



TRADE POLICY DEVELOPMENTS PAPER NO. 1

REPORT ON BRAZIL (for the period April 2011- June 2011)

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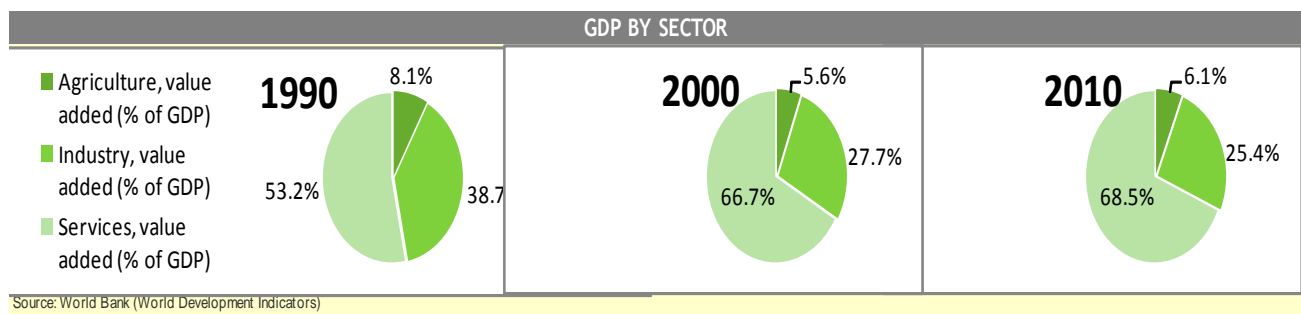
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INTRODUCTION

Brazil is the only Portuguese-speaking nation in the Americas. Brazil's economy is one of the largest in Latin America and Caribbean (LAC).

Brazil is one of the leading trading nations and has considerable diversification in its exports and imports. Brazil is one of the largest exporters of agricultural products. Although, it has a large agricultural and industrial base, agriculture constitutes less than 6 % of the GDP. The growing services sector accounts for over 60 percent of GDP in recent years. Brazil has a strong manufacturing sector as well; it is one of the leading producers of steel, aircraft, automobiles, and auto parts.

Table I



For several years Brazil followed the policy of import substitution. In order to promote industrial development, Brazil established government sponsored enterprises that still operate today. These include the National Economic and Social Development Bank (BNDES); the National Steel Company (CSN); Embraer, the manufacturer of regional jets, and; Petrobras, the national petroleum company. In the decade of the late eighties Brazil began to shift its focus from a focus on insulating the economy from international trade pressures to a focus on integrating the economy through international trade. During the mid-nineties, President Fernando Cardoso initiated the privatization initiative and started to open the Brazilian economy to global competition. Pursuant to this policy, more state enterprises were opened up and Brazil moved towards a greater integration with world economy. President Lula da Silva who succeeded maintained Brazil's economic policies of greater budgetary discipline and relatively liberalized trade.¹

ECONOMIC OUTLOOK

The Brazilian economy grew at an impressive rate of 7.5 % during the year 2010 which was one of the highest in the LAC and also one of notable growth rates among the leading economies in the world. Brazil's economy is the world's eighth-largest and is expected to rise to fifth within the next several years. This is all the more impressive since the economic growth was driven by growth in domestic consumption. President Dilma Rousseff, who took office on January 1, 2011, has indicated her intention to continue the former president's economic policies, including sound fiscal management, inflation control, and a floating exchange rate.

¹ WTO, *Brazil: Trade Policy Report* (2004), available at [http: www.wto.org](http://www.wto.org)

The latest economic data suggest a slowdown in industrial activity. The economy after growing at 7.5 percent per annum in 2010 has slowed down to 4 % during 2011. However, the growth in consumption has been fairly robust. According to the *Branco Central do Brasil*, the Central Bank, the consumption growth was shaped by subsidized consumer credit.

One of the issues facing Brazil has been the sharp appreciation of *Real*.² The *Real* Plan was adopted in the mid-nineties to serve as a price stabilization policy. *Real* was pegged to the U.S. Dollar to combat hyperinflation. In pegging *Real* to the U.S. Dollar, the differences in inflation between the two countries caused a significant appreciation of *Real*. The Brazilian currency has been close to a 12-year high against the US Dollar. Slow growth and lower interest rates in advanced economies continued to put upward pressure on the Brazilian currency. In an effort to limit the appreciation, the government has increased dollar reserves and capital controls. The Brazilian Central Bank has also introduced a permanent 60% cash (non-interest bearing) reserve requirements on banks and the Brazilian sovereign wealth fund has been authorized to trade currencies and currency derivatives in an effort to prevent the *Real* from breaching the 1.65 *Real*/USD exchange rate. Currency appreciation can affect the competitiveness of the domestic industry and the Brazilian government is pursuing various steps to prevent the appreciation of *Real*.

