TRADE POLICY DEVELOPMENTS PAPER NO. 6

REPORT ON BRAZIL

(FOR THE PERIOD JULY - SEPTEMBER 2011)

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Contents

Abbreviations

ANP	-	National Agency of Petroleum, Natural Gas and Biofuels
ANVISA	-	Agência Nacional de Vigilância Sanitária/National Health Surveillance Agency
BNDES	-	Brazilian National Bank for Economic and Social Development
CET	-	Common External Tariff
CET	-	Common External Tariff
COFIN	-	Social Security Financing Condition
COFINS	-	A Contribuição para o Financiamento da Seguridade/ Social Contribution for the Financing of Social Security
Copom	-	Brazilian Central Bank's Monetary Policy Committee
CSS	-	Social Contribution for Health
DECOM	-	Department of Commercial Defense
EEC	-	European Economic Community
FINEP	-	Brazilian Innovation Agency
GATT	-	General Agreement on Tariffs and Trade
GPA	-	Agreement on Government Procurement
ICT	-	Information and communications technology
IMF	-	International Monetary Fund
INMETRO	-	National Institute of Metrology, Standardization and Industrial Quality
INSS	-	Instituto Nacional do Seguro Social/National Institute for Social Security
IPI	-	*Imposto sobre Produtos Industrializados*/Tax over industrialized products
IT	-	Information Technology
MDIC		Ministério do Desenvolvimento, Indústria E Comércio Exterior/Ministry of Development, Industry and Commerce
MERCOUSR	-	*Mercado Comum do Sul / Common Southern Market*
No	-	Number
OTEXA	-	US Office of Textiles and Apparel

PIS	-	Social Security Tax
PNMPO	-	National Program of Oriented Productive Microcredit
PSI	-	Investment Support Program
SDA	-	Secretariat of Animal and Plant Health
SISCOMEX	-	Integrated System of Foreign Trade
TRIMS	-	Agreement on Trade-Related Investment Measures
US	-	United States
WTO	-	World Trade Organization

Executive Summary

1. Brazilian currency has appreciated over time Brazil's has started to moderate. In order to make its industrial sectors competitive, Brazil has introduced a new industrial plan entitled *Plano Brasil Maior* in August 2011. This plan provides benefits to the various sectors such as textiles, footwear, furniture and IT by way of tax concessions.

2. *Plano Brasil Maior*, provides for repayment of tax credits for the Social Security Tax (PIS) and the Social Security Financing Condition (COFIN) of up to 4 % of the exported value of manufactured products accumulated in the production chain, and the enlargement and streamlining of the repayment of tax credit for exporters.

3. On August 10, 2011, the Government of Brazil announced the temporary tariff reduction of the ad-valorem import duties applicable to certain telecommunications, information technology, and capital goods.

4. *Plano Brasil Maior* provides protection to the local automobile industry through differential taxes, mainly in the form of IPI tax. The restriction is in the form of increase of IPI tax (*Imposto sobre Produtos Industrializados*/Tax over industrialized products), which will be levied on cars using less than 65 percent of locally-produced parts. The increase was issued under a decree (Decree 7,567) published on September 16, 2011 on Brazil's Federal Register-*diario oficial da uniao*. It exempts certain cars from the increase if it follows certain requirements. In certain conditions the reduced tax also applies to imports from listed companies from MERCOUSR countries.

5. *Plano Brasil Maior* also seems to fortify the 'Buy Brazilian' law implemented in July 2010—which set a 25 percent margin of preference in the bidding process for Brazilian manufactured goods and services that meet national technical standards

6. Brazil has imposed special inspection procedure for the importation of textiles and apparels, to prevent the circumvention and underpayment in textile imports, and to reduce illegal imports. It has also imposed stricter monitoring and control of import textile items.

7. Brazil has revised the conformity procedure for refrigerators, revised the technical regulations for edible mushrooms and set new guideline for the import of canned sardines; Brazil has also revised the general requirements for product certification and including a technical regulation concerning quality control of petroleum products.

8. To strengthen the enforcement of trade defence instruments, *Plano Brasil Maior* seeks to increase the number of investigators at the Ministry of Development, Industry and Foreign Trade from 30 to 120. The period of investigation for application of anti-dumping measures is also proposed to be reduced from 15 to 10 months (this is done by Brazil's Department of Commercial Defense (DECOM)) and for application of provisional duty will decrease from 240 to 120 days.

9. An important recent change is reportedly the decision of SECEX to levy antidumping duties at the full margin of dumping as opposed to the application of the lesser duty rule. The guidance has been issued from May 2011 which recommends levy of antidumping duties up to the full margin of dumping.

10. Brazil also introduced tax incentive measures for micro and small industries. Individual entrepreneurs and micro-enterprises are sought to be helped by the Government through the expansion of National Program of Oriented Productive Microcredit (PNMPO), which will be renamed as "Growing - National Microcredit Program,".

11. Brazil is planning to make a constitutional amendment known as Amendment 29, which will increase the spending on state-funded healthcare throughout Brazil. Brazil has also made certain changes in the IT sector to make it more cost competitive.

ISSUES FOR NEXT REPORT

I. The Third Trade Policy Developments Report needs to map the developments introduced under ***Plano Brasil Maior* .** This Plan has significant implications for sectors such as textiles, IT and automobile. Most of the measures introduced under this plan seeks to provide subsidies, differential treatment of imported products vis-à-vis domestic products raising questions of inconsistency with Article III of the GATT. Some of the measures appear as prohibited TRIMS included in the Illustrative List of the WTO TRIMS Agreement.

The G-20 Report that tracks the trade restrictive policies within the G-20countries-- which is due in November—needs to be thoroughly examined.

2. Brazil appears to strengthen its antidumping enforcement agency obviously with an intent to initiate and expedite more antidumping actions. These developments have to be monitored carefully in the current quarter. The developments in the enforcement of the anti-circumvention investigation of ant

3. Brazil is introducing a new Antitrust/Competition Law regime, which is proposed to be introduced in the Congress in October, 2011. The Third Trade Policy Developments Report will track the developments.

