

BRAZIL

TRADE SUMMARY

The U.S. goods trade deficit with Brazil was \$1.0 billion in 2007, a decrease of \$6.1 billion from \$7.1 billion in 2006. U.S. goods exports in 2007 were \$24.6 billion, up 28.1 percent from the previous year. Corresponding U.S. imports from Brazil were \$25.6 billion, down 2.8 percent. Brazil is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Brazil were \$7.6 billion in 2006 (latest data available), and U.S. imports were \$2.8 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$10.7 billion in 2005 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$540 million.

The stock of U.S. foreign direct investment (FDI) in Brazil was \$32.6 billion in 2006 (latest data available), up from \$29.6 billion in 2005. U.S. FDI in Brazil is concentrated largely in the manufacturing, nonbank holding companies, finance, mining, and banking sectors.

IMPORT POLICIES

Tariffs

Brazil's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 11.46 percent in 2007. Brazil is a member of MERCOSUR, a customs union formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's common external tariff (CET) averages 13.6 percent and ranges from 0 percent to 20 percent ad valorem, with a limited number of country specific exceptions. Currently, Brazil maintains 100 exceptions to the CET. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one MERCOSUR member before reaching their final destination. Full CET product coverage, which would result in duty free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until 2009.

Nontariff Barriers

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

Brazil has one safeguard measure in place against grated coconut. A number of imports are prohibited, including foreign blood products and all used consumer goods such as machinery, automobiles, clothing, refurbished medical equipment, and tires. A 25 percent merchant marine tax on long distance freight at Brazilian ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported via mail and express shipment by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime). Goods with a value of over \$3,000 cannot be imported using this regime.

Import Licensing/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access Brazil's "SISCOMEX" computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement; however, the new updated SISCOMEX system, installed in early 2007, has cut the wait time for import-export license processing almost in half. 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 nonautomatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to nonautomatic import licensing procedures is published on the Brazilian Ministry of Development, Industry and Trade website, (<http://www.desenvolvimento.gov.br/arquivo/secex/conPorImportacao/AnuentesLInaoAuto.pdf>), specific information related to nonautomatic import license requirements and explanations for rejections of nonautomatic 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 of onerous and burdensome documentation requirements, which are required before certain types of goods can enter Brazil - even on a temporary basis. For example, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes about 3 months to 6 months for new versions of existing products, but can take over 6 months to register products new to the market. Registration of pharmaceutical products can take over 1 year, since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug already has FDA approval.

ANVISA implemented a regulation late in 2007 (Regulation 185) to comply with federal legislation (Law 10742 of 2003). This regulation requires companies to submit economic information (some of it proprietary) including projected worldwide pricing intentions, in order to register medical devices. Attempts by industry representatives to challenge this new requirement have been unsuccessful thus far, and no new devices have been registered since it was established. Implementation of such import measures not only delays entry of state-of-the-art U.S. pharmaceutical and medical products into the Brazilian market; it also renders it impossible for U.S. companies to demonstrate new-to-market goods at industry trade shows.

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.

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. beef imports despite [World Organization for Animal Health \(OIE\)](#) guidelines which specify that trade in all U.S. beef and beef products, with the exception of certain specified risk materials (SRMs), is safe. Brazil continues to prohibit the import of poultry and poultry products from the United States. Scientific justifications for these restrictions have not been provided. Brazil's ban on wheat from the States of Washington, Oregon, Idaho, California,

Nevada, and Arizona due to phytosanitary concerns remains in place. The ban continues to adversely affect U.S. agricultural exports.

Biotechnology

Law 11460 on March 21, 2007, amended several provisions of Brazil's first Biosafety Bill (Law 11105 of 2005). These amendments were intended to smooth the approval process for biotechnology products in Brazil. However, despite changes made in the procedures of the National Technical Commission on Biosafety (CTNBio) to approve individual biotechnology products (from requiring a two thirds vote to a simple majority), nearly all new approvals are subject to court injunctions. The requests for such injunctions are filed by anti-biotechnology groups inside and outside the government to stop approval of individual biotechnology products.

GOVERNMENT PROCUREMENT

Law 8666 of 1993, which covers most government procurement other than informatics and telecommunications, requires nondiscriminatory treatment of all bidders regardless of the origin of the product or service. However, the Law's implementing regulations allow consideration of nonprice factors, giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits. Decree 1070 of 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 that have established legal entities in Brazil to compete for procurement-related multilateral development bank loans and opens selected procurements to international tenders.

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

EXPORT SUBSIDIES

In October 2007, Brazil restored tax breaks to exporters with the enactment of Law 11529 with the stated intention of helping industries hurt by the strengthening real. This Law allows certain Brazilian industrial sectors (textiles, furniture, ornamental stones, woodworking, leatherworking, shoes, leather goods, heavy and agricultural machinery manufacturers, apparel, and automotive goods – including parts) to apply tax credits under the social integration (PIS) and social security (COFINS) programs to the purchase of capital goods, both domestic and imported, to be used for manufacturing finished products. The Law also expands the government's program for exporting companies purchasing capital goods. To be exempt from paying the 9.25 percent PIS-COFINS tax on these purchases, companies must prove they derive at least 70 percent of their revenues from exportation. This benchmark was lowered to 60 percent for companies in the sectors covered by the legislation.