The currency exchange rate policy had a direct impact on the balance of payment situation and Brazil had traditionally high rates of inflation. Obviously, interest rates were used to contain inflation despite moderate success (see Table II).

Rising employment and strong domestic demand pushed inflation to nearly 6% in 2010, leading the central bank to boost interest rates and the Rousseff government to announce cuts in 2011 spending.

Brazil is generally open to foreign investment. It is the largest recipient of foreign direct investment (FDI) in Latin America, and the United States is traditionally the top foreign investor in Brazil. Since domestic savings are not sufficient to sustain long-term high growth rates, Brazil has to continue to attract FDI, especially as the government plans to invest in off-shore oil, nuclear power, and other infrastructure sectors over the next few years.

The major international athletic competitions that Brazil will host every year until the 2016 Rio Olympics are also leading the government to invest in roads, airports, sports facilities, and other areas.

Table II

	2005-09 (Av)	2010	2011 (up to May)
GDP (% growth)	3.5%	7.5%	4.1%
Inflation	5.1%	5.9%	5.5%
Fiscal Balance (% of GDP)	-2.4%	-2.6%	-2.4%
Exports	11.2%	29.2%	7.0%
Imports	18.1%	43.9%	15.0%
Current Account Balance	-0.1%	-2.6%	-3.11%

² Chris Giles, *Currency wars 'not over'*, FINANCIAL TIMES, July 6, 2011, at 1.

External (% of GDP)	debt	17.8%	15.8%	15%
Exchange Ratio		2.1	1.7	1.8

Source: EDC

Trade policy

Brazil has adopted a cautious approach to trade liberalization. Trade policy changes have not been drastic although the economy has become much freer when compared to the days of the import substitution regime. In many ways, macroeconomic priorities still constrain trade policy formulation in Brazil.

In regard to trade negotiation, Brazil continues to be a key player. Brazil has been a leading player in the World Trade Organization's Doha Round negotiations. Brazil is also a leader in the G-20 and an important player in G-4 alongside US, EU and India. Brazil is also one of top five frequent complainants in the WTO dispute settlement system. It has won strategically important cases against WTO's leading powers, and in particular against the United States in cotton subsidies and against the European Union in sugar.³

To further increase its international profile, the Rousseff administration is understandably seeking expanded trade ties with developing countries, as well as a strengthening of the Mercosur customs union with Uruguay, Paraguay, and Argentina. In 2008, Mercosur concluded a free trade arrangement with Israel, and another arrangement with Egypt was signed in 2010. Mercosur is pursuing free trade negotiations with Mexico and Canada and resumed trade negotiations with the EU. In recent times, China has become Brazil's principal export market and an important source of investment.

Business Environment in Brazil

Despite making significant progress with trade liberalisation and opening up of its exchange rate scheme, Brazil is widely known for weak regulation and cumbersome administration. In the 2011 World Bank "Doing Business" report, Brazil ranked 127th out of 183 countries in terms of overall ease of doing business.⁴ According to the study, it takes an average of 15 procedures and 120 days to start a new business in Brazil. According to this same study, the total tax rate for Brazil's medium-sized business is 69.0 percent of profits, compared to 43.0 percent in the OECD high-income economies. The government continues to control and regulate prices with respect to certain goods and sectors. The National Petroleum Agency fixes the wholesale price of fuel, and the government controls airfares even in this liberalized economy.

General Legal and Institutional Framework

The Federative Republic of Brazil is formed by the union of the 26 states, the municipalities, and the Federal District (collectively "the Union").⁵ Executive power is exercised by the President, supported by the Cabinet of Ministers. The President holds office for four years and may be re-elected for an additional four-year term. The Cabinet of Ministers is appointed by the President.

³ See EC- *Export Subsidies on Sugar* (2005) and *United States – Subsidies on Upland Cotton* (2005)

⁴ World Bank report, *Doing Business Report*, 2011, available at <http://publications.worldbank.org/>

⁵ Article 1 of the 1988 Federal Constitution of the Federative Republic of Brazil.