Trade Policy Developments Report of Brazil

for the Quarter, July- September, 2011

I. ECONOMIC CHANGES

According to the International Monetary Fund (IMF), Brazil's growth rate has already begun to moderate, with the economy expanding by 4 percent in the first half of 2011, compared with 7.5 percent in 2010. The GDP growth rate during the quarter that ended in September, 2011 was 3.1 percent. The industrial production also came down by 0.3 percent during this quarter. According to the IMF, the economic outlook for Brazil is not very encouraging as the near-term growth is expected to slow below potential.

However, there are positive trends. For far too long, Brazil's currency, the real had appreciated against the US Dollar. Until July, 2011 the real had gained 40 percent against the dollar since the end of 2008. This has led to a surge in imports and its consequent impact on Brazil's current account balance. Brazil's export bore the brunt of the currency appreciation. Brazil had attempted partial capital controls and massive currency intervention to stem this rise. For instance in July 2011, U.S. Dollar appreciated to a 12-year high when it was traded at 1.54 Real against a Dollar. However in the subsequent months, i.e., in August and September, the U.S. Dollar gained against the Real. In October the Real was trade at 1.82 against the U.S. Dollar.

The Brazilian Central Bank's Monetary Policy Committee (Copom), reduced Brazil's basic interest rate, (known as the Selic), for the first time in 2011. COPOM announced a 0.5 percent reduction – from 12.5 percent to 12 percent.[1] Brazil Selic (*Sistema Especial de Liquidação e de Custódia*/ Special System for Settlement and Custody) is the central depository of securities issued by the National Treasury and the *Banco Central do Brasil*. It is a settlement system which is always conditioned to the availability of the traded securities in the seller's custody account and the availability of funds in the settlement participant's account. Even though the drop is minimal there will be increase in loans and borrowing within the people and entities within the country leading to an increase in the real income of the people. Thus it will increase their purchasing power parity, and hence the basket of goods they can now purchase. This will

[1] Sarah de Sainte Croix, *Brazil Central Bank Lowers Interest Rate: Daily,* Sept 2, 2011, THERIOTIMES, http://riotimesonline.com/brazil-news/rio-daily/brazil-central-bank-lowers-interest-rate-daily/ (last visited Sept 13, 2011).

bring in competition not just within the domestic industry but also within foreign and domestic industries.

II. NEW INDUSTRIAL POLICY

The President of Brazil announced a new industrial plan called *Plano Brasil Maior* (or "Bigger Brazil Plan") on August 2, 2011. The apparent motivation of this policy was to make the labour intensive manufacturing sector in Brazil that was hurt by the rising exchange rate of Real against the major currencies in the world, regain its competitiveness.[2] This Plan is aimed at fostering industrial development in several sectors and contains measures that are likely to limit market access for foreign products and operators on the one hand, and sectoral support schemes on the other. According to *Plano Brasil Maior* there will be tax reductions of US $16 billion by the end of 2012. During the past, Brazilian export sales have been primary commodities and manufactured goods that use imported inputs.[3] At the same time competition has been intensified in the domestic market as a result of imports. It is in this scenario that Bigger Brazil Plan has been stated to achieve sustainable development, market expansion, strengthening production and technology, and creation and strengthening of key competencies.[4]

Plano Brasil Maior has the following features: it reduces IPI tax, for over a year for capital goods, building materials, and trucks and light commercial vehicles; seeks gradual reduction of the repayment period for tax credit on capital goods, and; extends the Investment Support Program (PSI) up to December 2012 for capital goods, innovation and exports, and supporting technology-intensive sectors. The Brazilian National Bank for Economic and Social Development (BNDES) will provide financial support under preferential conditions for the production of auto parts, furniture, wood, leather, clothing, footwear, fruit, ceramics, software, and information and communication technology (ICT),[5] products and will lend US $2 billion to the Brazilian Innovation Agency (FINEP) to expand the institution's portfolio of investments in innovation.[6]

In foreign trade, the plan provides for repayment of tax credits for the Social Security Tax (PIS) and the Social Security Financing Condition (COFIN) of up to 4 % of the exported value of manufactured products accumulated in the production chain, and the enlargement and streamlining of the repayment of

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[22] Brazil's Industrial Policy, *Dealing with the real*, ECONOMIST, Aug 6-12, 2011

[3] See Gaya, Romina,& Michalczewsky, Kathia, *El Salto Exportador del MERCOUSR en 2003-2008, Mas Alla Del Boom de las Materias Primas*, Buenos Aires: INTAL,2011.

[4] IADB, *Bigger Brazil Plan to Boost Competitiveness*, http://www.iadb.org/intal/aplicaciones/uploads/publicaciones/i_INTAL_ICM_180_MERCOSUR2_2011.pdf, See also BRAZILIAN-AMERICAN CHAMBER OF COMMERCE, "*Bigger Brazil Plan": $16 Million in Taxes Breaks to Fight Surging Real and Cheap Imports from China*, Aug 3, 2011, http://www.brazilcham.com/default.asp?id=248&c002_ui=sa&c002_id=1441

[5] *Ibid.*

[6] *Brazil Launches Plan to Strengthen National Industrial Productivity and Competitiveness*, Sept 2, 2011, BRAZIL.GOV.BR, http://www.brasil.gov.br/news/history/2011/08/02/brazil-launches-plan-to-strengthen-national-industrial-productivity-and-competitiveness/newsitem_view?set_language=en (last visited Oct 9, 2011)

tax credit for exporters; greater use of trade defense measures (anti-dumping duties, safeguards, and countervailing measures); intensifying combat against imports attempting to circumvent existing trade remedy measures (new anti-circumvention regulations entered into force last year); support for the creation of a mechanism to increase the Common External Tariff (CET) in MERCOUSR; financing and guarantees for exports by MSME Export Financing Fund; trade promotion by facilitating the movement of goods subject to temporary admission, and specific trade promotion for priority products and services;[7] stepping up of border enforcement against customs fraud and imports that infringe intellectual property rights, and; supporting MERCOSUR efforts to raise import tariffs in the region and suspension of certain tariff concessions to imports of used machinery [8]

Plano Brasil Maior also seems to fortify the 'Buy Brazilian' law implemented in July 2010—which set a 25 percent margin of preference in the bidding process for Brazilian manufactured goods and services that meet national technical standards.[9] The preference margin was immediately applied to the ICT sector and is being extended by virtue of *Plano Brasil Maior* to cover other sectors such as health, communication and high-tech equipment, etc. The measures are ostensibly introduced to strengthen small and medium business and are applied in the areas of defence, health care, and information and communication technologies.[10] These measures are apparently discriminatory vis-à-vis foreign suppliers and service providers. However, Brazil is not a signatory to the WTO Agreement on Government Procurement (GPA).

