

BRAZIL

TRADE SUMMARY

The U.S. goods trade balance with Brazil went from a deficit of \$1.0 billion in 2007, to a surplus of \$2.5 billion in 2008. U.S. goods exports in 2008 were \$32.9 billion, up 33.6 percent from the previous year. Corresponding U.S. imports from Brazil were \$30.5 billion, up 18.8 percent. Brazil is currently the ninth largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were \$9.8 billion in 2007 (latest data available), and U.S. imports were \$4.0 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$17.7 billion in 2006 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$995 million.

The stock of U.S. foreign direct investment (FDI) in Brazil was \$41.6 billion in 2007 (latest data available), up from \$33.1 billion in 2006. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance/insurance, and nonbank holding companies sectors.

IMPORT POLICIES

Tariffs

Brazil's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 11.5 percent in 2008. Brazil's average bound tariff in the WTO is significantly higher at 31.4 percent. Given the fact that there are large disparities between bound and applied rates, U.S. exporters face greater uncertainty because Brazil has the ability to raise its applied rates to bound levels in an effort to manage prices and supply.

Brazil is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.7 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Brazil maintains 100 exceptions to MERCOSUR's common external tariff (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 December 31, 2009.

High *ad valorem* tariffs affect U.S. exports across diverse sectors including automobiles, auto parts, electronics, chemicals, plastics, textiles, and apparel.

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.

A number of imports are prohibited, including foreign blood products, and all used consumer goods such as machinery, automobiles, clothing, medical equipment, and tires. Brazil also restricts the entry of

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certain types of remanufactured goods (*e.g.* earthmoving equipment, automotive parts, and medical equipment) through onerous import licensing procedures. Additionally, Brazil only allows the importation of such goods if they are not produced domestically. 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 SISCOMEX system, updated in early 2007, has cut the wait time for import-export license processing almost in half. 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 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 non-automatic import licensing procedures is published on the Brazilian Ministry of Development, Industry and Trade website (<http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=272&refr=246>), 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.

Additionally, specific issues have arisen regarding Brazil's usage of import licensing requirements in certain sectors. For example, Brazil's non-automatic import license system for toys was implemented at the end of 2005, shortly before Brazil's safeguard mechanism for toys was set to expire. U.S. companies have reported that in evaluating the applications for import licenses for toy entries, SECEX has relied on determinations regarding customs valuation level. Evaluation of these import license applications involves a lengthy process, with some importations subject to additional scrutiny and delays resulting from customs valuation determinations. Companies have reported delays in excess of 90 days for the approval of import license applications.

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 from three to six months for new versions of existing products, but can take over six months to register products new to the market. Registration of certain pharmaceutical products can take over one 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.

U.S. companies have also complained that customs officials often apply a higher dutiable value based on a retail price rather than recognizing the company's stated transaction value.

In recent years, Brazil has become a more active user of antidumping and safeguard remedies. Since November 2007, Brazil has initiated three antidumping investigations involving U.S. exports (including biaxially oriented polypropylene film, butyl acrylate, and supercalendered paper). In addition, Brazil has

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initiated a safeguard investigation (recordable CDs and DVDs), affecting nearly \$37 million in U.S. exports.

EXPORT POLICIES

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 of the national currency, the 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 – 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 normally 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 Air Transport Association of America (ATA) and its member airlines were concerned with the government of Brazil's delay in sending proposed legislation eliminating the PIS-COFINS tax on international jet fuel in Brazil. This tax did not comply with international agreements or with the International Civil Aviation Organization's Policies on Taxation in the Field of International Air Transport, to which Brazil is a signatory country. ATA, the International Air Transport Association, and U.S. airlines coordinated a successful campaign by sending letters urging the government of Brazil to promptly implement legislation to eliminate the PIS-COFINS tax. On September 25, 2008, the Brazilian government published a resolution eliminating the PIS-COFINS from the refinery price. The elimination of the tax represents savings of approximately \$97 million per year to the fuel costs of international flights for carriers operating out of Brazil.

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 the 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, for a five year period, PIS-COFINS taxes on goods and information technology 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 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 export goods and services such that they account for at least 80 percent of their overall gross income for the previous calendar year.

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STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

A number of U.S. companies have raised concerns with respect to Brazil's standards development process across sectors. For example, Brazil is developing standards for a range of electrical products that are seemingly based not only on International Electrotechnical Commission standards but MERCOSUR standards as well; according to U.S. industry, this could create barriers for many products that include U.S. technology and meet U.S. or relevant international standards.