Law making is done at three levels-- federal, state, and municipal levels by the respective legislative bodies. Under the Constitution, legislation in a number of areas must be drafted and passed at the federal level; these areas include foreign trade, telecommunications, insurance, maritime and air transport, credit policy, monetary issues, and utilities. Similar to India, Brazil has also a concurrent scheme; on education, health, and social security legislation can be passed at the federal and state level.. In accordance with Article 30 of the Constitution, municipalities may only issue legislation on matters of local interest and to supplement federal and state legislation where pertinent. Each federative body drafts its tax legislation in accordance with its constitutional competence.

The National Congress has the responsibility for legislating on all matters within the competence of the Union. Congress is also responsible for approving international treaties.⁶

The Judiciary is organized into federal and state branches. Municipalities do not have their own justice systems, and must, therefore, resort to state or federal justice systems, depending on the nature of the case. The judicial system consists of several courts. The apex is the Federal Supreme Court and is the guardian of the Constitution.

The legislative process includes preparation of: amendments to the Constitution; supplementary laws; ordinary laws; delegated laws; provisional measures; legislative decrees; and resolutions. The main law of the State is the 1988 Constitution, which has been amended 67 times since its promulgation in October 1988; 25 of these amendments have been made since the beginning of 2004.⁷

Constitutional provisions are buttressed by supplementary provisions. Supplementary laws complement and regulate specific provisions of the Constitution and may be voted only when the Constitution calls for them; they have a higher legal standing than ordinary laws. Supplementary laws must be approved by absolute majority of the members of each House. Ordinary laws must be approved by majority vote, when an absolute majority of members is present. Delegated laws are prepared by the President on delegation from the Congress; since the 1988 Constitution was promulgated, only two delegated laws have been drafted.

Provisional measures can be used in certain situations. Article 62 of the Constitution allows the use of provisional measures on issues considered to be of importance and urgency. It is almost like the ordinance in India. Provisional measures are issued by the President and become effective upon publication; they are analysed by Congress only upon enactment and should be voted on within 60 days, renewable once for the same period, failing which, they lapse. They have the same legal status as ordinary laws, and are used very widely, since many laws in Brazil originate as provisional measures. Provisional measures creating or increasing taxes may only affect the following year's budget if converted into law before the end of the fiscal year in which they were issued. Legislative decrees, which are administrative in nature, enact Congress deliberations on matters of its competence. Legislative decrees are approved by a simple majority in Congress and do not need the sanction of the President; they have the same legal status as ordinary laws.

In respect of international treaties and conventions, it should be approved by Congress to enter into force domestically. After enactment, through a legislative decree, international treaties have the

⁶ Federal Constitution, Title IV (Chapter I, Section II).

⁷ Brazilian Government online information. See generally, https://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/quadro_emc.htm.

same legal status as ordinary laws; their revocation takes place only when deemed incompatible with the Federal Constitution through an express decision of the Supreme Federal Court.

Trade Policy Formulation and Implementation

The formulation, adoption, coordination, and implementation of trade policy in goods and services is the responsibility of the Chamber of Foreign Trade (CAMEX), established in 1995; its functions are specified by Decree No. 4,732 of 10 June 2003. The CAMEX is part of the Government Council of the Presidency of the Republic; its main decision-making body is the Council of Ministers, comprising of the Minister of Development, Industry and Foreign Trade; and the Ministers of the Civil House; Foreign Affairs; Finance; Planning, Budget and Administration; Agriculture and Supply; and Agrarian Development.⁸

The Chamber of Foreign Trade coordinates the implementation of its decisions, but each ministry remains responsible for implementing matters within its competence. Other public bodies must consult the CAMEX on decisions related to trade policy issues, with the exception of financial market issues within the competence of the National Monetary Council (NMC) and the Central Bank.

The Ministry of Development, Industry and Foreign Trade (MDIC) is in charge of implementing trade policy, according to the guidelines devised by the CAMEX, through the Secretariat of Foreign Trade (SECEX).

SECEX has four departments. These departments are responsible for trade negotiations, planning and conduct of trade remedy investigations. These departments are: Foreign Trade Operations (DECEX); Trade Remedies (DECOM); International Trade Negotiations (DEINT); and Planning and Development of Foreign Trade Policies (DEPLA). The Ministry of External Affairs too has an important role. It assists the CAMEX in formulating foreign policy on, *inter alia*, regional integration and trade, and is the representative to the WTO in Geneva. The Ministry of Finance formulates and implements economic policy; it is in charge of customs and tax policy and administration, inspection, and revenue collection. Private-sector participation in trade policy formulation is institutionalized by means of periodic meetings of the CONEX (the CAMEX Private Sector Advisory Council), and through several sectoral competitiveness fora.

