BRAZIL

TRADE SUMMARY

The U.S. trade deficit with Brazil was $7.3 billion in 2004, an increase of $595 million from $6.7 billion in 2003. U.S. goods exports in 2004 were $13.9 billion, up 23.7 percent from the previous year. Corresponding U.S. imports from Brazil were $21.2 billion, up 18.1 percent. Brazil is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Brazil were $4.8 billion in 2003, and U.S. imports were $1.9 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $12.8 billion in 2002 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $366 million.

The stock of U.S. foreign direct investment (FDI) in Brazil in 2003 was $29.9 billion, up from $27.6 billion in 2002. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance, and utilities sectors.

IMPORT POLICIES

Brazil's average applied tariff rate was 10.8 percent in 2004. Brazil is a member of MERCOSUL, a customs union comprising Argentina, Brazil, Paraguay, and Uruguay. Full Common External Tariff (CET) product coverage is scheduled for implementation in 2006. CETs range from zero percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Brazil maintains 100 exceptions to the CET, with tariffs reaching as high as 55 percent on peaches. A temporary CET surcharge applied to most imports since 1997 was abolished by Brazil on January 1, 2004.

High CETs significantly impede increased U.S. imports of agricultural products, distilled spirits, and computer and telecommunications equipment. Brazil applies additional import taxes and charges that can effectively double the actual cost of importing textile products into Brazil. High tariffs on information technology products and components as well as high taxes have led to a large gray market in personal computers. One safeguard measure is in place against toy imports. A number of imports are prohibited, including all used consumer goods such as machinery, foreign blood products, refurbished medical equipment, automobiles, clothing, and other consumer goods. A 25 percent merchant marine tax on freight at certain ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUL products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime).

Import Licensing/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access the SISCOMEX computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement. In addition, 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 includes 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, 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.

U.S. companies continue to complain that Brazil employs a variety of customs-related non-tariff barriers. For example, product registrations from the Ministry of Health are required for imported processed food products and food supplement products. On March 1, 2000, the term of validity for such a registration was shortened. Registration fees for these imports, as well as for medical and pharmaceutical products, have increased significantly. Implementation of such import measures continues to have a negative impact on U.S. exports, especially given the high tariffs on medical equipment.

The United States has raised a concern with Brazil that the state of Rio de Janeiro administers the ICMS tax (a value-added tax collected by individual states) in a way that provides a preferential tax advantage to a Brazilian soda ash supplier located within the state. Similarly, some U.S. companies have raised concerns about the arbitrary application of various quotas and non-automatic import licensing procedures, such as authorizations from the Federal Police and the Nuclear Regulatory Agency. For example, Brazil maintains extremely restrictive import quotas and requires non-automatic import license approval for imports of lithium compounds, including lithium carbonate and lithium hydroxide, citing the potential nuclear applications of these products. However, these products are widely available without restriction in global markets. The United States has raised this issue with Brazil on several occasions, both bilaterally and in the WTO. In addition, some U.S. companies have claimed that the manner in which the PIS/COFINS tax (a value-added tax collected by the federal government) has been applied to imports under the 2004 tax reform has disadvantaged imported goods vis-à-vis domestic manufactured goods.

STANDARDS, TESTING, LABELING AND CERTIFICATION

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. For example, due to concerns about bovine spongiform encephalopathy (BSE), Brazil restricts U.S. exports of low-risk beef and beef products without scientific justification and contrary to international standards. Brazil continues to prohibit the import of poultry and poultry products from the entire United States. Brazil has indicated that these restrictions are based, in part, on an alleged lack of reciprocity. Brazil's ban on durum and white wheat from the states of Washington, Oregon, Idaho, California, Nevada, and Arizona due to phytosanitary concerns remains in place. While the United States understands that some of these SPS measures are being rewritten, the ban continues to adversely affect U.S. agricultural exports.

Biotechnology

Brazil has not been able to put into place a long-term regulatory framework for biotechnology. Congress did not pass the proposed Biosafety Bill in time for the 2004/2005 planting season, prompting the federal government to issue Provisional Measure 223 (MP223) on October 18, 2004 to allow the planting and commercialization of the 2004/05 soybean crop. On December 21, 2004, the Congress passed Law 11.092/05, which transformed an amended MP223 into a full-fledged law, and sent the measure on to President Lula for his signature. Many of the MP223's original provisions remain intact under Law 11.092/05. For instance, under the law, marketing of the biotechnology soybean crop is possible until January 31, 2006, with a possible 60-day extension. The law also continues to prohibit the sale of biotechnology soybean from the 2004/05 harvest for use as seed. Some farm organizations had sought an elimination of this restriction, which the Governor of Parana state has used to prohibit sales of biotechnology seeds in his state and to place restrictions on exports of biotechnology soybeans through the Port of Paranagua. Article 7 of Law 11.092/05 introduced a problematic requirement (not present in MP 223 as originally proposed by the Lula Administration) that manufacturers of biotechnology seeds show receipts prior to collecting payments for their product. As Law 11.092/05 also prohibits the sale of biotechnology seeds, it may prove difficult for seed manufacturers to obtain the necessary receipts. President Lula signed Law 11.092/05 in early January 2005. A Biosafety Bill, the current version of which would allow for seed sales to be legalized, remains before Congress.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement, and transparency in its procurement processes could be improved. The U.S. Government has received complaints relating to practices that lead to non-transparent preferences for Brazilian products in procurement bids for government and non-profit hospitals, including favoring domestically produced “similars” over imported refurbished medical equipment. Limitations on foreign capital participation in procurement bids reportedly impair access for potential service providers in the energy and construction sectors. Brazilian federal, state and municipal governments, as well as related agencies and companies, in general follow a "buy national" policy. Law 8,666 (1993), which covers most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders regardless of the nationality or origin of the product or service. However, the law's implementing regulations allow consideration of non-price factors giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits. Decree 1,070 (1994), which regulates 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 to compete in any procurement-related multilateral development bank loans and opens selected procurements to international tenders.