In May and June 2008, Brazil notified the WTO of numerous proposed changes to their technical regulations for wine and distilled spirits. U.S. industry raised concerns that the regulations would set quality and identity standards that are not in conformity with international practices, are not justified by health and safety considerations, and could bar a number of U.S. distilled spirits and wine exports to Brazil. Brazil responded that the regulations would only apply to domestic production and, thus, would not affect imports.

In late 2006, Brazil adopted a regulation which requires companies to submit economic information (some of it proprietary), including projected worldwide pricing intentions, in order to register and re-register certain medical devices. Registration is a requirement for these products to be placed on the Brazilian market. The United States continues to express its concern that Brazil's National Health Surveillance Agency (ANVISA) requires the submission of certain economic data with each registration that does not appear to be related to the safety and efficacy of medical devices and is unnecessarily costly and burdensome. U.S. industry has indicated that some of the information required by ANVISA is impossible to provide, either because that information does not exist, or because information exists, but is sensitive commercial information or is only available if obtained from other companies, which raises potential antitrust issues. Brazil and the United States are currently engaged in discussions aimed at resolving the issue.

U.S. companies have complained that Brazil has not identified a standard for sulfite tolerance for dehydrated potatoes, restricting U.S. exports.

Certification

Because Brazil's National Telecommunications Regulatory Agency does not accept test data generated outside of Brazil (except in a few limited cases), and virtually all testing for information technology (IT) and telecommunications equipment must be conducted by testing labs in Brazil. There are concerns that this requirement of "in country" testing significantly increases the costs of exporting equipment to Brazil.

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 to Brazil. For example, due to the 2003 discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States, Brazil prohibits the importation of all U.S. cattle, beef, and beef products. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded from all countries regardless of BSE status as long as the appropriate Specified Risk Materials (SRMs) are removed. In May 2007, the OIE classified the United States as "controlled risk" for BSE. The United States continues to press Brazil to implement import

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requirements for U.S. live cattle, beef, and beef products on the basis of science, the OIE guidelines, and the U.S. "controlled risk" classification.

Brazil continues to limit the import of poultry meat and table eggs from the United States without a scientific basis for its actions. As a result, U.S. poultry meat exports, which exceeded \$1.1 million in 2004, dropped to \$218,000 in 2007. Exports during the first 10 months of 2008 fell 47 percent compared to the same period in 2007.

Brazil also maintains phytosanitary restrictions that prevent importation of specific types of wheat grown in certain areas of the United States despite scientific evidence that objectively demonstrates that the risk to Brazil of removing these restrictions is negligible. Through technical dialogue, U.S. and Brazilian officials will continue to pursue the development and application of science-based sanitary standards for trade in U.S. agricultural products.

Biotechnology

Agricultural biotechnology in Brazil is rigorously regulated under a risk-based system which provides for safety norms and inspection mechanisms for activities that involve genetically engineered organisms (and their by-products), establishes the National Biosafety Council (CNBS), re-structures the National Biosafety Technical Commission (CTNBio), and sets the National Biosafety Policy. The system also includes provisions for stem cell research in Brazil. Biosafety Law 11,460 of March 21, 2007 improved the voting process for approval of individual biotechnology events by the CTNBio. As of June 18, 2008, all approvals of biotechnology events in Brazil by the CTNBio are conclusive and cannot be appealed to the CNBS, which considers only issues of social and economic interests. This decision eliminates a major constraint for the approval of biotechnology events in Brazil. Although hurdles still remain, progress has also been made in addressing protection of intellectual property rights as it relates to biotechnology.

Reciprocity

Brazil requires that the U.S. Department of Agriculture's export certificates for animals and plants and their by-products be authenticated by a Brazilian consulate in the United States before shipping. This results in extra cost and unnecessary delays in exports of agriculture products to Brazil. The United States does not have a comparable requirement. U.S. efforts over the last three years to seek modifications to this Brazilian law, which dates from 1934, have thus far yielded little change.

GOVERNMENT PROCUREMENT

U.S. companies have found it difficult to participate in Brazil's public sector procurement unless they are associated with a local firm. Without a significant in-country presence, U.S. companies regularly face significant obstacles in 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 available.

Brazilian government procurement policies apply to purchases by government entities and state-owned companies. Brazil has an open competition process for major government procurements. Under Brazilian law, price is to be the overriding factor in selecting suppliers. By law, the Brazilian government may not make a distinction between domestic and foreign-owned companies during the tendering process;

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however, when two equally qualified vendors are considered, the law's implementing regulations provide for a preference to Brazilian goods and services.