Preferential trade agreements

Brazil is a founding member of the Southern Common Market (MERCOSUR). In addition, through its participation in MERCOSUR, Brazil has preferential trade agreements in force with: Bolivia; Chile; Colombia; Ecuador; and Venezuela; Cuba; Mexico; and Peru; and in the framework of the Latin American Integration Association (LAIA), Brazil has Economic Complementarity Agreements (ECAs) in force with Guyana and Suriname.

India signed a framework agreement with Brazil in June 2003. The India-Mercosur PTA entered into force in June 2009 under which 450 items from each country was identified to receive duty concessions in the region of 10% to 100%.⁹

⁸ Ministry of Development, Industry and Foreign Trade online information, <http://www.desenvolvimento.gov.br> (last visited July 20, 2011)

⁹ Embassy of India, Brasilia, *India-Brazil Relations* (Jan. 2011), available at http://www.indianembassy.org.br/eng/bilateral_relations/brazil.pdf

MERCOSUR

MERCOSUR is by far Brazil's most important preferential agreement in terms of value of trade, although only some 10% of Brazil's merchandise trade takes place with the three other MERCOSUR members (Argentina, Paraguay and Uruguay). Trade between Brazil and Argentina totaled about \$32.5 billion in 2010, with Brazil running a \$3.38 billion surplus with its neighbour.

The Common Market was established in November 1991. It seeks to promote:

- The free transit of produced goods, services and factors among the member states. Among other things, this includes the elimination of customs rights and lifting of nontariff restrictions on the transit of goods or any other measures with similar effects;
- Fixing of a common external tariff (CET) and adopting of a common trade policy with regard to nonmember states or groups of states, and the coordination of positions in regional and international commercial and economic meetings;
- Coordination of macroeconomic and sectorial policies of member states relating to foreign trade, agriculture, industry, taxes, monetary system, exchange and capital, services, customs, transport and communications, and any others they may agree on, in order to ensure free competition between member states;
- The commitment by the member states to make the necessary adjustments to their laws in pertinent areas to allow for the strengthening of the integration process. The Asunción Treaty is based on the doctrine of the reciprocal rights and obligations of the member states. Mercosur initially targeted free-trade zones, then customs unification, and finally a common market. The common market will allow (in addition to customs unification) the free movement of manpower and capital across the member nations, and depends the grating of equal rights and duties to all member countries. Because member states will implement the trade liberalization at different speeds, during the transition period the rights and obligations of each party will initially be equivalent but not necessarily equal. In addition to the reciprocity doctrine, the Asunción Treaty also contains provisions for the most-favored nation concept. This concept is that after the common market is formed, member nations are to automatically extend to the other members any advantage, favor, entitlement, immunity or privilege granted to a product originating from or intended for countries that are not party to the Latin American Integration Association (ALADI).¹⁰

The main decision-making body, the Council for the Common Market, comprises Ministers of Foreign Affairs and of Finance of the member countries.¹¹ The Common Market Group, MERCOSUR's executive body, is in charge of supervising the application of the Treaty of Asunción, its protocols and the agreements signed within its framework. It is also responsible for negotiating with third countries, groups of countries, and international organizations. The Common Market Group issues Resolutions, which are mandatory for the member countries. Within the Common Market Group there are a number of working groups, committees, and ad-hoc groups. The Trade Commission is responsible for the application of common trade policy instruments, as well as for the follow-up and revision of related issues.

MERCOSUR's Common External Tariff (CET) entered into force on 1 January 1995, with a number of sector- and country-specific exceptions. Under Decisions CMC 21/02, 31/03, 38/05

¹⁰ *Mercosur*, <http://en.wikipedia.org/wiki/mercosur>(last visited Aug.10,2011).

¹¹ MERCOSUR online information. Viewed at: <http://www.mercosur.org.uy/pagina1esp.htm>.

and 59/07, Brazil maintains, exception lists comprising 100 tariff lines until 31 December 2009, to be trimmed to 50 tariff headings in the second half of 2010, and eliminated by 31 December 2010.¹² These exceptions together represent 0.7% of Brazilian tariff lines.

The Protocol of Olivos, signed in February 2002 and in force 2004 replaced the Protocol of Brasilia as MERCOSUR's dispute settlement mechanism. The main change with respect to the Protocol of Brasilia is the establishment of a Permanent Review Court (PRC) of five arbitrators. The Protocol of Olivos provides for compensatory measures pursuant to total or partial non-compliance with an award of the arbitration court.

