BRAZIL

TRADE SUMMARY

U.S. goods exports in 2013 were $44.1 billion, up 0.7 percent from the previous year. Corresponding U.S. imports from Brazil were $27.6 billion, down 14.2 percent. The U.S. goods trade surplus with Brazil was $16.6 billion in 2013, an increase of $4.9 billion from 2012. Brazil is currently the 7th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were $23.9 billion in 2012 (latest data available), and U.S. imports were $6.9 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $38.0 billion in 2011 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $1.5 billion.

The stock of U.S. foreign direct investment (FDI) in Brazil was $79.4 billion in 2012 (latest data available), up from $73.8 billion in 2011. U.S. FDI in Brazil is led by the manufacturing and finance/ insurance sectors.

IMPORT POLICIES

Tariffs

Brazil is a member of the Southern Common Market (MERCOSUR) customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, Uruguay, and Venezuela, which was admitted as a full member in July 2012. MERCOSUR maintains a Common External Tariff (CET) schedule with a limited number of country-specific exceptions, with most favored nation (MFN) applied rates ranging from zero percent to 35 percent *ad valorem*. Brazil's import tariffs follow the MERCOSUR CET, with few exceptions. Brazil's MFN applied tariff rate averaged 13.5 percent in 2012. Brazil's average bound tariff rate in the WTO is significantly higher at 31.4 percent. Brazil's maximum bound tariff rate for industrial products is 35 percent, while its maximum bound tariff rate for agricultural products is 55 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs to protect domestic industries from import competition and to manage prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to predict the costs of doing business in Brazil.

Brazil imposes relatively high tariffs on imports across a wide spread of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. Under MERCOSUR, Brazil is permitted to maintain 100 exceptions to the CET until December 31, 2015. Using these exceptions, Brazil maintains higher tariffs than its MERCOSUR partners on certain goods, including cellular phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, sardines, and mushrooms. At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to allow member countries to increase import duty rates temporarily to a maximum rate of 35 percent on an additional 100 items per member country. In October 2012, Brazil issued its list of 100 products subject to this tariff increase, which expired in November 2013. The Brazilian government announced that it does not intend to extend these tariffs or implement new tariff hikes under the June 2012 MERCOSUR CMC agreement, which also permits member countries to increase tariffs above the CET on an additional 100 line item products. Exports of U.S. products in the categories affected by tariff increases totaled approximately $3.9 billion in 2013.

In August 2010, MERCOSUR's CMC advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and Decision 5610 (December 2010) to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012, but the deadline was not met. In November 2012, Argentina became the first MERCOSUR member to ratify the CCC. The CCC still must be ratified by the other four MERCOSUR member countries.

As part of its Uruguay Round commitments, Brazil agreed to establish a 750,000 metric ton (MT) duty-free tariff-rate quota (TRQ) for wheat. Brazil has never opened the TRQ, and therefore no wheat has been shipped under the TRQ. In an April 1996 notification to the WTO, Brazil indicated its intent to withdraw the wheat TRQ in accordance with the process established in Article XXVIII of the GATT 1994. Brazil considers the Article XXVIII process to be ongoing. The Brazilian government considers the current MFN applied tariff rate for wheat of 10 percent, along with *ad hoc* duty-free MFN quotas established to bridge supply gaps, to confer benefits that are commensurate with, or in excess of, the 750,000 MT TRQ. However, because Brazil could increase the 10 percent applied tariff at any time and the *ad hoc* quotas are unpredictable by nature, these arrangements do not offer U.S. wheat exporters the same certainty that a 750,000 MT TRQ would provide. The United States will continue to engage Brazil on this issue.