EXPORT SUBSIDIES

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 linked to international rates and are generally lower than the interest rates on alternative domestic financing. One BNDES program, FINAME, provides capital financing to Brazilian companies for, among other things, expansion and modernization projects as well as 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.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Patents and Trademarks

Brazil's industrial property law (Law 9,279/1996) became effective in May 1997. Concerns continue about a provision in Brazil’s industrial property law that prohibits importation as a means of satisfying the requirement that a patent be “worked” in Brazil. This issue was the subject of a U.S. dispute settlement proceeding at the WTO, which was terminated without prejudice in June 2001. The dispute was terminated based on Brazil's commitment to provide advance notice to, and hold consultations with, the United States should it deem it necessary in the future to grant a compulsory license for failure to work a patent.

Law 10,196 (2001) includes some problematic provisions, including a requirement that Health Ministry approval be obtained prior to the issuance of a pharmaceutical patent. This raises concerns with respect to Article 27 of the TRIPS Agreement, and U.S. officials have raised this concern with their Brazilian counterparts.

The U.S. Government has also received complaints that unauthorized copies of pharmaceutical products have received sanitary registrations that rely on undisclosed tests and other confidential data, raising concerns of consistency with TRIPS Article 39.3.

Due to a lack of government focus and resources, Brazil's patent office, the National Institute for Industrial Property (INPI), has amassed a backlog of more than 60,000 patent applications -- an estimated 18,000 for pharmaceuticals -- and 500,000 trademark applications. In 2004, INPI received a $10 million increase in its budget and authorization to hire an additional 500 employees over the next several years, 300 as patent examiners. Nonetheless, the Brazilian government projects it will take five to six years to work through the patent and trademark application backlogs.

Law 10,603 (2002) on data confidentiality covers pharmaceuticals for veterinary use, fertilizers, agrotoxins, and their components and related products; the law does not cover pharmaceuticals for human use. If the product is not commercialized within two years of the date of sanitary registration, third parties may request use of the data for registration purposes.

Copyrights

Brazil’s Law 9,610 (1998) on copyrights included changes intended to bring Brazil into compliance with the Berne Convention and TRIPS. A software law (1998) protects computer programs for 50 years as "literary works", and makes software infringement a fiscal and an intellectual property crime. Brazil is not a party to the WIPO Treaties on Copyright, and Performances and Phonograms.

Copyright enforcement remains weak. Despite Brazil’s copyright law, losses from copyright infringement in Brazil have risen in recent years. According to the International Intellectual Property Alliance (IIPA), estimated losses due to piracy of copyrighted materials totaled $931.9 million in 2004. Piracy problems have been particularly acute with respect to sound recordings and videocassettes, and an estimated 75 percent of audiocassettes sold are pirated copies. Piracy is a serious problem in other industries as well, including digital media and disc-based entertainment and business software. Despite inspections at border crossings, a substantial amount of pirated material continues to enter Brazil from Paraguay. Brazil has launched a MERCOSUL initiative to share intelligence and coordinate actions to combat piracy and smuggling in the Brazil-Paraguay-Argentine border area. Although a significant number of raids and seizures on the border and in the interior were carried out in 2004, the conviction rate remains low. Furthermore, the judicial process is often slow, and prison sentences are routinely commuted to fines, undermining efforts to create deterrence.

On June 30, 2004, the Administration announced that it would continue to review Brazil's eligibility for GSP for a ninety-day period, which concluded on September 30, in response to a petition filed by the International Intellectual Property Alliance (IIPA) to remove Brazil's GSP benefits due to its failure to offer adequate protection to copyrighted materials. In a series of meetings during that period, the U.S. Government and the Brazilian government examined both steps taken and future plans to strengthen and improve copyright enforcement. As a result of these discussions, a number of key priorities and actions to combat copyright piracy through enforcement of existing laws have been identified. Accordingly, the United States and Brazil expect to maintain a dialogue on developments in this critical area. In the meantime, the review of the petition has been formally extended through March 31, 2005 in order to assess Brazil's progress.