The government of Brazil offers a variety of tax, tariff, and financing incentives to encourage production for export and the use of Brazilian-made inputs in domestic production. For example, Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several different programs. The interest rates charged on this financing are customarily lower than the prevailing market interest rates for domestic financing. One BNDES program, FINAME, provides 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.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) introduced in 2005 suspends PIS 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 their 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 3 years to export goods and services such that they account for at least 80 percent of their overall gross income during that time.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brazil has made important progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audio-visual goods. Nonetheless, shortcomings in some areas of IPR protection and enforcement continue to represent barriers to U.S. exports and investment.

Patents and Trademarks

The United States has raised concerns regarding Brazil's Law 10196 of 2001, which includes a requirement that National Health Surveillance Agency (ANVISA) approval be obtained prior to the issuance of a pharmaceutical patent. The implementation of this requirement is nontransparent and has contributed to an ongoing backlog in the issuance of patents. The United States is also concerned that this requirement singles out one particular product category for a set of procedural requirements, raising questions in connection with Article 27 of the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS Agreement).

On May 4, 2007 Brazil issued a compulsory license for Merck Sharp & Dohme's anti-retroviral drug efavirenz (brand name: Stocrin) used in treating HIV/AIDS patients. The United States has urged Brazil, in advancing its national public health objectives, to engage in transparent and open discussions with patent holders and other stakeholders, in order to achieve good public health outcomes while preserving the incentive to innovate by protecting intellectual property.

Although Brazil's patent backlog remains high, estimated at between 130,000 and 150,000 applications, the national patent office has taken concrete steps to streamline processing, including an upgrade of its outdated computer system. Over the past 2 years it has increased the number of patent examiners over 200 percent and has plans to further increase the number of examiners from the current level of 255 to 360 full time examiners by the end of 2008, at the same time increasing median salaries 50 percent to retain experienced employees. By the end of 2008, INPI expects to increase its patent processing capacity from the current 20,000 applications per year to 30,000 per year. The government estimates that by the end of 2009, new patent applications will be adjudicated within 4 years, which would represent the end of the backlog. Brazil has also raised trademark approvals almost six-fold since 2003. In mid-2006, the National Institute of Industrial Property (INPI) instituted a new system of streamlined, paperless processing for trademarks. According to INPI, as a result of the new system, new trademark applications are now being initially processed within a maximum time frame of 12 months. The U.S. Patent and Trademark Office is working with INPI to help that agency in its modernization efforts.

The United States is also concerned about Brazil's protection against unfair commercial use of data generated in connection with obtaining marketing approval for pharmaceutical products. Law 10603 of 2002 on data confidentiality covers pharmaceuticals for veterinary use, fertilizers, agro-toxins, and their components and related products. The law does not cover pharmaceuticals for human use. If a human use pharmaceutical product is not commercialized within 2 years of the date of sanitary registration, third parties may request use of the data for registration purposes.

Copyrights

Brazil is not a party to the World Intellectual Property Organization Treaties on Copyright, and Performances and Phonograms.

Despite recent enforcement gains, piracy remains a serious problem. The International Intellectual Property Alliance (IIPA) estimates losses due to piracy of copyrighted materials in Brazil totaled at least \$849.6 million in 2007.

SERVICES BARRIERS

Audio Visual Services

Brazil limits foreign ownership of cable and media companies and places some restrictions on foreign programming content. 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 10610 of 2002 limits foreign ownership in media outlets to 30 percent, including the print and "open broadcast" (noncable) television sectors. Open television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin.

Law 10454 of 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.

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

Brazil's customs service is in the process of switching to an automated express delivery clearance system, which will significantly reduce customs clearance times for express packages once it is implemented. Customs originally expected to complete implementation of the system by the end of 2007; however, a revised schedule now calls for completion in the first quarter of 2008. After implementation of this system is complete, customs has plans to redraft express delivery regulations to remove some of the current restrictions on express delivery.

The U.S. Government is engaging the Brazilian government on use of Admission Temporaire-Temporary Admission (ATA) Carnets. The ATA Carnet, an internationally accepted customs document, would ease the temporary importation of commercial samples, professional equipment, and goods for exhibitions and fairs.

Financial Services

On January 15, 2007, Brazil published Complementary Law 126, eliminating the previous state monopoly on reinsurance, which had been in place since 1939. Previously the domain of the government controlled Brazilian Institute of Reinsurance (IRB), the regulation of co-insurance, reinsurance and retrocession transactions, and their intermediation will be handled by the National Private Insurance Council (CNSP) with oversight from the insurance supervisory body, the Brazilian Private Insurance Superintendence (SUSEP). The IRB will continue operating in the market only as a local reinsurer.

Complementary Law 126 authorizes three different types of reinsurance companies to operate in Brazil:

- local reinsurers: reinsurers with registered offices in Brazil and incorporated for the sole purpose of conducting reinsurance and retrocession transactions;
- "admitted" reinsurers: reinsurers with registered offices abroad and with a representative office in Brazil, which, in compliance with the requirements of the Complementary Law and the rules applicable to reinsurance and retrocession activities, have registered as such with SUSEP for the conduct of reinsurance and retrocession transactions; and,
- "eventual" reinsurers: foreign reinsurance companies with registered offices abroad that do not have a representative office in Brazil, which, upon compliance with the requirements established in the Complementary Law and with the rules applicable to reinsurance and retrocession activities, have registered as such with SUSEP to conduct reinsurance and retrocession transactions.

INVESTMENT BARRIERS

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