Nontariff Barriers

Brazil applies to imports federal and state taxes and charges that can effectively double the actual cost of imported products in Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges for U.S. companies operating in and exporting to Brazil. For example, effective January 1, 2013, Brazil instituted a "temporary" regime for a reduction in the Industrial Product Tax (IPI) that provides locally produced vehicles preferential tax rates, provided that manufacturers comply with a series of local content and other requirements. This program will remain in effect until 2017. As part of the program, the baseline IPI on all vehicles will be revised upward by 30 percentage points, which is equivalent to the level applied to imported vehicles under the prior program introduced in December 2011. However, it allows those meeting certain levels of local content, fuel efficiency and emissions standards, and required levels of local engineering, research and development, or labeling standards to receive tax breaks that may offset the full amount of the IPI. Imported automobiles face a potential 30 percentage point price disadvantage *vis-à-vis* equivalent vehicles manufactured in Brazil even before import duties are levied.

Brazil prohibits imports of all used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology (ICT) products as well as some blood products. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). In general, Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically. A 25 percent merchant marine tax on ocean freight plus port handling charges at Brazilian ports puts U.S. products at a competitive disadvantage *vis-à-vis* MERCOSUR products.

Import Licenses/Customs Valuation

All importers in Brazil must register with the Secretariat of Foreign Trade (SECEX) to access the Brazilian Secretary of Foreign Trade's computerized documentation system (SISCOMEX). SISCOMEX registration requirements are onerous, including a minimum capital requirement.

Brazil has both automatic and non-automatic import license requirements. Brazil's non-automatic 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 (Ministry of National Defense). Although a list of products subject to non-automatic import licensing procedures is available on the SISCOMEX system, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures creates additional burdens for U.S. exporters.

U.S. footwear and apparel companies have expressed concern about the extension of non-automatic import licenses and certificate of origin requirements on non-MERCOSUR footwear to include textiles and apparel. They also note the imposition of additional monitoring, enhanced inspection, and delayed release of certain goods, all of which negatively impact the ability to sell U.S.-made and U.S.-branded apparel, footwear, and textiles in the Brazilian market.

In May 2011, the Brazilian government imposed non-automatic import licensing requirements on imported automobiles and automotive parts, including those originating in MERCOSUR countries. Delays in issuing the non-automatic import licenses negatively affect U.S. automobile and automotive parts manufacturers that export vehicles to Brazil, particularly those that manufacture such products in Argentina for export to Brazil.

U.S. companies continue to complain of burdensome documentation requirements for the import of certain types of goods that apply even if imports are on a temporary basis. In addition, 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 from three to six months for new versions of existing products and can take more than six months for new products.

SUBSIDIES

The Plano Brasil Maior (Greater Brazil Plan) industrial policy offers a variety of tax, tariff, and financing incentives to encourage local producers and production for export by firms in Brazil. The *Reintegra* program, launched in December 2011 as part of Plano Brasil Maior, exempted from certain taxes exports of goods covering 8,630 tariff lines. The Reintegra program expired at the end of 2013 despite industry pressure to maintain the program. Plano Brasil Maior also calls for the creation of funds designed to aid small and medium-sized exporters and to cover non-payment by customers in countries where the risk of non-payment is high.

Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several programs, such as the R$44 billion (approximately $22 billion) Investment Maintenance Program. At 3 percent to 5.5 percent, the interest rates charged on financing under this program are substantially lower than the prevailing market interest rates for commercial financing. One BNDES program, FINAME, provides preferential financing for the sale and export of Brazilian machinery and equipment and provides financing for the purchase of imports of such goods provided that such goods are not produced domestically. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture. BNDES also provides preferential financing for wind farm development, contingent upon progressively more stringent local content requirement through 2016. Currently, Brazilian wind turbine suppliers are eligible to receive preferential BNDES financing, provided the wind towers are built with at least 70 percent Brazilian steel.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) suspends Social Integration Program (PIS) and Contribution to Social Security Financing (COFINS) taxes on goods

imported and information technology services provided by companies that commit to export software and information technology services to the extent that those exports account for more than 50 percent of their annual gross income. The 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 two years to export goods and services such that they account for at least 50 percent of their overall gross income for the previous calendar year.