In June 2002, the Council of the Common Market adopted the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures for the application of these contingency measures to intra-MERCOSUR trade.¹³ Decision CMC No. 17/96 regulates the application of safeguards on imports from third parties. The 49th Additional Protocol to the MERCOSUR, incorporates Decision the regime of Application of Safeguard Measures to non-MERCOSUR members. Decision CMC No. 17/04 is awaiting incorporation in the internal legislation of other MERCOSUR members and has not entered into force.

Tariff Profile

Brazil's import tariffs range from 0 to 35 percent with an average applied rate of 11.6 percent in 2010. Brazil's average bound tariff in the WTO is significantly higher at 31.4 percent. This gap between the applied tariff and the bound tariff provides flexibility to the Government to manage prices and supply by modulating the applied rates.

Since Brazil is part of MERCOSUR, the Common External Tariff of MERCOSUR will be a relevant one as far as third country imports are concerned. The CET average is around 11.5% and ranges from 0% to 35%, with a limited number of country-specific exceptions.

In terms of Brazil's Customs Union with MERCOSUR, Brazil is permitted to maintain 100 exceptions to the CET until 2015. Brazil is also authorised to maintain high tariffs than its MERCOSUR partners on products such as telecommunication equipments, computers and computer printers, certain chemicals, pharmaceuticals and certain fish and fish products.

The average applied tariffs in Brazil have risen by three percentages points since 2007, and are imposed on the vast majority of imports. The products on which import tariff was increased include electrical machinery, automotive parts, textiles, leather, toys, etc.

During 2009 and 2010, Brazil increased import tariffs on several industrial products including electric machinery, machine tools, automotive parts, telecommunication equipment, crane lorries, textile, leather, and toys.

Brazil has eliminated most import restrictions barring a few exceptions. In general, all consumer goods are not allowed to be imported. Used capital goods are allowed only when a similar product is not produced locally. Aviation parts are, perhaps, one of the few used products permitted to be imported. Remanufactured goods are still considered as used goods. There is also a prohibition on

¹² Paraguay and Uruguay were authorized to maintain lists of exceptions of 150 and 125 tariff headings, respectively, until 31 December 2010 (MDIC online information. Viewed at: <http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=1386&refr=374>).

¹³ CMC/DEC/13/02 and CMC/DEC/14/02, respectively

importation of goods which are considered as harmful to health, sanitary, environment and national security.

According the World Trade Indicators (2009-10) released by the World Bank, Brazil's tariff regime is more protectionist on an average than any country in Latin America and Caribbean (LAC).¹⁴ The World Bank Report further notes that Brazil's trade regime in agriculture, where it is highly competitive, is more open than that of its competitors whereas its non-agricultural market access is much more restrictive

Development during review quarter

As per Decisión No. 60/10 del Consejo del Mercado Común, a temporary authorization was given to increase the Mercosur Common Tariff applied rates for the imports of 14 tariff lines (certain toys: NCM 9503.00.10; 9503.00.21; 9503.00.22; 9503.00.31; 9503.00.39; 9503.00.40; 9503.00.50; 9503.00.60; 9503.00.70; 9503.00.80; 9503.00.91; 9503.00.97; 9503.00.98; 9503.00.99).¹⁵ However, the temporary authorisation is not be allowed to go beyond the bound levels under the WTO schedule of concessions. The increased duties will remain in force for a period starting from the 1 April 2011 to 31 December 2011.

Non-Tariff Barriers

Brazil applies federal and state taxes to imports that can effectively double the actual cost of imported products in Brazil.

A number of imports are prohibited, including foreign blood products and all used consumer goods such as automobiles, clothing and tires, as well as used medical equipment and information and communication technology products. Brazil also restricts the entry of certain types of remanufactured goods (e.g earth moving equipment, automotive parts, and medical equipment) through onerous import licensing procedures. In general, Brazil allows the importation of such goods only if the importer can provide evidence that they are not or cannot be produced domestically.

Brazil also maintains a flat tax of 60% on manufactured retail goods imported by individuals via mail and express shipment.

Customs Procedure and Valuation and Import Licensing

The key agencies in Brazil responsible for formulating regulations to implement import measures include (i) the Secretariat of Foreign Trade in the Ministry of Development, Industry and Foreign Trade (MDIC); and (ii) Federal Revenue of Brazil (RFB) in Ministry of Finance.