One of the most important of the proposals under *Plano Brasil Maior* include reduction of taxes on payrolls of sectors that require a high number of employees, like the textiles and clothing sector, shoe manufacturing, furniture and the IT sector. The government lowered to zero the contribution of INSS, a tax to fund the social security program. INSS currently is estimated to be about 20% of the cost of production in those industries. According to Mr. Fernando Pimentel, the MDIC Minister, the industries that would benefit from the plan would save about R$25 billion, or US$16.1 billion, by the end of 2012.

The restrictive trade policies introduced by *Plano Brasil Maior* need intensive examination and careful monitoring.

III. TRADE RELATED INVESTMENT MEASURES

Brazil imposed a 30 percent tariff as means of restriction on the imported cars. The restriction is in the form of increase of IPI tax (*Imposto sobre Produtos Industrializados*/Tax over industrialized products). IPI tax

[7] *Ibid.*
[8] *Brazil launches new Industrial Plan*, INTERNATIONAL LAW, Aug 4, 2011, http://www.mondaq.com/x/141720/Export+controls+Trade+Investment+Sanctions/Brazil+Launches+New+Industrial+Plan
[9] *Ibid.*
[10] *Ibid.*

is a tax over all manufactured products, both locally and imported, based on certain classification. The IPI tax is calculated based on sales price for Brazilian goods; and sales price, shipping cost and import duty on imported goods.[11] The increase was issued under a decree (Decree 7,567) published on September 16, 2011 on Brazil's Federal Register-*diario oficial da uniao*, and was announced by Guido Mantega, Brazil's Finance Minister.[12] The measure is taken by Brazil's Development, Industry and Foreign Trade Ministry.[13] The measure encompasses automobiles, tractors, buses, trucks, and light vehicles and will be in effect through the end of 2012.[14] It will be effective from 15 December 2011, i.e upon the expiry of a ninety-day period after the issuance of the notification.[15] The new rules require an application for an import license for each shipment of automobiles, which may at least take 60 days after the arrival of the shipment.[16]

The decree exempts certain categories of vehicles from this increase in rate. Accordingly the "reduced" rate is applicable if certain requirements are fulfilled. Vehicles should have 65 percent (calculated by means of a formula established by Decree 7,567—*see Box I*) of their content to be made in Brazil or in fellow MERCOSUR countries such as Argentina, Uruguay and Paraguay.[17] The automobile manufacturing company must invest at least 0.5% of its total gross revenue, resulting from the sale of goods and services (excluded tax and contributions due on sales), in innovation & R&D activities within Brazil.[18] Further the automobile manufacturing company must carry out at least six of the following activities in Brazil for atleast 80% of its production; assembly, final inspection and testing; stamping; welding; anticorrosive treatment and painting; plastic injection; engine manufacturing; transmission manufacturing; assembly of steering, suspension, electric, break, axis, engine, gear and transmission systems; assembly of car chassis and bodywork; final cabin or body assembly, including the installation of acoustic and thermal items, lining and finishing; production of auto bodies primarily from spare parts, stamped or formatted regionally.[19] Sixty (60) days are given to comply with the standards and thereby to avoid tax increase.[20]

[11] *IPI*, THEBRAZILBUSINESS, http://thebrazilbusiness.com/qa/what-is-ipi (last visited Oct 10, 2011)
[12] *Protectionism in Brazil*, THEECONOMIST, Sept 24, 2011, *available at* http://www.economist.com/node/21530144
[13] *Brazil Raises Tax on Autos Imported from Outside* MERCOUSR, Sept 16, 2011, FOXNEWS, http://latino.foxnews.com/latino/money/2011/09/16/brazil-raises-tax-on-autos-imported-from-outside-mercosur/.
[14] *Ibid.*
[15] This is so because Brazilian federal Constitution states that any amendments to IPI rates are only enforceable after a period of 90 days.
[16] Charles Newbery, Nacha Cattan and Daniel Horch, *LatamWatch:Brazil Trade Barriers Hint at Rising Protectionism?,* May 16, 2011, https://mninews.deutsche-boerse.com/index.php/latamwatchbrazil-trade-barriers-hint-rising-protectionism-0?q=content/latamwatchbrazil-trade-barriers-hint-rising-protectionism-0 (last visited Sept 14, 2011).
[17] *Brazil taxes could localize factories,* CHINADAILY, Sept 26, 2011, *available at* http://www.chinadaily.com.cn/usa/epaper/2011-09/26/content_13793843.htm
[18] *Brazil: New IPI Rates for Automotive Industry*, Oct 3, 2011, ERNST&YOUNG, http://tmagazine.ey.com/brazil-new-ipi-rates-for-automotive-industry/.
[19] *Ibid.*
[20] *Ibid.*

Box. I: Key Aspects of "IPI Tax" and the Automobile Sector

The main requirements established by Decree 7,567 for the "reduced" IPI tax rate are as follows:

- The vehicles must have a minimum regional content of 65%, which is calculated by means of a formula provided by Decree 7,567.
- The automotive manufacturing company must invest at least 0.5% of its total gross revenues, resulting from the sale of goods and services (excluded taxes and contributions due on sales), in innovation and R&D activities within Brazil.
- The automotive manufacturing company must carry out at least six of the following activities in Brazil for at least 80% of its production:
    - Assembly, final inspection and testing
    - Stamping
    - Welding
    - Anticorrosive treatment and painting
    - Plastic injection
    - Engine manufacturing
    - Transmission manufacturing
    - Assembly of steering, suspension, electric, break, axis, engine, gear and transmission systems
    - Assembly of car chassis and bodywork
    - Final cabin or body assembly, including the installation of acoustic and thermal items, lining and finishing
    - Production of auto bodies primarily from spare parts, stamped or formatted regionally

Source: *Plano Brasil Maior (*Aug 2, 2011)

Under certain conditions, the exemption from increased IPI also applies to imports of listed vehicles by enrolled automotive companies resident in countries that are member of MERCOUSR and countries that have signed treaties pertaining to automotive sector with Brazil.[21]

In order to obtain the exemption of reduced IPI rates, the eligible automotive companies have to be licensed by the Ministry of Development, Industry and Foreign Trade (MDIC). Automotive companies within Brazil are already granted a temporary license for a period of 45 days. The licensed companies that fail to comply with the requirements shall have their licenses cancelled, resulting in the application of the increased rates and the obligation to collect amounts not paid as a result of the reduction, increased by fines and interest for late payment.[22]

The rates actually range from 7% to 25%, depending on the vehicles, and are currently increased to rates ranging from 37% to 55%. Following the hike, automobiles with engine displacement of up to 1,000

[21] *Ibid.*
[22] *Ibid.*

cubic centimeters (61cubic inches) will be subject to an IPI tax of 37 percent, up to from the previous rate of 7 percent. For automobiles with engine displacement goods of between 1,000-2,000 cc, the IPI will be between 41-43 percent.[23]

The measure will mainly affect China as Brazil is the main foreign market for Chinese passenger cars.[24]

Box II: Differential IPI Tax rates: Is the tax policy WTO Compatible?

It appears that the local value ("indigenisation") requirements, namely Brazil decision to increase the so-called IPI tax for cars using less than 65 percent of locally-produced parts, affect the sale, use or purchase of automobile parts and components that afford "less favourable" treatment to foreign products as opposed to the like domestic products based on the origin of the parts and components used. It appears as a violation of Article III: 2 and III: 4 of the GATT and the TRIMS Agreement.

Local content requirement have been systematically condemned in the GATT and WTO. For instance, the Canada- FIRA panel recognised that undertakings that excluded the possibility of purchasing available imported products clearly treated such imported products less favourably than domestic products and, therefore, were not consistent with Article III: 4 of the GATT. Similarly a GATT Panel in EEC- Parts and Components concluded that the conditions posited by a governmental authority to obtain an "advantage" could be treated as "requirements" within the meaning of Article III: 4. The higher IPI tax on finished automobile products that incorporated less than 65 percent local contents will function as a discrimination to such products in the matter of sale and distribution as against local products. Again, since the IPI is a tax measure it could be subject to the disciplines of Article III: 2.

It is also reported that Uruguay which is a Member of Brazil does not meet with the 65% local or regional component condition imposed by Brazil's new industrial plan. Application of such measures appears to be inconsistent with Brazil's MFN obligation under GATT Article 1(See Indonesia- Auto case).

Bloomberg reports that the Japanese government intends to challenge the measure at a World Trade Organization. The initial indication is that many other WTO Members may also follow suit.

Source: Own analysis & Bloomberg News

IV. CUSTOMS PROCEDURE, VALUATION AND IMPORT LICENSING

Brazilian customs authorities had published on 17 August 2011 a new regulation that includes special inspection procedures for the importation of textiles and apparel, which may delay the release of imported goods up to 180 days. The new procedures apply to textiles and apparel classifiable in chapters 61 and 62 of the Harmonized System of Tariff Classification. The regulation specifies procedures for the

[23] *Ibid.*
[24] *Protectionism in Brazil*, THEECONOMIST, Sept 24, 2011, *available at* http://www.economist.com/node/21530144

inspection of the declarations for imports of textiles and apparel. These documents will also continue to be subject to existing audits and procedures already established for the monitoring and control of import operations. The new procedure is to prevent circumvention and underpayment in textile imports, and to reduce illegal and irregular imports of textile and apparel.

Brazilian customs authorities have also enacted other regulations that will allow stricter monitoring and control of textile and apparel import transactions. Under Normative Instruction 1.169, if the authorities identify a difference between the weight declared on the import declaration and the actual weight identified in customs clearance, the import declaration will be subject to the special customs control procedure and could be seized. Normative Instruction 1.181, concerning procedures for the customs compliance of foreign operators, which are defined in the regulations as the producer, manufacturer or exporter of goods to Brazil.[25]

A brief overview of the Brazilian import licensing procedure is as follows:[26] The Brazilian importation regime does not require licensing. But for some products, Integrated System of Foreign Trade (SISCOMEX) requires, automatic import licensing and non-automatic import licensing. All import licenses shall be required through the Integrated System of Foreign Trade (SISCOMEX). The products subject to the automatic and non-automatic import licensing are listed in the Administrative Treatment of SISCOMEX and can also be found on the web page of the Ministry of Development, Industry and Foreign Trade[27]. Products subject to non-automatic import licensing are in their majority products which may cause damage to human, plant or animal health; products capable of causing environmental damage; products classified as weapons or made for warlike purpose; products subject to non-tariff quotas as established in the agreements of the Uruguay Round; products subject to tariff quotas; and products subject to trade defence measures established in accordance with the WTO agreements, etc. The Brazilian import licensing regime is based on the following legislation:

- Decree No 660 of 25 September 1992, instituting the Integrated System of Foreign Trade (SISCOMEX);
- Ministerial Act MF/MICT No 291 of 12 December 1996, on processing import operations within SISCOMEX;
- Ministerial Act DECEX No 8 of 13 May 1991, on rules for imports of used good, as amended by: Ministerial Act MDIC No 235 of 7 December 2006; Ministerial Act MDIC No 77 of 19 March 2009; Ministerial Act MDIC No 92 of 30 April 2009; Ministerial Act MDIC No 171 of 1 September 2009; Ministerial Act MDIC No 207 of 8 December 2009; Ministerial Act MDIC No 84, of 20 April 2010; and Ministerial Act MDIC No 175, of 17 August 2010.

