BRAZIL

TRADE SUMMARY

The U.S. goods trade surplus with Brazil was $6.1 billion in 2009, an increase of $4.3 billion from 2008. U.S. goods exports in 2009 were $26.2 billion, down 19.0 percent from the previous year. Corresponding U.S. imports from Brazil were $20.1 billion, down 34.1 percent. Brazil is currently the 10th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were $12.3 billion in 2008 (latest data available), and U.S. imports were $5.0 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $25.4 billion in 2007 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $1.1 billion.

The stock of U.S. foreign direct investment (FDI) in Brazil was $45.5 billion in 2008 (latest data available), down from $47.8 billion in 2007. U.S. FDI in Brazil is led by the manufacturing, and finance/insurance 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 2009. Brazil's average bound tariff, *i.e.*, the rate that generally cannot be exceeded under WTO rules, is significantly higher at 31.4 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in Brazil's market because the government has the ability to raise applied rates to bound levels in an effort to manage prices and supply. For instance, in August and September 2009, Brazil raised tariffs by as much as 14 percentage points on several industrial products including industrial fatty alcohols, refractory bricks, valves for oleohydraulic or pneumatic transmissions, and parts of electric appliances.

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 11.5 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region that transit at least one MERCOSUR member before reaching their final destination.

Brazil is permitted by MERCOSUR to maintain 93 exceptions to the CET until December 31, 2011. Brazil's Foreign Trade Chamber (Camex) decided in June 2009 to raise import duties on a select group of 8 imported steel products by removing these items from an exceptions list of 100 duty-free products contained in MERCOSUR's CET. Products covered under this action included different types of hot- and cold-rolled steel in plates and coils. The removal of these products from the exceptions list increased the import tariffs to between 12 percent and 14 percent.

In December 2009, Brazil – along with the other MERCOSUR members – approved tariff increases for hundreds of products in the CET, including dairy, textiles, and bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the bound levels.

High *ad valorem* tariffs affect U.S. exports across diverse sectors including automobiles, automotive 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 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/Trade Remedies

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, since it was updated in early 2007, the SISCOMEX system for import-export license processing has become more efficient. Fees are assessed for each import statement submitted through SISCOMEX. 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 (National Defense Ministry). 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 can be frustrating and cumbersome for U.S. exporters.

U.S. companies continue to complain of onerous 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 months 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 approval from the U.S. Food and Drug Administration.

U.S. companies also have 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 July 2009, Brazil has initiated three antidumping proceedings involving U.S. exports (an investigation of polypropylene film and reviews of the antidumping measures on ethylene glycol [EBMEG] and polyvinyl chloride in suspension [PVC-S]). Brazil presently has antidumping measures in force involving the following eight products exported from the United States: EBMEG, PVC-S, polyethylene terephthalate (PET) resin, pre-sensitized offset plate, polycarbonate resin, phenol, supercalendared paper, and butyl acrylate.

In October 2009, Brazil terminated its safeguard investigation on recordable CDs and DVDs.

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 *real*, the national currency. The law expands the government's program for exporting companies purchasing capital goods. To be exempt from paying the 9.25 percent social integration (PIS) and social security (COFINS) taxes 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 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 financing for Brazilian firms to purchase Brazilian-made machinery and equipment and capital goods with a high level of domestic content. 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) suspends through 2010 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.

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

The procurement of certain parastatal companies is subject to simplified procedures designed to make those companies more competitive with their private sector counterparts. In 1997, with the end of the oil monopoly, the Brazilian government issued Law Decree number 2745/98, which regulates the procurement of services, construction works, and the acquisition of goods and equipment. Pursuant to Law Decree number 2745/98, Petrobras may hold tenders through invitation letters, electronic auctions, or national or international bids. From time to time, however, suppliers have found that Brazil's General Attorney will question procurements conducted pursuant to these simplified procedures resulting in delays in Petrobras' tenders. More recently, in May 2009, the Brazilian government extended the same simplified procurement procedures to the parastatal power company Eletrobras and its subsidiaries through Law 11.943/09.

Brazil's regulations on the procurement of information technology goods and services require 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 financed by multilateral development bank loans.

Through direct bidding or participation in consortia, most government procurement is open to at least some form of international competition. However, many of the larger procurements (*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 to the WTO Agreement on Government Procurement (GPA).

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brazil was listed on the Watch List in the 2009 Special 301 report. While Brazil has made important progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audiovisual goods, some areas of IPR protection and enforcement continue to represent barriers to U.S. exports and investment. Key issues cited in the report include concerns regarding IPR enforcement, including the need to increase raids and seizures of pirated and counterfeit products, and increase actions against book and Internet piracy. The United States has also raised concerns regarding patent protection for pharmaceuticals and medical devices, including with respect to the role of Brazil's health authority (ANVISA) in the patent application process; inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for human-use pharmaceutical products; and an inter-ministerial decision against granting patents for polymorphs and second-use inventions. Implementation of that decision would require a change to Brazil's patent law. Though not yet enacted, a bill has been introduced in the Chamber of Deputies; in the interim, the Brazilian patent and trademark office (INPI) continues to evaluate polymorph and second-use applications on a case by case basis.

SERVICES BARRIERS

Audiovisual Services

Law 10454 of 2002 aims to promote the national film industry through the creation of the National Film Agency (ANCINE) and through various regulatory measures. The law imposes a fixed tax on each foreign film released 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 separate 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.

Broadcasting

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 broadcast television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin.

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, and low maximum value limits for express export and import shipments.

The Brazilian government charges a 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. U.S. industry contends that this duty 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 $10,000 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 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. Legislation to implement ATA Carnet is currently under consideration in Brazil's Congress.

Financial Services

U.S. companies wanting to enter Brazil's insurance and reinsurance market must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. Market entry for banks may occur on a case-by-case basis.

Telecommunications

One U.S. company has complained that Brazil's mobile termination rates (the rate a telecommunications operator must pay a competitor to deliver a call to one of the customers on that competitor's network) are the highest in the region, given limitations on the independent regulator's (ANATEL) ability to intervene to impose rates on carriers deemed to hold significant market power. Although ANATEL has been trying to conduct a proceeding to review and establish reasonable rates, the proceeding, which is scheduled to be completed in 2010, continues to face delays. This results in arbitrarily higher costs for U.S. carriers providing mobile services in Brazil.

INVESTMENT BARRIERS

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

Civil Aviation

Brazil's Civil Aviation Regulatory Agency (ANAC) has proposed facilitating quicker entry of new airlines into the Brazilian market by eliminating the requirement for limited validity public concession contracts. Instead, ANAC would simply provide an authorization, without an expiration date. This proposal is expected to be approved by the Brazilian Congress in 2010. Furthermore, ANAC has begun the process of deregulating domestic and international fares, leading to further competition in the aviation market.