Brazil's regulations on 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.

Most government procurement is open to international competition, either through direct bidding or participation in consortia. However, many of the larger bids (*e.g.* military purchases) can lead to unilateral single source procurement awards. The value of current pending military procurements exceeds \$1 billion.

Brazil is not a signatory of the WTO Agreement on Government Procurement (GPA).

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brazil has made important progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audiovisual 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 continues to raise 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. On June 23, 2008, ANVISA issued Resolution RDC 45 standardizing, to some extent, the procedures for review of such patent applications. Nonetheless, ANVISA's role in reviewing pharmaceutical patent applications remains non-transparent and has contributed to an increasing backlog in the issuance of patents.

Although Brazil's patent application backlog remains high, estimated at over 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 two 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 238 to 473 full-time examiners by the end of 2010, at the same time increasing median salaries 50 percent to retain experienced employees. By the end of 2008, the National Institute of Industrial Property (INPI) expected to increase its patent processing capacity from the current 20,000 applications per year to 30,000 per year. In mid-2006, INPI instituted a new system of streamlined, paperless processing for trademarks. The system, titled "*e-Marcas*," enables new trademark applications to be filed with INPI via the Internet. By the end of 2009, INPI looks to adopt a similar system for new patent applications. The U.S. Patent and Trademark Office (USPTO) is working with INPI to help that agency in its modernization efforts. In July 2008 the USPTO and Brazilian IPR regulator INPI signed a Memorandum of Understanding that will serve as a vehicle for continued cooperation on IPR issues, such as training and efforts to reduce the patent and trademark backlog.

The United States is also concerned about Brazil's protection against unfair commercial use of test 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.

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Copyrights

Brazil is not a party to the World Intellectual Property Organization (WIPO) Copyright Treaty or the WIPO Performances and Phonograms Treaty (collectively the "WIPO Internet Treaties").

Despite ongoing 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 \$1.19 billion in 2008.

Intellectual Property Licensing

Patent and trademark licenses between Brazilian and foreign companies must be recorded with, and approved by, INPI and registered with the Central Bank of Brazil. Licensing contracts must contain detailed information about the terms of the agreement and royalties to be paid. In such arrangements, Brazilian law limits the amount of royalty payments that can be taken as a tax deduction, which consequently acts as a *de facto* cap on licensing fees. Royalty remittance must go through the Central Bank of Brazil.

SERVICES BARRIERS

Audiovisual Services

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 audiovisual 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" (non-cable) 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. Domestic film quotas also exist for theatrical screening and home video distribution.

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Express Delivery Services

U.S. express delivery service (EDS) companies face significant challenges in the Brazilian market due to numerous limitations established by the Brazilian government such as high import taxes, a new, partially functioning automated express delivery clearance system, low maximum value limits for express export and import shipments, and the possible approval of a damaging postal reform law that could undermine current levels of market access for private EDS companies.

The Brazilian government charges a 60 percent duty for all goods that are imported through the Simplified Customs Clearance procedure that express delivery mail uses. This is much higher than the External Tariff Code Duty (ETCD), the normal code used for regular service of shipments, which is 25 percent. Receita Federal, the agency charged with levying taxes, claims that the 60 percent duty is less than the ETCD when the harmonized code is added in on normal shipments. U.S. industry contends that it is more, noting that the 60 percent tax frightens potential customers away. In addition to the high taxes, Brazilian Customs has established maximum value limits of \$10,000 for export and \$3,000 for import by EDS companies. These restrictions severely impair the Brazilian express delivery market's growth potential and also impede U.S. exporters doing business with Brazil.

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

Financial Services

U.S. companies wanting to enter Brazil's insurance market must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company.

INVESTMENT BARRIERS

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

Customer Care Support Law

Brazil enacted a law in December 2008 (Decree 6523 – SAC) that implements numerous new requirements for customer support and call centers operating in Brazil. The provisions of the law are perceived as onerous, expensive, and adverse to private business. Among the many provisions are a requirement for companies to operate customer service call centers 24 hours a day, year-round, an obligation to preserve recorded call records for a minimum of 90 days and written records for 2 years in a central, easily accessible database, and a requirement to provide requested information to customers immediately and to resolve the complaint within 5 business days. Others provisions include the right of the consumer to cancel contracts over the phone without dispute or penalty should the issue involve unsolicited service or incorrect billing. The enforcement of the decree and sanctions given noncompliance are covered under article 56 of Law 8078, adopted in 1990.

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