[25] *Brazil Customs Authorities Impose New Requirements to Prevent Illegal Textile Imports*, TEXTILETREASURE, http://www.textiletreasure.com/fullnews.php?newsid=6562 (last visited Oct 15, 2011)
[26] This is as notified by Brazil under Article 7.3 of the Agreement on Import Licensing Procedures. See WTO, *Notification by Brazil to WTO Committee on Import Licensing*, G/LIC/N/3/BRA/9 (September 16, 2011), http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/LIC/N3BRA9.doc
[27] The official website of Ministry of Development, Industry and Foreign Trade - www.mdic.gov.br

- Ministerial Act SECEX No 23 of 14 July 2011, that, in its Chapter II, regulates the procedures for obtaining import licenses.

Most licensing is statutorily required. Periods for processing and issuing licenses are in accordance with dispositions laid down in articles 2 and 3 of the Agreement on Import Licensing Procedures. The importer is required to obtain an authorization from the Federal Revenue of Brazil in order to operate within SISCOMEX.

No notification is given by Brazil to WTO regarding customs valuation during this review quarter.

V. CUSTOMS TARIFF, QUOTAS AND TRQS

Brazil has accelerated its use of border measures through the application of several import duty increases for textiles and clothing products. On the other hand, Brazil has reduced the duties on a number of strategic imported products which may be essential for making its manufacturing, services and agricultural sectors more competitive. In August 2011, Brazil has raised the COFINS for imports of textiles, shoes and furniture from 7.6% to 9.1%, which will be effective from December, 2011. It has imposed new regulations on textiles and apparels to prevent illegal and irregular imports. According to the US Office of Textiles and Apparel (OTEXA), a new Brazilian customs regulation includes special inspection procedures which may delay the release of imported goods up to 180 days".[28]According to the new regulations goods that are suspected of being irregularly imported, and that are not strictly complying with the customs procedure can be seized. [29]

COFINS (A Contribuição para o Financiamento da Seguridade/ Social Contribution for the Financing of Social Security or COFINS) is a federal contribution applied to both Brazilian and imported goods. The applicable rate for this contribution is 7.6 percent.[30]

On 10 August 2011, the Government of Brazil announced the temporary tariff reduction of the *ad-valorem* import duties applicable to certain telecommunications, information technology, and capital goods. The Brazilian legislation, through the "ex-tarifarios" regime authorizes the temporary reduction of the ad-valorem import duty of capital and information technology goods, its parts, pieces and components. This temporary reduction may take place whenever it is found that there is no domestic production of these goods. To implement these reductions, the Brazilian authorities are allowed to create new tariff nomenclature.[31]

By virtue of this resolution, the Brazilian Government determines the temporary application of a 2% ad-

[28]Malaysian Knitting Manufacture Association, *Brazil: New Regulations to Prevent Illegal Textile Imports,* Sept 10, 2011, MKMA, http://www.mkma.org/default.htm (last visited Sept 14, 2011)
[29] Normative instruction 1.169 and 1.181
[30] *Ibid*
[31] *Brazil: Temporary Tariff Reduction on Certain Telecommunications, IT and Capital Goods*, Measure #2641, Aug 11, 2011, GLOBALTRADEALERT, http://www.globaltradealert.org/measure/brazil-temporary-tariff-reduction-certain-telecommunications-it-and-capital-goods-1.

valorem import duty for certain telecommunications, information technology, and capital goods, classified in Chapters 73, 82, 84, 85, 86, 87 and 90 of the Harmonized Tariff System.[32]

On 2 August, 2011, Brazil announced the proposal to be submitted to its MERCOSUR partners, to raise the number of products in the list of exceptions to the Common External Tariff (CET) from 100 to 200. Following the planned extension of the list of exemptions to the CET, Brazil increased tariffs on imported ceramic tiles from 12 percent to 35 percent.

Brazilian official gazette announced that Brazil would alter the rules for a system of taxes on which some coffee industry players have been able to claim credits when exporting.[33]

a. Export Quota

It is reported that the Presidential Administration is considering the imposition of an iron ore export tax meant to encourage investment in local steel production and reduce reliance on commodity exports. According to market analysts, in light of the tight world market conditions and considering Brazil's position as a leading exporter of iron ore, it could lead to surge in iron ore prices.[34]

VI. TECHNICAL BARRIERS TO TRADE

- Brazil revised the conformity assessment procedure for refrigerators by the *Portaria Nº 374, de 27 de Setembro de 2011* (Ministerial Act n° 374, 27 September 2011).[35] The conformity assessment procedure was issued by INMETRO.[36]
- Brazil revised technical regulation for the production of edible mushrooms as well as their extraction, processing and storage by Ministerial Act: N° 37, 2 August 2011. This was published in the *Diário Oficial da União* (Brazilian Official Journal).[37]
- National Institute of Metrology, Standardization and Industrial Quality-(INMETRO) of Brazil has set new deadlines for marketing, manufacturing and importing the product in conformity with the requirements by the Ministerial Act Nº 362. It was published in the *Diário Oficial da União* (Brazilian Official Journal) on 14 September 2011.[38]
- Amended the identity and quality requirements for canned sardines which are marketed in Brazil or in external markets by the by the Ministerial Act number 1, 12 July 2011 (*Resolução 1, de 12 de*