All individuals and legal entities engaging in foreign trade must be registered with SECEX in the Register of Importers and Exporters. Only Brazilian citizens are permitted to work as customs brokers in Brazil. This requirement was introduced in a Decree released in 1992.¹⁶

¹⁴ World Bank Group, World Trade Indicators 2009/10, available at http://info.worldbank.org/etools/wti/docs/Brazil_brief.pdf

¹⁵ Decisión No. 60/10 del Consejo del Mercado Común

¹⁶ Decree No. 646 of Sept. 9, 1992.

As a general rule imports into Brazil are exempted from import licensing, an exception being drawback imports. Importers are only required to register their imports documents (making an Import Declaration) at SISCOMEX, an electronic system for the control of external trade operations. At the end of January 2009, the government of Brazil (Ministry of Development, Industry and Trade, MDIC) adopted automatic import licensing procedures for certain products.

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, pharmaceuticals, etc. It is reported that 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 explanation for rejection in specific cases is generally lacking.

Developments during review quarter

On 10 May 2011, Brazil suspended the automatic licensing regime for the import of auto and auto parts. Although the measure is alleged to directly affect Argentina, it applies to all countries in the WTO.

Subsidies and Export Related Schemes

The Export Financing Programme (PROEX) is a federal government programme managed by the Banco do Brasil.

According to the USTR, the Government of Brazil offers a variety of tax, tariff and other financial incentives for production related to export and for use of domestic inputs. It is also alleged that the National Bank, BNDES, provides long term financing to Brazilian industries through several different programmes. Charging lower interest rate is considered to be one of the forms of subsidy. FINAME, one of the BNDES programme, provides long term subsidy for Brazilian firms to purchase Brazilian made machinery and equipment and capital goods with a high percentage of domestic content.

There are reports indicating that Brazil emerged as the leading producer of ethanol on account of the Governments' support to the industry since the 1970s.¹⁷ Latest reports, however, indicate that no such subsidies are currently provided.

Table: III

Export Credits: Brazil-Air Craft Dispute and its Aftermath

Brazil during the Uruguay Round would not have worried about issues that might arise from its operation of the export credit schemes. Subsidies until then would have been considered as a developed country problem. But, in 1996 consultations were requested by Canada against Brazil before the WTO dispute settlement system, concerning the Brazilian system of export credits to the civil aircraft sector (Embraer case, WT/DS46). The results of this dispute required changes in Brazil's domestic regulation and called the attention to the limits of the Brazilian institutional framework dealing with export credits. This case was considered to be a "wake-up call for Brazil" of

¹⁷ Troy G. Schmitz, James Seale, and Andrew Schmitz, *Hidden Ethanol Subsidies In Brazil Revisited* (Nov. 17, 2009) (available with the author)

the need for formulating trade policies consistent with the WTO. The Embraer case was an isolated situation of financing though; however, as from 2003 Brazil issued a large-scale industrial policy program establishing several mechanisms to finance its domestic industry and, in such context, it created in 2004 the Brazilian Agency on Industrial Development. That programme called for detailed scrutiny. Recent proposals in Brazil intend to revise the institutional mechanisms for export credit in order to better grant access to its domestic industry and, secondly, to foster the information flow and knowledge on the field with international and foreign agencies.

Source: Latin American Trade Network (LATN)

Government Procurement

Developments during review quarter

On July 19th 2010, the Brazilian government, through the “Medida Provisória nº 495” introduced changes in Law Nº 8.666, which establishes the general rules regarding administrative contracts and governmental procurement related to works, services, including marketing, acquisitions, sales and leases carried out by the three levels of government.

TECHNICAL REGULATIONS AND STANDARDS

The National Institute for Metrology, Standardisation and Industrial Quality (INMETRO) is the agency responsible for the implementation of standards. INMETRO is the operating arm of the National Council of Metrology, Standardisation and Industrial Quality (CONMETRO), which is formed by a group of eight ministries and five governmental agencies. The Council is the regulatory body of the National System of Metrology, Standardisation and Industrial Quality (SINMETRO).

INMETRO is the national accreditation agency and is also responsible for implementing national policies regarding quality and metrology established by the CONMETRO. INMETRO is also responsible for certification of products, services, licensing and testing labs. The Brazilian Association of Technical Standards (ABNT) is also a recognised standards organization.

Development during review quarter

In February 2011, the Brazilian delegation to the WTO has submitted a draft technical resolution that seeks to establish minimum technical requirements regarding safety, efficacy and labelling for the registration at ANVISA of insect repellent cosmetics. For insect repellent cosmetic products already registered at ANVISA, it will be granted a six month period from the date of entry into force to make the necessary adjustments.

