BRAZIL

TRADE SUMMARY

The U.S. goods trade surplus with Brazil was $11.6 billion in 2011, an increase of $104.3 million from 2010. U.S. goods exports in 2011 were $42.9 billion, up 21.2 percent from the previous year. Corresponding U.S. imports from Brazil were $31.4 billion, up 30.9 percent. Brazil is currently the 8th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were $16.5 billion in 2010 (latest data available), and U.S. imports were $5.2 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $24.7 billion in 2009 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $972 million.

The stock of U.S. foreign direct investment (FDI) in Brazil was $66.0 billion in 2010 (latest data available), up from $55.2 billion in 2009. U.S. FDI in Brazil is led by the manufacturing and finance/ insurance sectors.

IMPORT POLICIES

Tariffs

Brazil is a member of the MERCOSUR customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. 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 effectively determine the MERCOSUR CET, with few exceptions. Brazil's MFN applied tariff rate averaged 11.64 percent in 2011, compared to 10.3 percent and 10.5 percent in Paraguay and Uruguay, respectively. Brazil's average bound tariff in the WTO is significantly higher, at 31.4 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government routinely changes tariffs to protect fledgling domestic industries from import competition or to manage prices and supply. In December 2009, Brazil, along with the other MERCOSUR members, approved tariff increases in the CET for hundreds of products, including dairy, toys, textiles, bags, backpacks, and suitcases. In many cases, the applied tariffs were increased up to the WTO bound levels.

Brazil imposes high tariffs on U.S. exports across diverse sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, and textiles and apparel. Brazil is permitted by MERCOSUR to maintain 100 exceptions to the CET until December 31, 2015, through which it maintains higher tariffs than its MERCOSUR partners on certain goods, including cell phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, sardines, and mushrooms. In 2011, Brazil proposed a temporary allowance for an additional 100 tariff line exceptions to the CET. At the MERCOSUR summit in December 2011, MERCOSUR members agreed to increase import duty rates temporarily to a maximum rates of 35 percent on 100 tariff items per member country. The increased duties went into effect in January 2012 and will remain in effect through the end of 2012, with the possibility of an extension through the end of 2015.

During the 39th meeting in August 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code and decision 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. The deadline was not met, however, and the CCC still must be ratified by MERCOSUR's member countries.

Nontariff Barriers

Brazil applies federal and state taxes and charges to imports 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 Brazil. For example, in September 2011, Brazil announced a significant increase of 30 percent of the base price to its Industrial Products Tax on vehicles that do not meet a 65 percent domestic content requirement (defined as content from MERCOSUR countries or Mexico) and certain other investment and production requirements. This tax increase is to remain in effect until December 2012 and targets imports that compete with domestic production of automobiles.

Brazil also prohibits a number of imports, including foreign blood products and all used consumer goods, such as automobiles, clothing, and tires, as well as used medical equipment and information and communications technology products. 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. 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 long distance freight at Brazilian ports puts U.S. agricultural products at a competitive disadvantage vis-à-vis MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals via mail and express shipment, which 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 the Brazilian Secretary of Foreign Trade's computerized documentation system ("SISCOMEX"). SISCOMEX registration requirements are onerous, including a minimum capital requirement. 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 create additional burdens for U.S. exporters.

U.S. footwear and apparel companies have expressed concern about the imposition of non-automatic import licenses and certificate of origin requirements on non-MERCOSUR footwear, which have been expanded 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 vehicles, including those originating in MERCOSUR countries. The delays in issuing non-automatic import licenses negatively affect U.S. automobile manufacturers that produce vehicles in Argentina for export to Brazil.

U.S. companies continue to complain of onerous and burdensome documentation requirements that 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, and can take more than six months for new products. Registration of certain pharmaceutical products can take more than a year, since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug has already obtained approval from the U.S. Food and Drug Administration.

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.

SUBSIDIES

In October 2007, Brazil restored tax breaks to exporters with the enactment of Law 11529, the stated intention of which was to help industries hurt by the strengthening of the national currency, the *real*. This law allows firms in certain Brazilian industrial sectors (textiles, furniture, ornamental stones, woodworking, leatherworking, shoes, leather goods, heavy and agricultural machinery manufacturers, apparel, and automotive, including parts) and producers of certain agricultural products (including cattle semen and embryos, horticultural and fruit products, eggs, seeds, wheat and wheat flour, day-old chicks, fluid and pasteurized milk, cheeses, whey, blends for bakery products, fertilizers, and pesticides) 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. Under this program, 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 *Brasil Maior* ("Greater Brazil") industrial policy offers an additional variety of tax, tariff, and financing incentives to encourage production for export. The Reintegra Program, launched in December 2011 as part of *Brasil Maior*, exempts exports of goods covering 8,630 tariff codes, representing R$80 billion (approximately $46.5 billion) of exports, from certain taxes and introduces a tax credit for exporters of industrialized goods equal to three percent of the value of their exports. To qualify, the imported content of the exported goods must not exceed 40 percent, except in the case of high-technology goods such as pharmaceuticals, electronics, and aircraft and parts, which are permitted to have imported content of up to 65 percent. *Brasil Maior* 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$75 billion (approximately $43.6 billion)

