

BRAZIL

In 1996, the U.S. trade surplus with Brazil was \$3.9 billion, an increase of \$1.3 billion from the U.S. trade surplus of \$2.6 billion in 1995. U.S. merchandise exports to Brazil were \$12.7 billion, an increase of \$1.3 billion (11.0 percent) from the level of U.S. exports to Brazil in 1995. Brazil was the United States' twelfth largest export market in 1996. U.S. imports from Brazil were \$8.8 billion in 1996, a decrease of \$53 million (0.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1995 was \$23.6 billion, an increase of 25.5 percent from the level of U.S. FDI in 1994. U.S. FDI in Brazil is concentrated largely in the manufacturing, financial, and banking sectors.

Overview

The process of economic liberalization initiated in 1990 has produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports have increased as a result of generally lower tariffs and reduced non-tariff barriers, as well as the strength of the Brazilian currency relative to the dollar. Imports are composed of a wide range of industrial, agricultural, and consumer goods. Despite some restrictive measures adopted during 1996 to slow mounting trade deficits -- measures which the Government of Brazil maintains are temporary -- access to Brazilian markets in a significant number of sectors is generally good, and most markets are characterized by competition and participation by foreign firms through imports, local production, and joint ventures.

The government still dominates certain sectors of the economy, such as the telecommunications, petroleum, and electrical energy sectors, limiting trade, investment, and procurement opportunities. However, the federal government is in the process of opening cellular telephone service to private investors and foreign firms and has submitted a bill to Congress to regulate privatization of remaining phone services. In addition, one state (Rio Grande do Sul) has already sold 35 percent of the stock in its state phone company to a foreign operator, effectively privatizing it. The government also privatized three federally-owned electric companies in 1995-96 and plans to privatize others in 1997. Several Brazilian states are also working with the National Development Bank to develop privatization plans for state-controlled electric companies. The government is in the process of introducing legislation and regulations to implement the constitutional amendments eliminating the government monopoly in the petroleum and telecommunications sectors, approved by the Brazilian Congress in 1995.

IMPORT POLICIES

Tariffs

Tariffs, in general, are the primary instrument in Brazil for regulating imports. As of October 1996, the average tariff was 13.6 percent and the median tariff rate was 20.0 percent.

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In response to an import surge and the resulting large monthly trade deficits in late 1994 and early 1995, in March 1995 the government raised import tariffs significantly on a range of consumer durable goods, including automobiles, motorcycles, and toys. The new tariff levels, as high as 70 percent on some products, were to remain in effect until April 1996. However, in 1996 the government decided to maintain high tariff levels for both autos and toys until the year 2000. As Brazil is currently phasing down its tariff binding levels as required by the World Trade Organization (WTO), these rates will have to be lowered periodically to remain within WTO bindings. The tariff increases have not affected capital goods, which constitute approximately 40 percent of U.S. exports to Brazil. Industry reports that tariffs remain high on certain food and chemical products.

In December 1995, the government issued regulations establishing investment incentives for the automobile sector that do not appear to conform to Brazil's WTO obligations. These measures require firms to invest in Brazil and maintain specified levels of local content in order to qualify for lower duty rates on imports of vehicles, parts, and materials. The United States and Japan requested WTO consultations on this issue in August 1996, contending that the regime did not comply with WTO obligations. The EU, Korea, and Canada joined those consultations. In August 1996, Brazil issued a decree that provided tariff-rate quotas to Japanese, Korean, and European auto manufacturers. In-quota rates equaled the rates being offered to U.S. firms that were invested in Brazil. The United States was not included in the tariff-rate quota. In October 1996, the United States initiated a Section 301 investigation into Brazil's practices, and is currently consulting with Brazil on this issue.