In February 2011, the Brazilian delegation to the WTO has submitted a draft resolution that seeks to establish compulsory notifications, corrective and preventive actions that must be carried out by the holders of health products.¹⁸

On 14 June 2011, Brazil issued a notification No. G/TBT/N/BRA/435, providing details of the draft resolution No.21-MERCOSUR on food label nutrition declaration. This Mercosur Draft Resolution applies to nutrition claims on food labelling, including brands on food packaging, produced and marketed within the territory of Mercosur Members (Argentina, Brazil, Paraguay, Uruguay), the

¹⁸ WTO Notification, G/TBT/N/BRA/425

trade among them and extra-zone imports. The nutrition claims established in this Draft Resolution applies to all forms of media advertisement, and every message transmitted orally or in writing. This Technical Regulation does not apply to food for special purposes (as defined in Mercosur Technical Regulation on nutrition labelling for packaged food), mineral waters and other bottled waters for human consumption and salt. Specific regulations must also be followed.

Table IV

<p>India Pharmaceutical companies</p> <p>Brazil is one of the largest markets for pharmaceutical products in the world. It is also one of the largest generic markets in the world.</p> <p>The India pharmaceutical industry is the 3rd largest in the world in terms of volume and 14th in terms of value. The generic segment of the industry is growing at a compounded annual growth rate of 17%, a bulk of which is procured by the Health agencies. A number of Indian pharmaceutical companies have acquired entities in Brazil. Most of the companies consider Brazil as a base to penetrate into the Latin American Region. Out of the Indian leading Indian pharmaceutical companies, Ranbaxy and Dr. Reddy's Laboratories, Sun Pharmaceuticals, Cipla, Lupin, Aurobindo Pharmaceuticals, Cadilla, etc have own manufacturing facility in Brazil. Lupin, according to the information provided on its website, has signed an agreement with the Department of Health, Government of Brazil and Farmanguinhos (the largest public sector undertaking in health care in Brazil) to supply it 4-in-1 combination drug to treat tuberculosis for the next five years.</p> <p>The major barrier faced by the Indian pharmaceutical companies include the procedural delays in the clearances, inspection and registration by the Brazilian health surveillance agency, ANVISA. The registration process at ANVISA requires three to six months for new versions of existing drugs, but could take from six months to one year for new products.</p> <p><i>Source:</i> CCI Report on Indian Pharma Industry, Pharmaceutical company websites, etc</p>

SANITARY AND PHYTOSANITARY MEASURES

Brazil has been fairly regular in notifying new measures to the SPS Committee of the WTO. This requirement is cast by Article 7 of the SPS Agreement. The notifications are available at the WTO website (<http://spsims.wto.org>).

Brazil has made a relatively high number of notifications during 2010-11. The notifications covered measures aimed at ensuring food safety and/or protecting human health from animal- and plant-carried diseases.

The majority of Brazil's recent SPS notifications were not related to emergency actions. Emergency SPS notifications are to be submitted only when measures are taken in response to disease outbreaks, pest infestations or other urgent health risks.

It is seen that none of the SPS notifications submitted by Brazil during the quarter under review may have specific trade concerns for India.

CONTINGENT TRADE REMEDIES

Brazil is one of the leading users of trade contingent protection. Although Brazil has established the framework for initiating all three forms of trade contingent measures, antidumping has been the most commonly used remedy.

Antidumping

In 2010 alone, Brazil initiated 25 investigations. Some of the products on which investigations were made include n-butanol, discocynate, toluene, nitrile rubber and light weight coated paper.

Table V: AD Measures by Brazil (As of Dec. 31, 2010)

China	30
US	12
India	6
Others	57
Total	105

Source: WTO

Anti-circumvention provisions: By virtue of Directive 21 of 18 October 2010, the Secretary of Foreign Trade of the Ministry of Development, Industry, and Foreign Trade broadened the scope of the anti-dumping measure provided for in article 10-A of Law 9019 of 30 March 1995. The objective of the Directive is to introduce anti-circumvention procedure in the Brazilian Antidumping Law. Pursuant to article 3 of CAMEX Resolution 63 of 2010, the investigation of circumvention practices shall be initiated and conducted as per this Directive.