[32] *Ibid.*
[33] *Brazil alters tax credit for Coffee Exports,* REUTERS, Sept 30, 2011.
[34] Eight Report on Trade Restrictive Measures, European Commission-Trade, available at http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148288.pdf
[35] WTO, *Notification of Brazil to Committee on Technical Barriers to Trade*, G/TBT/N/BRA/198/Add.3 (October 20, 2011), http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/Tbtn05/BRA198A3.doc.
[36]The text is available in Portuguese at http://www.inmetro.gov.br/legislacao/rtac/pdf/RTAC001737.pdf
[37] WTO, *Notification of Brazil to Committee on Technical Barriers to Trade*, G/TBT/N/BRA/448 (28 September 2011), original text is available under http://extranet.agricultura.gov.br/sislegis/action/detalhaAto.do?method=abreLegislacaoFederal&chave=50674&tipoLegis=A
[38] WTO, *Notification of Brazil to Committee on Technical Barriers to Trade*, G/TBT/N/BRA/404/Add.1 (26 September 2011), original text is available under http://www.inmetro.gov.br/legislacao/rtac/pdf/RTAC001733.pdf

Julho de 2011). This measure is to establish appropriated sales designation for the sardines species. This measure was entered into force upon publication in the Official Journal on 13 July 2011.[39]

- INMETRO issued 'Inmetro Ordinance Nº 361, 6 September 2011' which entered into force on 9 September 2011. By this ordinance INMETRO approved a new revised text on the general requirements for product certification and revoked ordinance 457. Ordinance 457 used the third party certification scheme as the essential requirement for conformity assessment including laboratory accreditation and audit programmes for product and company certification.[40] The ordinance has 14 articles. Article 4 provides definitions, article 6 provides the stage of conformity assessment, article 9 provides for the termination of certification.[41]
- National Agency of Petroleum, Natural Gas and Biofuels – ANP issued technical regulation concerning quality control of petroleum diesel fuels by Draft Ministerial Act: Nº 27/2011. The regulation establishes a quality certification in order to carry out the Program for controlling the air pollution from mobile sources. This measure is intended for protection of the environment; quality requirements and was published in the *Diário Oficial da União* (Brazilian Official Journal).[42]

VII. SANITARY AND PHYTOSANTIARY MEASURES

- Secretariat of Animal and Plant Health - SDA/Ministry of Agriculture, Livestock and Food Supply – (for short, 'MAPA') published a notification *"Portaria" Nº 147* on 25 August 2011 in the *Diário Oficial da União* (Federal Official Journal). This measure intended for plant protection is for the plant propagation material of coffee.[43]
- The Ministry of Agriculture, Livestock and Food Supply of Brazil issued certain technical regulations for the production of seeds and seedlings in organic production systems by Ministerial Act: N° 38, 2 August 2011. It was published in the *Diário Oficial da União* (Brazilian Official Journal).[44]

ANVISA (Brazilian Health Surveillance Agency) has published and adopted the following resolutions:

[39] WTO, *Notification of Brazil to Committee on Technical Barriers to Trade*, G/TBT/N/BRA/386/Add.2 (28 September 2011)
[40] WTO, *Notification of Brazil by the*
[41] MINISTRY OF DEVELOPMENT, INDUSTRY AND TRADE, *Ordinance No.361 of September 6, 2011*, translation of this page is available on http://translate.google.co.in/translate?hl=en&sl=pt&u=http://www.inmetro.gov.br/legislacao/rtac/pdf/RTAC001729.pdf&ei=jAywTsm1MsTprQfTldlh&sa=X&oi=translate&ct=result&resnum=2&sqi=2&ved=0CCQQ7gEwAQ&prev=/search%3Fq%3Dttp://www.inmetro.gov.br/legislacao/rtac/pdf/RTAC001729.pdf%26hl%3Den%26biw%3D1366%26bih%3D643%26prmd%3Dimvns
[42] WTO, *Notification of Brazil to Committee on Technical Barriers to Trade*, G/TBT/N/BRA/446 (28 September 2011)
[43] WTO, *Notification by Brazil to the Committee on Sanitary and Phytosanitary Measures*, G/SPS/N/BRA/775 (27 September 2011).
[44] WTO, *Notification of Brazil to Committee on Technical Barriers to Trade*, G/TBT/N/BRA/447 (28 September 2011), original text is available under http://extranet.agricultura.gov.br/sislegis/action/detalhaAto.do?method=abreLegislacaoFederal&chave=50674&tipoLegis=A

- On 27 September 2011 ANVISA modified draft regulation *Resolution RE nº165 of 29 August 2003* by including the use of Metiram in the cultures of potato to be effective from November 2011. This measure which is intended for food safety is applicable to all its trading partners.[45]
- On 27 September 2011 ANVISA modified draft resolution RE nº165 of 29 August 2003 by including in it the use of Clothianidin in the cultures of soy (Leaf application MRL 0,02 mg/kg and safety period of 14 days). This measure which is intended for food safety is applicable to all its trading partners.[46]
- On 27 September 2011 ANVISA modified draft resolution RE nº165 of 29 August 2003 by including the use of Milbemectin in the cultures of strawberry. This measure which is intended for food safety is applicable to all its trading partners.[47]

These regulations have been notified to the WTO SPS Committee.

VIII. ANTIDUMPING MEASURES

The Semi-Annual Report of the antidumping measures taken by Brazil released by the WTO Secretariat indicates that Brazil has taken anti-dumping actions against 26 states during the period of 1 January 2011 to 30 June 2011.[48] The bulk of the measures have been taken against China.