Brazil and its Southern Common Market (MERCOSUR) partners, Argentina, Paraguay, and Uruguay, implemented the MERCOSUR common external tariff (CET) on January 1, 1995. The CET currently covers approximately 85 percent of 9,000 tariff items; most of the remaining 15 percent will be covered by 2001, and all will be covered by 2006. The CET levels range between 0 and 20 percent, with the exception of tariffs on telecommunications equipment, computers, some capital goods, and products included on Brazil's national list of exceptions to the CET, such as shoes, automobiles, and consumer electronics. For products covered by the CET, the maximum Brazilian tariff is still 20 percent, the most commonly applied tariff is 14 percent, and the average CET tariff is 11.7 percent. The United States signed a framework agreement on trade and investment with MERCOSUR in 1991. Meetings of the Trade and Investment Council are held on an annual basis.

At the request of the United States and other WTO member countries, the members of MERCOSUR agreed to the formation of a WTO working party to examine the WTO consistency of MERCOSUR. The first meeting of the working party took place in the fall of 1995 and the second in the fall of 1996. The United States will continue to encourage the reduction of trade and investment barriers, including tariffs, and the creation of a customs union that is open and consistent with the WTO, specifically GATT Article XXIV.

Import Licensing

Although import licenses are required for virtually all products, import licensing generally does not pose a barrier to U.S. exports. On January 2, 1997, the Secretariat of Foreign Trade implemented a computerized trade documentation system (SISCOMEX) to handle import licensing. Although the system

is still having technical problems, the government expects to resolve the problems soon. The system should streamline the filing and processing of import documentation, as well as allow the government to maintain trade statistics and track import tariff collections more effectively.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The primary barriers to U.S. agricultural products are sanitary and phytosanitary measures. Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. In October 1995, Brazil prohibited the importation of live sheep from the United States due to scrapie disease. New regulations on imports of wine may also restrict access to the Brazilian market for U.S. wines.

Brazil adopted the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE), composed of Argentina, Chile, Brazil, Paraguay, and Uruguay, on January 1, 1996. Exporters encountered difficulties during 1995 and 1996 as Brazil implemented a number of the new regulations with insufficient advance notification on such commodities as wheat, apples, and seeds. The United States is negotiating with Brazil to enable U.S. firms to meet the import requirements established by the new regulations for agricultural products. In the summer of 1996, the United States and Brazil negotiated new protocols for wheat, some fruits, seeds, and legumes, but Brazil has failed to implement some of these agreements. The United States is working with Brazil to fulfill its commitments.

GOVERNMENT PROCUREMENT

The federal, state, and municipal governments, as well as related agencies and companies, follow a "buy national" policy. Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurement to international tenders. Given the significant influence of the state-controlled sector due to its large size, discriminatory government procurement policies are, in relative terms, a substantial barrier to U.S. exports. For example, discriminatory government procurement practices exist in the telecommunications, computer, and computer software sectors. Foreign companies with production facilities in Brazil still receive preferential treatment in government procurement decisions.

To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. Complete implementation of the constitutional amendments passed in 1995, opening the state telecommunications, petroleum, and natural gas distribution monopolies to private (including foreign) participation, may also ease some of the barriers currently faced by foreign suppliers. However, even after complete implementation, foreign companies with production facilities in Brazil will still receive preferential treatment in government procurement decisions.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, regulations introduced in late 1993 allow consideration of non-price factors, give preferences to telecommunications, computers, and digital electronics goods produced in Brazil, and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires

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federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix. Bidders that meet one or more of the criteria for preferential treatment -- Brazilian-owned company, Brazilian technology or products, or minimum local value-added content -- are allowed a price differential of up to 12 percent over other bidders.

It is not possible to estimate the economic impact of these restrictions on U.S. exports. However, free competition could provide significant market opportunities for U.S. firms. The United States seeks adoption of competitive procurement procedures, elimination of any measures favoring domestic producers, and provision of predictable, nondiscriminatory treatment for U.S. suppliers in Brazil's government procurement.

EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export, excise and sales tax exemptions on exported products, and rebates on materials used in the manufacture of exported products. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing as well as from the financial operations tax for deposit receipts on export products. Exporters are also eligible for a rebate on social contribution taxes paid on locally-acquired production inputs.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing. Revisions to PROEX were announced in late 1995. The revisions expanded the size of the program and authorized coverage of additional export sectors. While \$344 million was initially budgeted for PROEX in 1996, the revisions actually increased export financing to \$380 million.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Industrial Property

On May 14, 1996, a new industrial property law was enacted. Although it will enter into force in May 1997, implementing regulations have not yet been published. This law improves many aspects of Brazil's industrial property regime, but some problems remain.

Patent protection will now be available for pharmaceutical products and processes, chemical products, and other inventions that were not patentable under the prior law. Protection is still not available, however, for man-made plants and animals (except for man-made microorganisms), nor has plant variety protection been provided as ultimately required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) when patent protection is not available for man-made plants. In addition, certain isolated or purified forms of substances found in nature are not patentable subject matter. The term of patent protection was extended from 15 years from the date of filing to 20 years from the date of filing, but

patents in force are not expressly extended to the new term as stipulated by paragraph 2 of Article 70 of the TRIPs Agreement. “Pipeline” protection is provided for inventions that were not patentable in Brazil because of limitations on patentable subject matter (e.g., pharmaceutical and chemical products) if the inventions were patented in another country and not marketed in Brazil.

Domestic working of a patented invention is required unless it is not economically feasible. Failure to produce locally could eventually result in forfeiture of the patent. Importation does not always satisfy the working requirement as ultimately required by the TRIPs Agreement. The remedies for non-working are compulsory licenses and permission to parallel import.

There is a vast network of compulsory licenses. Compulsory licenses may be granted for abuse of rights, abuses of economic power, non-working in Brazil, failure to meet the needs of the market, working dependent patents, and in national emergencies or to meet the public interest.

The new law added provisions for the protection of “well-known” trademarks, but also contains a long list of categories of marks that are not registrable. A law for the protection of the layout designs of integrated circuits, introduced in April 1996, has not been enacted.

Copyrights and Related Rights

Estimated trade losses from the piracy of computer programs and entertainment software, motion pictures, sound recordings and musical compositions continued to increase in 1996 (estimated at \$666.2 million by U.S. industry), despite significant efforts by right holders to enforce their rights under the existing laws. Improved laws and more effective judicial procedures are needed to reduce these losses.

In the area of computer programs, in 1994 the Government of Brazil committed itself to enact amendments to a 1987 software law by January 1, 1995. At present, amendments are pending that would significantly improve protection for firms marketing computer programs in Brazil; among these amendments are: the abolition of the “law of similars,” elimination of the software registration system, introduction of a rental right, and an increase in the term of protection to fifty years. These amendments were approved in January 1, 1996, by the Chamber of Deputies, but are still pending in the Senate. In addition to the software amendments, amendments to Brazil’s copyright law are needed to bring it into compliance with the Berne Convention and TRIPs Agreement. In particular, amendments should address “retroactive” protection for sound recordings and parallel imports.

Enforcement

In the last two years, enforcement of laws against video and software piracy has gradually improved. Foreign firms have had some success in using the Brazilian legal system to protect their copyrights, and the government has initiated action to reduce the importation of pirated sound recordings and videocassettes. However, fines are not indexed to an appropriate economic indicator. As a result, the value of fines established several years ago has eroded to the point where they are no longer a deterrent to piracy. Thus, the penal code needs to be amended to provide indexed fines that create a deterrent to infringement, increase the effectiveness of the criminal enforcement system, and decrease delays in the judicial process.

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Entry into force of provisions under the 1996 industrial property law establishing specialized intellectual property courts may provide some relief for copyright owners.

SERVICES BARRIERS

Restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances, and arbitrary application of regulations and laws limit U.S. service exports to Brazil. Service trade opportunities, particularly in the telecommunications, oilfield, mining, and financial industries, have been affected by limitations on foreign capital participation in many sectors. The passage of constitutional amendments eliminating the distinction between national and foreign capital; opening the state telecommunications, petroleum, and natural gas distribution monopolies to private participation; and permitting foreign participation in coastal and inland shipping should ease many of the current restrictions on foreign services providers. However, the degree to which some of these sectors are actually opened will depend on implementing legislation, which, in most cases, has not yet been introduced. In those areas where implementing legislation has been introduced, described below, the opening to foreign participation remains limited.