SERVICES BARRIERS

Telecommunications

Privatization within the telecommunications sector, which is based on the General Telecommunications Law of 1997, has presented regulatory challenges. In the fixed-line sector, interconnection charges and other incumbency advantages have provided strong barriers for entry, and the companies created during a transitional duopoly stage have not fared well.

Brazil has not yet ratified its original WTO basic telecommunications commitments. In 2001, Brazil withdrew its schedule of commitments because of concerns raised by certain WTO Members that it maintained the legal prerogative of the Executive Branch to limit foreign participation in this sector, thereby creating significant uncertainty for investors. This legal prerogative is contained in Brazil's 1997 General Law on Telecommunications and is inscribed in Brazil's constitution. While Brazil has not sought the constitutional change required to allow a revision of its offer to open up this sector, the current regulatory environment generally reflects the obligations contained in the WTO Basic Telecommunications Reference Paper.

Audio Visual 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; however, the tax can be avoided if the programmer invests 3 percent of its remittances in co-production of Brazilian audio-visual services. National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels.

Law 10,610 (2002) limits foreign ownership in Brazilian media to 30 percent, including the print and "open broadcast" (non-cable) television sectors. Open television companies also have a regulation requiring that 80 percent of their programming content be domestic in origin.

Law 10,454 (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 videophonographic 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. A theatrical screen quota for local films is maintained at 63 days per calendar year. Quotas on domestic titles for home video distributors, while not currently enforced, present another potential hindrance to commerce.

Express Delivery Services

A bill (PL 1491/99) that would reorganize the National Postal System remains under discussion in the Brazilian Congress. The current proposal would create a regulatory agency for postal services as well as a new Postal Company of Brazil, owned and operated by the federal government. Although the bill would end the government monopoly over postal services after a ten-year period, it would also create a monopoly on the delivery of certain types of correspondence and parcels that are not now subject to regulation, such as express delivery packages, thereby significantly inhibiting market access by U.S. firms. Brazil also applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime) that is used by express delivery services.

Financial services

Brazil has not yet ratified its commitments from the 1997 Financial Services negotiations or taken the necessary steps to make them binding under the GATS (accept the Fifth Protocol). Brazil is potentially South America's largest insurance market, and earnings from premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital, and many major U.S. firms have since entered the market, mainly via joint ventures with established companies. However, foreign participation is limited to 50 percent of the capital of a company and to one third of its voting stock. Brazil maintains a government-owned reinsurance monopoly, however, through the Brazil Reinsurance Institute (IRB). While a 1996 constitutional reform allowed the abolishment of the monopoly, private reinsurance companies have been precluded from operating in Brazil pending passage of legislation to privatize the IRB, the constitutionality of which was challenged in the Supreme Court. While the Supreme Court decided in September 2004 that the bill was constitutional, the Lula administration has not decided to resubmit to Congress a bill privatizing IRB. A 2003 constitutional amendment allows for the regulation of the reinsurance sector, including market entry. Implementing these provisions would require passage of a complementary law. If Brazilian shipping companies wish to obtain foreign hull insurance, they must submit information to IRB demonstrating that the foreign insurance policy is less expensive than that offered by Brazilian insurers. Brazilian importers must obtain cargo insurance from insurance firms resident in Brazil, although the firms may be foreign-owned. Brazil has not ratified its 1998 WTO commitments on insurance.

Service trade opportunities in some sectors have been affected by limitations on foreign capital participation. Brazil's constitution precludes the expansion of foreign-owned banks until new financial sector legislation is issued. For practical reasons, the required legislation has not been issued, but the President of Brazil has the authority to authorize new foreign participants on a case-by-case basis. In practice, Brazil has approved most plans by foreign service suppliers to enter the market or expand existing operations. U.S. financial service suppliers have established significant operations in Brazil. As of December 2003, foreign-owned or controlled assets accounted for 24 percent of Brazil’s total financial sector equity.

INVESTMENT BARRIERS

In addition to restrictions discussed above, various prohibitions limit foreign investment in internal transportation, public utilities, media and other "strategic industries." Foreign ownership of land adjacent to national borders remains prohibited under Brazilian law, unless approved by the National Security Council. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. accounting for more than one-third of total foreign investment. There is neither a bilateral investment treaty nor a treaty on the avoidance of double taxation between the United States and Brazil.

Energy

In 2004, Brazil implemented new energy legislation to restructure the power generation and distribution sector. The new model gives the state a leading role in determining, for example, how much new power capacity is needed, based on forecasts by a newly created independent Energy Research Institute (IPE). The new model separates into two different competition groups power generators that have not yet amortized their investments (new energy) and those that have (old energy), based on whether the generators' investment had been built by a certain cutoff date. This dual-pool structure has disadvantaged some U.S. companies that invested in the sector during privatization in the late nineties and whose investments have not been amortized, but were nevertheless included in the old energy pool. The Brazilian government is still in the midst of implementing the new model.