In Brazil, the antidumping actions are conducted by Department of Commercial Defence (DECOM) which is part of Secretariat of Foreign Trade (SECEX), whereas the duties are imposed by Chamber of Foreign Trade (CAMEX). On October 6, 2011, CAMEX imposed antidumping duties against two items:

Final Antidumping Measures

a. Glassine and other glazed transparent or translucent papers (NCM 4806.40.00) from France, Italy, and Hungary. The measure consists of a minimum import price of 401.03 dollars per ton for France; 369.19 dollars per ton for Italy, and; 235.54 dollars per ton for Hungary. The antidumping investigation was initiated on 16 April 2010, upon request of the Brazilian enterprise

[45] WTO, *Notification by Brazil to the Committee on Sanitary and Phytosanitary Measures*, G/SPS/N/BRA/772 (27 September 2011); original text available under http://portal.anvisa.gov.br/wps/wcm/connect/4e82f380486650158f7f8f2bd5b3ccf0/CP+N%C2%BA+44+GGTOX.pdf?MOD=AJPERES
[46] WTO, *Notification by Brazil to the Committee on Sanitary and Phytosanitary Measures*, G/SPS/N/BRA/773 (27 September 2011); original text available under http://portal.anvisa.gov.br/wps/wcm/connect/7ff7958048664e428f6d8f2bd5b3ccf0/CP+N%C2%BA+42+GGTOX.pdf?MOD=AJPERES
[47] WTO, *Notification by Brazil to the Committee on Sanitary and Phytosanitary Measures*, G/SPS/N/BRA/773 (27 September 2011);
[48] WTO, *Notification by Brazil to Committee on Anti-Dumping Practices*, G/ADP/N/216/BRA (September 23, 2011), http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/ADP/N216KOR.doc

MD Papéis Ltda.[49] The product subject to the antidumping duties is classified under the following tariff code of the MERCOSUR Harmonized System: 4806.40.00.[50]

b. N-Butyl alcohol from the U.S. The measure consists of minimum import prices, between 102.67 dollars per ton and 272.12 dollars per ton, depending on the exporter. The antidumping investigation was initiated on July 14, 2010, upon request of the Brazilian enterprise Elekeiroz S.A.

   The product subject to the antidumping duties is classified under the following tariff code of the MERCOSUR Harmonized System: 2905.13.00.[51]

Initiation of Antidumping Measures

a. *Vide* SECEX Cir. No. 30, DECOM, initiated antidumping investigations on diphenyl methane diisocyanate (MDI) originating in USA, Belgium and China.
b. *Vide* SECEX Cir. No. 31, DECOM, initiated antidumping investigations on stainless steel cutlery originating in China

Brazil is continuing antidumping duties against the following products from India: Nitrile Rubber (not hydrogenated); Stainless Steel Cookware; and Flat-Rolled Products of Iron or Non-Alloy Steel (of a width of 600 mm or more) and clad (plated or coated). The details of action against each product are shown in the table below.

Table 1: Details of AD actions maintained by Brazil against India

Product	Date of initiation	Period of investigation (D-dumping; I-Injury)	Import Volume as % of Apparent Domestic or as Consumption or as % of Total Imports	Nature of Measure
Nitrile Rubber (Not hydrated)	10 October 2010	D: July 2009 to June 2010 I: July 2005 to June 2010	1,9% of total imports	n/a
Stainless Steel Cookware	22 December 2010	D: October 2009 to September 2010	3,2% of total imports	n/a*

[49] World Trade Organization, WTO document G/ADP/N/202/BRA, 6 September 2010

[50] *Brazil: Adoption of Antidumping Duties Against Glassine and Other Glazed Transparent or Traslucent Papers from France, Italy, and Hungary*, Maesure # 2746, Oct 6, 2011, GLOBALTRADEALERT, http://www.globaltradealert.org/measure/brazil-adoption-antidumping-duties-against-glassine-and-other-glazed-transparent-or-transluc

[51] *Brazil: Adoption of Antidumping Duties Against n-Butyl Alcohol from the U.S.*, Oct 6, 2011, GLOBALTRADEALERT, http://www.globaltradealert.org/measure/brazil-adoption-antidumping-duties-against-n-butyl-alcohol-us.

		I: October 2005 to September 2010		
Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated.	18 April 2011	D: October 2009 to September 2010 I: October 2005 to September 2010	6,5% of total imports	n/a*

**Not available at this stage*

Source: WTO Document online

a. Antidumping: Other developments during review quarter

On 25 August 2011 SECEX published a news in the *Diário Oficial da União icial* (Official Gazette) with a view to receiving suggestions for a amendment of Decree 1602/95 (the act that regulates the conduct of Antidumping Proceedings in Brazil). This proposal, among others, is considered to be an extension of the *Plano Brasil Maior*, which seeks to enhance the competitiveness of the Brazilian domestic industry.

To strengthen the enforcement of trade defence instruments, *Plano Brasil Maior* seeks to increase the number of investigators at the Ministry of Development, Industry and Foreign Trade from 30 to 120.[52] The period of investigation for application of anti-dumping measures is also proposed to be reduced from 15 to 10 months (this is done by Brazil's Department of Commercial Defense (DECOM)) and for application of provisional duty will decrease from 240 to 120 days.[53]

An important recent change is reportedly the decision of SECEX to levy antidumping duties at the full margin of dumping as opposed to the application of the lesser duty rule. The guidance has been issued from May 2011 which recommends levy of antidumping duties up to the margin of dumping, as against the levy of duty only to offset injury caused to the domestic industry on account of the dumped imports.[54]

b. Brazil's use of Anti-circumvention rules in the enforcement of antidumping duties

During the last reporting period, Secretariat of Foreign Trade (SECEX) *vide* Circular 20/11 published the initiation of an anti-circumvention proceedings against suspected circumvention of antidumping duties pertaining to the imports of blankets from Paraguay and Uruguay and tools and components from China. Again, on 4 October 2011 SECEX vide Circular 48/11 the initiated an anti-circumvention proceedings

[52] *Ibid.*
[53] *Ibid*
[54] Global Law Experts News letter (Aug, 2011), *available at* http://www.goblalawexperts.com

against suspected circumvention on imports of shoes from Indonesia and Vietnam and tools and components (soles and uppers) from China.

IX. SUBSIDIES AND ANTI-SUBSIDY MEASURES

Plano Brasil Maior introduced on 2 August 2011, provides that 3 percent of export revenues would be redistributed to the benefit of the manufacturing industry.