Brazil provides tax reductions and exemptions on many domestically-produced ICT and digital goods that qualify for status under the Basic Production Process (Processo Productivo Basico, or PPB). The PPB provides benefits on the production and development of goods that incorporate a certain minimum amount of local content. Tax exemptions are also provided for the development and build-out of telecommunications broadband networks that utilize locally-developed products and investments under the Special Taxation Regime for the National Broadband Installation Program for Telecommunication Networks (Regime Especial de Tributação do Programa de Banda Larga para Implantação de Redes de Telecomunicações, or REPNBL-Redes).

In April 2013, Brazil passed the Special Regime for the Development of the Fertilizer Industry (REIF). Under this program, fertilizer producers receive tax benefits, including an exemption for the industrial products tax (IPI) on imported inputs, provided they comply with minimum local content requirements and can demonstrate investment in local research and development projects.

Brazil also provides a broad range of assistance to its agricultural sector in the form of low interest financing, price support programs, tax exemptions, and tax credits. An example of such assistance is the Equalization Premium Payment to the Producer (Prêmio de Equalização Pago ao Produto or PEPRO), which offers a payment through an auctioning system to producers or cooperatives of certain agricultural commodities including grapes, corn, and cotton based on the difference between the minimum price set by the government and the prevailing market price. Each PEPRO auction notice specifies the commodity to be tendered and the approved destinations for that product, including export destinations. Another example is financing provided by BNDES. Of the R$146.8 billion (approximately $73.4 billion) BNDES allocations to the various sectors of the Brazilian economy from January until October 2013, R$14.8 billion (approximately $7.4 billion) was set aside for the agriculture and livestock sectors, 73 percent more than the same period of time in 2012. In 2012, BNDES announced the Prorenova credit line of R$4 billion (approximately $2 billion) available for the calendar year to finance the renewal and/or expansion of approximately 2.5 million acres (1 million hectares) of sugarcane fields. In January 2013, the program was extended through December 31, 2013 with the same capital grant as in 2012. However, in the first year of operation, the program released R$1.4 billion, one-third of the total planned.

GOVERNMENT PROCUREMENT

U.S. companies without a substantial in-country presence regularly face significant obstacles to winning government contracts and are often more successful in subcontracting with larger Brazilian firms. Regulations allow a Brazilian state enterprise to subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms.

In 2010, Brazil passed a law giving procurement preference to firms that produce in Braziland that fulfill certain economic stimulus requirements such as generating employment or contributing to technological development, even if their bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. The law allows for “strategic” information and communications technology (ICT) goods and services procurements to be restricted to those with indigenously developed technology. In August 2011, this system of preference margins was folded into Plano Brasil Maior. Government

procurement is just one of many measures under Plano Brasil Maior intended to promote and protect domestic producers, particularly the labor-intensive sectors facing import competition. In November 2011, the Ministry of Development, Industry, and Commerce implemented an 8 percent preference margin for domestic producers in the textile, clothing, and footwear industries when bidding on government contracts. In April 2012, Brazil implemented 5 percent to 25 percent preference margins for domestically produced backhoes, motor graders, and a variety of pharmaceuticals.

Brazil's regulations regarding the procurement of ICT goods and services require federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated price/technology matrix. In addition, Brazil has made several attempts over the past decade to enact preferences at the federal, state, and local government levels for the procurement of open-source software over commercial products. Most recently, in December 2011, two Brazilian legislative committees approved draft Law PL 2269/1999, which would require all Brazilian federal government agencies and state-owned entities to favor open-source software in their procurement policies. This legislation is subject to further action in the Brazilian Congress. If enacted, this law would put U.S. software providers at a severe disadvantage *vis-à-vis* Brazilian companies. In addition, in August 2012, the Ministry of Science, Technology and Innovation released a "Bigger IT Plan" intended to bolster the growth and development of the domestic information technology industry. The program focuses heavily on software and related services and establishes a new process for the government to evaluate and certify that software products are locally developed in order to qualify for price preferences that may be as high as 25 percent.