Investment Maintenance Program. At between four percent and eight 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 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 PIS and 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 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. According to Law 11174/2008, the Brazilian government may lower the required ratio to 60 percent for some industries (*e.g.*, textiles and furniture) and 50 percent for others (*e.g.*, software and IT services). As of February 2012, 265 companies benefited from RECAP.

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, then-President Lula signed a provisional measure that later was approved by the Brazilian Congress and became law, giving procurement preference to firms that produce in Brazil, whether foreign-owned or Brazilian, that fulfill certain economic stimulus requirements such as generating employment or contributing to technological development, even when their bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. In August 2011, this system of preference margins was folded into *Plano Brasil Maior*. Government procurement is just one of 35 components under *Brasil Maior* intended to support Brazilian exporters and protect domestic producers, particularly the labor-intensive sectors threatened by exports from abroad. The textile, clothing and footwear industries were the first to benefit from *Brasil Maior* when, in November 2011, the Ministry of Development, Industry and Commerce implemented an eight percent preference margin for domestic producers in these industries when bidding on government contracts.

Pursuant to Decree number 2745/98, the state-controlled oil company Petrobras may issue tenders through invitation letters, electronic auctions, or national or international bids. From time to time, however, suppliers have found that Brazil's Federal Attorney General will question procurement conducted pursuant to these simplified procedures resulting in delays in tenders from Petrobras.

Petrobras's 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. Technology-intensive equipment and services will likely be subject to higher local content regulations than low-technology equipment and services. The new Oil and Gas Regulatory Framework introduced in December 2010 will require Petrobras to be the majority operator of new projects, and as a result, Petrobras will be responsible for ensuring that its workforce and its entire supply chain adhere to these increasingly high local content requirements. ANP has fined Petrobras and other oil exploration and production companies over the last few years for noncompliance with local content requirements; in September 2011, Petrobras was fined R$29 million (approximately $16.85 million) for noncompliance.

Brazil’s regulations regarding 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.

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 others’ procurement markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil was listed on the Watch List in the 2011 Special 301 report. In January 2011, the Federal Attorney General reissued an opinion that ANVISA does not have the authority to review patentability requirements when analyzing pharmaceutical patent applications. This resolves a longstanding concern of the United States with respect to ANVISA’s double examination of patents. Brazil has taken steps to address a backlog of pending patent applications, but long delays still exist. Brazil has also continued to make important progress in enhancing the effectiveness of intellectual property enforcement, including some significant raids. However, concerns remain with respect to Brazil’s high levels of piracy and counterfeiting, especially with respect to book piracy and piracy over the Internet, and inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for human use pharmaceutical products. Brazil also needs to make improvements in its border enforcement and provide for expeditious and deterrent sentences for copyright infringement.

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, President Rousseff signed 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, it also establishes new content quotas which require every channel to air at least three and one-half hours per week of Brazilian programming during prime time. Additionally, one-third of all channels included in any television package must be Brazilian. 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 three percent of its remittances in co-production of Brazilian audiovisual services. In addition, the law delegates significant programming and advertising regulatory authority to ANCINE, the national film industry development agency.

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. 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 low *de minimis* levels for express export and import shipments.

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 with Brazil.

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 is subject to case-by-case approval. 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) effectively rolled back market liberalization 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.

Telecommunications

Brazil is currently conducting a proposal for comment regarding the auctioning of certain radioelectric spectrum and is proposing substantial requirements on the use of local technology and equipment. This is of concern to U.S. telecommunications equipment suppliers who could be discriminated against and telecommunications operators, many of whom operate international networks and need the ability to choose the most adequate technology for their networks.

In September 2011, Brazil passed a law allowing telecommunications operators to offer subscription video services, including cable television services, and removing the 49 percent cap on foreign ownership of cable operators.

INVESTMENT BARRIERS

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

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 that limited foreign agricultural ownership in Brazil. 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 the majority of shareholders from foreign countries. These restrictions and the accompanying uncertainty of how they will be applied in practice may discourage U.S. investment in Brazilian agricultural land.