Brazil launched federal program of tax incentives for micro and small businesses, Simples Nacional or Super Simples, and is expected to be passed quickly through congress. This is meant to increase the competitiveness of Brazilian companies, to stimulate their production and to stimulate growth.[55] Individual entrepreneurs and micro-enterprises are planned to be helped by the Government through the expansion of National Program of Oriented Productive Microcredit (PNMPO), which will be renamed as "Growing - National Microcredit Program,". The expansion will include in PNMPO new conditions for financing, including lower interest rates (from 60% per year to 8% per year) and lending targets for public banks. This can help in improving the sustainability of credit operations and thus increasing the production capacity of micro-entrepreneurs. It will encourage increased private bank participation, ultimately increasing the amount of resources available and the number of entrepreneurs who benefit".[56]

a. Anti-subsidy actions

No fresh anti-subsidy or countervailing duty investigation has been initiated by Brazil during the quarter under review. Brazil imposed countervailing duty measures on (Polyethylene terephthalate) films on July 4th 2008 by the resolution *Resolucao CAMEX 43/2008* which is still continuing.[57]

X. PUBLIC HEALTH CARE

Brazil is planning to make a constitutional amendment known as Amendment 29, which will increase the spending on state-funded healthcare throughout Brazil. But it has until now received no clear funding source. This amendment will determine a mandatory percentage of revenue to be spent on public healthcare at federal, state and municipal levels. This amendment seeks to increase taxes on activities which could potentially cast burden on the healthcare system, namely activities such as drinking, smoking and driving. The proposed tax is actually a rehash of the the old CPMF tax and is introduced as CSS (or Social Contribution for Health).[58]

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[55] Helen Trouton, *Tax Changes for Small Businesses in Brazil*, Aug 16, 2011, THE RIO TIMES, http://riotimesonline.com/brazil-news/rio-business/tax-changes-for-small-businesses-in-brazil (last visited Sept. 13, 2011)
[56] *Brazil Expands Feederal Micro Credit Progrmme* (Aug 25, 2011, 08:04 PM), BRAZIL.GOV.BR, http://www.brasil.gov.br/news/history/2011/08/25/brazil-expands-federal-microcredit-program (last visited Sept. 13, 2011).
[57] WTO, COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES, G/SCM/N/228/BRA, Sept 27, 2011, http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/SCM/N228BRA.doc.
[58] The CPMF (obsolete now since January 2008) was a 0.38 percent tax levied on all bank transactions, whose R$20 billion annual income was supposed to have been destined for the healthcare system. It was abolished when significant changes to the healthcare system failed to materialize

XI. TRADE, DEBT & FINANCE

On 20 September 2011, Brazil has filed its second submission to the WTO Working Group on Trade, Debt and Finance on the relationship between exchange rates and international trade. According to Brazil addressing this issue may help prevent the overstretching of multilateral trade rules as regards, for instance, provisions on safeguards, antidumping, subsidies and countervailing measures, as well as bound tariffs in dealing with exchange rate policies.

XII. SERVICES SECTOR

a. IT Services

Plano Brasil Maior proposes policies that could make Brazilian IT companies more cost-competitive globally, and could end up boosting exports of Brazilian software and services. This could be an issue potentially relevant for the Indian exporters.

b. Insurance Services

Brazil has targeted the reinsurance sector to limit the scope of cross-border cooperation between international companies within this sector. Two resolutions were introduced during the quarter under review which introduced limitations whereby insurers are allowed to cede 20 percent of the reinsurance business to their affiliates abroad. This measure negatively affects global insurers, who will no longer be able to take full advantage of inter-company risk transfer arrangements.

c. Banking Sector

Brazil is also promoting the trade and business to achieve this goal. It gives bank loans, reduces the interest rates. Brazil is expanding many of its policies and programmes to expand its trade, to promote business, strengthen the economy, and to deal with the international economic crisis.

d. Oil and Natural Gas

Foreign firms can only pump oil in the recently discovered *pré-sal* oilfields as junior partners of the state-controlled Petrobras. Previously foreign firms could have bid for all concessions on equal terms.

XIII. INTELLECTUAL PROPERTY RIGHTS

XIV. AGRICULTURE

Brazil is a major exporter of agriculture and agro-industrial products. The G20 countries are the major players in global biofuel production, and many directly subsidize production and/or have blending mandates that encourage investment in biofuels, including the EU, US, Brazil, Canada, China and Australia. These policies are widely seen to distort markets and divert grain from food uses, which can drive up food prices. Although countries such as the US have removed subsidies on bio-fuel it is reported that the other countries are still maintaining restriction on ethanol based bio-fuel.

No notification was submitted by Brazil to WTO regarding agriculture during this review quarter.

XV. RELATIONSHIP WITH MERCOSUR

Argentina: Argentina is one of the main markets for Brazilian manufactured goods. Total trade between the two countries amounted a record R$51 billion (US$33 billion) in 2010[59].

The Presidents of both countries met on the first week of August and reaffirmed the strategic alliance and commitment to Mercosur during a summit held in Brasília. They agreed upon various matters. They sought for a unified regional response against the recent global economic crisis and discussed about how to deal with the possible impact of a standstill in US debt negotiations. The Brazilian President emphasized the need to take collective action to find market for their products. The two presidents launched the Brazil Argentina Business Council, in which companies can meet and discuss competitiveness, scientific development and strategies for joint insertion in international markets[60].

The relation between the two countries had been strengthening during the past years. There had been a dispute in the recent past. Last May Brazil initiated an import policy which could cause delays at the border up to sixty days. While the policy did not target Argentina specifically, many speculated it was retaliation for similar restrictions imposed by Argentina earlier in the year. The current talks will have a positive effect on the dispute[61]. Even though both are part of MERCOUSR free trade zone, Argentina have some non-tariff measures, such as strict import licensing of 600 odd Brazilian products.

XVI WTO DISPUTE SETTLEMENT:

There are no new disputes involving Brazil which have arisen during the quarter under review.

[59] *Ibid,.*
[60] Patricia Maresch, *Argentine President in Brazil for Trade Talks,* Aug 2, 2011, THERIOTIMES, http://riotimesonline.com/brazil-news/front-page/argentine-president-kirchner-in-brazil-for-trade-talks/ (last visited Sept 13, 2011)
[61] *Ibid*