State-controlled oil company Petrobras' local content requirements are currently established and regulated by Brazil's National Petroleum Agency (ANP), which is gradually introducing higher local content requirements with each bidding round. In addition, local content requirements vary by block (the geographic area that is awarded by the Brazilian government to oil companies for oil exploration), and within that block the local content requirements differ for equipment, workforce, and services. In the past, local content requirements were as low as 5 percent; however, Brazilian officials have indicated that local content requirements for Petrobras and other oil companies could reach 80 percent to 95 percent by 2020 in certain product categories. Technology-intensive equipment and services will likely be subject to higher local content requirements than low-technology equipment and services. The Oil and Gas Regulatory Framework introduced in December 2010 requires Petrobras to be the majority operator of new projects, and as a result, Petrobras is responsible for ensuring that its workforce and its entire supply chain adhere to these increasingly high local content requirements. ANP fined Petrobras and other oil exploration and production companies over the last few years for noncompliance with local content requirements; for example in September 2011, Petrobras was fined R$29 million (approximately $16.85 million) for noncompliance. In August 2012, ANP announced that it was reviewing 17 local content waiver requests from five unnamed operators, requiring that a company prove in its waiver request that it is unable to acquire the appropriate goods and services locally or that local prices are not in line with international standards.

The United States continues to urge Brazil to become a signatory to the WTO Agreement on Government Procurement in order to ensure that companies in both countries have access to each other's procurement markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil remained on the Special 301 Watch List in 2013. Brazil continues to make progress by conducting notable enforcement efforts across the country under the coordination of the National Council to Combat Piracy. However, Brazil continues to experience piracy and counterfeiting, especially pirated books, and the challenge of piracy over the Internet continues to grow. More sustained action and the imposition of deterrent-level penalties could enhance Brazil's border and general enforcement effectiveness. In the area

of patents, Brazil has taken steps to address a backlog of pending patent applications but delays still exist. In addition, regulations that provide Brazil's health regulatory agency, ANVISA, with the authority to review pharmaceutical patent applications for meeting patentability requirements appear to contravene an earlier opinion by the Federal Attorney General that clarified that ANVISA does not have this authority. These new regulations create transparency and predictability challenges, as well as additional delays in the patent application review process.

SERVICES BARRIERS

Audiovisual Services and Broadcasting

Brazil imposes a fixed tax on each foreign film released in theaters, on foreign home entertainment products, and on 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 video and audio advertising.

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. Domestic film quotas also exist for theatrical screening and home video distribution.

In September 2011, Brazil enacted law 12.485 covering the subscription television market, including satellite and cable television. The law permits telecommunications companies to offer television packages with their services and also removes the previous 49 percent limit on foreign ownership of cable television companies. However, new content quotas also went into effect in September 2011, which require every channel to air at least three and a half hours per week of Brazilian programming during prime time. Additionally, one third of all channels included in any television package must be Brazilian. The content quotas were phased in over a three-year period, achieving full implementation in September 2013. As before, foreign cable and satellite television programmers are subject to an 11 percent remittance tax, which does not need to be paid if the programmer invests 3 percent of its remittances in co-production of Brazilian audiovisual services. In addition, the law delegates significant programming and advertising regulatory authority to the national film industry development agency, ANCINE.

Cable and satellite operators are subject to a fixed 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" (non-cable) television sectors. Eighty percent of the programming aired on "open broadcast" television channels must be Brazilian.

Express Delivery Services

U.S. express delivery service companies face significant challenges in the Brazilian market due to numerous barriers, such as high import taxes, an automated express delivery clearance system that is only partially functional, and levels for *de minimis* exception from tariffs that are too low to facilitate efficient import of goods.

