunications Law, but has presented some regulatory challenges. In the fixed-line sector, for example, interconnection charges and other incumbency advantages have provided strong barriers to entry, and the companies created during a transitional duopoly stage have not fared well.

Brazil has not yet ratified its original WTO basic telecommunications commitments. In 2001, Brazil withdrew its schedule of commitments because of concerns raised by certain WTO Members that it maintained the legal prerogative of the Executive Branch to limit foreign participation in this sector, thereby creating significant uncertainty for investors. This legal prerogative is contained in Brazil's 1997 General Law on Telecommunications and is inscribed in Brazil's constitution. While Brazil has not pursued the constitutional change required to allow a revision of its offer to open up this sector, the current regulatory environment generally reflects the obligations contained in the WTO Basic Telecommunications Reference Paper.

Audio Visual Services

Brazil limits foreign ownership of cable and media companies, and has some restrictions on foreign programming contents. 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 audio-visual services. National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels. Law 10,610 (2002) limits foreign ownership in media outlets to 30 percent, including the print and "open broadcast" (non-cable) television sectors. Brazil's legislature is considering extension of this restriction to cover Internet Service Providers, pay TV channels and operators, and content producers and distributors. Such a change would pose a serious threat to a number of U.S. companies operating in Brazil as content producers/distributors. Open television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin.

Law 10,454 (2002) aims to promote the national film industry through creation of the National Film Agency (ANCINE) and through various regulatory measures. The law imposes a fixed title levy on the release of foreign films in theaters, foreign home entertainment products, and foreign programming for broadcast television.

FOREIGN TRADE BARRIERS

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 cinematographic or video phonographic advertisement. The fee may vary according to the advertising content and the transmission segment.

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. Theatrical screen quotas for local films exist. Quotas on domestic titles for home video distributors, while not currently enforced, present another potential hindrance to commerce.

Express Delivery Services

A bill (PL 1491/99) that would reorganize the National Postal System remains under discussion in the Brazilian Congress. The current proposal would create a regulatory agency for postal services as well as a new Postal Company of Brazil, owned and operated by the federal government. Although the bill would end the government monopoly over postal services after a ten-year period, it would also create a monopoly on the delivery of certain types of correspondence and parcels that are not now subject to regulation, such as express delivery packages, thereby significantly inhibiting market access by U.S. firms. Brazil also applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime) that is used by express delivery services.

Financial Services

Brazil has not yet ratified its commitments from the 1997 Financial Services negotiations (known as the Fifth Protocol) or taken the necessary steps to make them binding under the General Agreement on Trade in Services (GATS). Brazil is South America's largest insurance market and earnings from premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital, and many major U.S. firms have since entered the market mainly via joint ventures with established companies. Foreign participation, however, is limited to 50 percent of the capital of a company and to one third of its voting stock. Brazil maintains a government-owned reinsurance monopoly through the Brazil Reinsurance Institute (IRB). While a 1996 constitutional reform allowed for the abolishment of the monopoly, private reinsurance companies have been precluded from operating in Brazil pending passage of implementing legislation necessary to open the sector to private competition. The Brazilian government eventually dropped plans to privatize the IRB as part of the opening of the sector and opted instead to submit to Congress, in May 2005, a bill to allow private companies, including foreign ones, to offer reinsurance in the Brazilian market. The government would retain ownership of the IRB, which would continue to offer reinsurance on the domestic market. The IRB's regulatory functions would pass to the insurance regulator.

If Brazilian shipping companies wish to obtain foreign hull insurance, they must submit information to IRB demonstrating that the foreign insurance policy is less expensive than that offered by Brazilian insurers. Brazilian importers must obtain cargo insurance from insurance firm's resident in Brazil, although the firms may be foreign-owned.

Service trade opportunities in some sectors have been affected by limitations on foreign capital participation. Brazil's constitution precludes the expansion of foreign-owned banks until new financial sector legislation is issued. For practical reasons, the required legislation has not been issued, but Brazil's President has the authority to authorize new foreign participants on a case-by-case basis. In practice, Brazil has approved most plans by Foreign Service suppliers to enter the market or expand existing operations. United States financial service suppliers have established significant operations in Brazil. As of June 2005, foreign-owned or controlled assets accounted for 27.8 percent of Brazil's total banking sector equity.

INVESTMENT BARRIERS

In addition to restrictions discussed above, foreign investment is restricted in internal transportation, public utilities, media and other "strategic industries." Foreign ownership of land adjacent to national borders remains prohibited under Brazilian law, unless approved by Brazil's National Security Council. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. accounting for more than one-third of total foreign investment. There is neither a bilateral investment treaty nor a treaty on the avoidance of double taxation between the United States and Brazil.

Energy

In 2004, Brazil implemented new energy legislation to restructure the power generation and distribution sector. The new legislation gives the state a leading role in determining, for example, how much new power capacity is needed based on forecasts by a newly created independent Energy Research Institute (IPE). The new model separates into two different competition groups power generators that have not yet amortized their investments (new energy) and those that have (old energy), based on whether a facility had been built by a certain cut-off date. This dual-pool structure has disadvantaged some U.S. companies that invested in the sector during privatization in the late 1990s and whose investments have not been amortized, but which are nevertheless included in the old energy pool. The Brazilian government is still in the midst of implementing the new model.