The 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. However, in the recently concluded WTO negotiations on basic telecommunications services, Brazil made commitments on most basic telecommunications services and will remove its foreign investment restrictions on cellular and satellite services, contained in its 1996 law, on July 20, 1999. Furthermore, Brazil committed to bind the outcome of future reform legislation by revising its WTO commitments to incorporate such reforms. The legislation is expected to open all public and nonpublic services to unlimited market access and national treatment within one year of enactment.

The 1996 cabotage law limits foreign participation in cabotage to countries which have reciprocal cabotage arrangements with Brazil; otherwise, cabotage services are limited almost exclusively to Brazilian companies, although they may rent or charter foreign-made ships on a limited basis. Foreign companies or foreign crews may operate only with the prior approval of the Brazilian authorities.

Foreign companies, particularly construction engineering firms, are prevented from providing technical services in government procurement contracts unless Brazilian firms are unable to perform them. INPI, which must approve all technical service contracts, has subjected foreign companies to substantial delays. However, Brazil has promulgated a concessions law (February 1995) and the Law of Electrical Energy Producers (July 1995) to promote a more transparent regulatory regime and provide a legal framework for concessionaires of public services.

Brazil restricts the private sector use of foreign-produced advertising materials through limits on foreign film footage (two-thirds of which must be produced in Brazil) and sound tracks (all of which must be produced in Brazil), limits on foreign capital participation, and requirements that the majority of the directors of a company must be Brazilian. Discriminatory government procurement practices further curtail the use of foreign-produced advertising material.

Foreign legal, accounting, tax preparation, management consulting, architectural, engineering, and construction firms are hindered by various barriers. These include forced local partnerships, limits on foreign directorships and non-transparent registration procedures. The Government of Brazil reserves the right to refuse entry of managers or executives associated with the provision of a service if they do not provide new technology, increase productivity in Brazil, or attract new investment.

Brazil is South America's largest potential insurance market. The Government of Brazil discriminates against foreign firms in the insurance sector through: (1) limitations on foreign capital to 50 percent equity participation; (2) limitations on voting stock that foreign firms can control in an existing insurance company, insurance brokerage, or private premium fund to no more than 30 percent; (3) limitations on the entry of new firms in the sector ostensibly due to market "saturation;" and (4) mandatory incorporation in Brazil. The amendment eliminating the distinction between national and foreign capital should correct this discriminatory treatment. However, implementing legislation may be required before non-discriminatory rules can take effect. In addition, the Government of Brazil restricts import insurance to Brazilian firms through Resolution Number 3/71, which denies U.S. marine cargo insurers an opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian-owned brokerages. In June 1996, the Brazilian Government voted an end to the state's monopoly on reinsurance.

INVESTMENT BARRIERS

In addition to restrictions on services-related investments, various prohibitions limit foreign investment in petroleum production and refining, internal transportation, public utilities, media, and other "strategic industries." In other sectors, Brazil limits foreign-equity participations, imposes local-content requirements, and links incentives to export performance. For example, there are equity limitations, local content requirements, and incentive-based performance requirements in the computer and digital electronics sector. In the auto sector, local content and incentive-based export performance requirements were introduced in 1995. Foreign majority participation in direct mining operations and foreign investment in health care have been barred by Brazil's constitution.

Some of these restrictions may be reduced once the 1995 constitutional amendments are implemented. In August 1995, the government introduced a measure which permits foreign financial institutions to open new branches or to increase their ownership participation in Brazilian financial institutions. However, foreign ownership of land in rural areas and adjacent to national borders remains prohibited under Law Number 6634.

Investment restrictions are an important limitation for U.S. firms seeking to conduct business in Brazil. Despite these restrictions, U.S. and other foreign firms have major investments in Brazil. The United States will seek to ensure that implementing legislation for the constitutional amendments passed in 1995 will, in fact, lower barriers to U.S. business.

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