The Brazilian government charges a flat 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. U.S. industry contends that this flat rate is higher than duties normally levied on goods arriving via regular mail, putting express delivery companies at a competitive disadvantage. Moreover, Brazilian Customs has established maximum value limits of $5,000 for exports and $3,000 for imports sent using express services. These limits severely restrict the Brazilian express delivery market's growth potential and impede U.S. exporters doing business in Brazil.

Financial Services

In order to enter Brazil's insurance and reinsurance market, foreign firms must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. The Brazilian reinsurance market was opened to competition in 2007. However, in December 2010 and March 2011, the Brazilian National Council on Private Insurance (CNSP) reversed its previous market liberalization actions through the issuance of Resolutions 225 and 232, which disproportionately affect foreign insurers operating in the Brazilian market. Resolution 225 requires that 40 percent of all reinsurance risk be placed with Brazilian companies. In addition, Resolution 232 allows insurance companies to place only 20 percent of risk with affiliated reinsurance companies. In December 2011, CNSP passed Resolution 241, which loosens some of the requirements of Resolution 225 such that foreign firms are no longer subject to the 40 percent requirement of Resolution 225, if they can show that there is an insufficient supply on the local reinsurance market.

On August 31, 2012, President Rousseff signed a Provisional Measure decree (MP 564) which allows for the creation of a state-owned enterprise for reinsurance, the so-called "Segurobras." The purpose of the company would be to provide government-backed reinsurance for large infrastructure projects, such as for World Cup and Olympics construction, which do not have full coverage in the private market. *Segurobras'* broad mandate could also allow it to acquire and compete with private companies in the housing and vehicle insurance markets.

Telecommunications

As a condition of the June 2012 auction for the 2.5 GHz radio spectrum, the Brazilian National Telecommunications Agency (ANATEL) required wireless carriers to meet specific milestones over time to ensure local content for the infrastructure, including software, was installed to supply the licensed service and to ensure 60 percent local content in 2012, 65 percent in 2015, and 70 percent after 2017. ANATEL also required wireless carriers to use a minimum percentage of technology developed in Brazil, starting with 10 percent in 2012, 15 percent in 2015, and 20 percent after 2017. These requirements also apply to infrastructure in the 450 MHz spectrum. ANATEL has not yet announced the bid requirements for the 700 MHz spectrum related to its planned 2014 auction, but press reports and public statements by the Communications Minister suggest that the local content requirements may be similar.

Pursuant to Resolution 323 of November 2002, ANATEL requires local testing of telecommunications products and equipment by designated testing facilities in Brazil, rather than allowing testing by a facility certified by an independent certification body. The only exception is in cases where the equipment is too large or too costly to transport. As a result of these requirements, U.S. manufacturers and exporters must present virtually all of their information technology and telecommunications equipment for testing at laboratories located in Brazil before that equipment can be placed on the Brazilian market, which causes redundant testing, higher costs and delayed time to market.

In April 2013, Brazil's Ministry of Communications issued Portaria No. 87, which provides an exemption from consumption taxes for smartphones meeting certain requirements, including that they contain a pre-

loaded package of locally-developed applications. This tax exemption is expected to lead to a price reduction of up to 30 percent on smartphones containing these applications.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

On December 9, 2011, the National Land Reform and Settlement Institute (INCRA) published a set of new rules covering the purchase of Brazilian agricultural land by foreigners. These rules follow an August 2010 opinion issued by the Attorney General limiting foreign ownership of agricultural land. Under the new rules, the area bought or leased by foreigners cannot account for more than 25 percent of the overall area in its respective municipal district. Additionally, no more than 10 percent of the land in any given municipal district may be owned or leased by foreign nationals from the same country. The rules also make it necessary to obtain congressional approval before large plots of land can be purchased by foreigners, foreign companies, or Brazilian companies with a majority of shareholders from foreign countries. On September 3, 2013, INCRA published a normative instruction to clarify the regulations laid out in new rules. The normative instruction does not change the new set of rules, but spells out the regulation and implementation of the rules, as well as providing guidance for foreign investors. This continues to be a barrier to U.S. investment in Brazilian agricultural land.