Table VI

<p>New Anti-circumvention (of Antidumping measures) Law in Brazil</p> <p>Art. 3. The broadening of the scope of anti-dumping measures may encompass:</p> <p>I goods which are identical to the good (comma) subject to the anti-dumping measure in all aspects or any other good with very similar, even if not identical, characteristics to those of the good subject to the anti-dumping measure; and</p> <p>II parts, pieces, and components of the good under subsection I, including raw materials, intermediate products, and any other inputs employed in the manufacture of the said good.</p> <p>Art. 4. For purposes of this Directive and pursuant to article 2 of CAMEX Resolution 63 of 2010, the following shall be considered circumvention:</p> <p>I the introduction into the national territory of parts, pieces, and components for the purpose of the manufacture of a good resembling the good subject to the anti-dumping measure or of another product with characteristics that although not identical are very similar to those of the good subject to the anti-dumping measure;</p> <p>II the introduction into the national territory of a good manufactured in third countries using parts, pieces, or components originating in or from the country subject to the anti-dumping measure;</p>

III the introduction into the national territory of a good with minor modifications that do not affect such good's end use or purpose; or

IV any other practice designed to thwart the effective application of anti-dumping measures.

Source: **G/ADP/N/1/BRA/2/Suppl.5**

Developments during review quarter

Table VII: Recent Antidumping Investigations by Brazil

Initiation Date	Product and country involved	Notification
6 April 2011	Anti-dumping investigation on imports of citric acid (NCM 2918.14.00; 2918.15.00) from China	Camex Circular No. 14 (6 April 2011)
18 April 2011	Anti-dumping investigation on imports of flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated (NCM 7210.30.10; 7210.49.10; 7210.61.00; 7210.70.10) from Australia; China; India; Korea, Rep. of; and Mexico	Camex Circular No. 16 (15 April 2011)
8 June 2011	Antidumping investigation initiated on other amino-resins from Belgium, China and the U.S (NCM 3909)	Camex Circular No. (8 June 2011)
16 June 2011	antidumping investigation on certain type of table knives from China (NCM 8211, 8215)	Camex Circular No. (16 June 2011)

Source: Global Trade Alert & WTO Notifications

Countervailing Duties

Brazilian legislation does not allow for the simultaneous application of antidumping and countervailing duties, although both investigations can be carried out at the same time.

As of April 2011, India is the only country against which Brazil has a countervailing duty in force. Countervailing duty is still on force on polyethylene terephthalate (PET) films from India.¹⁹

Brazil has not started a CVD investigation during the quarter under review.

Safeguards

Brazil has a framework for the initiation of safeguard investigation since 1994. Administrative procedures for the application of safeguard laws since May, 1995. A Common Mercosur regulation seeking application of safeguards measures with respect to third countries was adopted as early as in 1998. However, this regulation has not entered into force since the other Mercosur members have not yet incorporated this into a legislation.

¹⁹ CAMEX, Resolução CAMEX 43/2008(July 04, 2008)

Brazil has been maintaining safeguard measures on desiccated peeled coconut, whether or not grated, classified in the item 0801.11.10 of the Mercosur Common Nomenclature for a long time. In September 2010, Brazil notified the Safeguard Committee for the extension of the measure for the period of two years until 2012.

Brazil has not initiated a safeguard investigations during the review quarter.

INTELLECTUAL PROPERTY RIGHTS

The National Institute of Industrial Property (INPI) is the Office responsible for the Industrial Property in Brazil. Linked to the MDIC, INPI is in charge of: registration of trademarks, grant of patents, official recording of technology transfer and franchising contracts, registration of industrial design, registration of geographical indication, registration of software, registration of integrated circuits topography, activities of dissemination of intellectual property and technological information. It stimulates the innovation, promotes the competition and favors technological, economical and social developments.²⁰

Plant Varieties in Brazil is protected by Law 9456 of 25 April 1997 and further elaborated by the Decree 2366 of 5 November 1997. It gives a protection of 15-18 years. The law creates the National Service of Protection of Plant Varieties (Servico Nacional de Protecao de Cultivares). Other intellectual property laws in Brazil are: Law 9609/1998 for software protection, Law 9610/1998 for copyright protection, and Decree 1800/1996 for companies registration and Law 11484/2007 for Topography Integrated Circuits Law.²¹

Patents

The present legislation is commonly called the ‘New Patent Law of 1997’. To be patentable, an invention must be ‘novel’, ‘involve an inventive step’, and must ‘be capable of industrial application’. Certain inventions which are not patentable are that which, are contrary to public morality, are in violation of public order and custom, and, are opposed to public health, welfare or public security. The person who first applies for the patent, as opposed to the one who first invents it gets the patent in Brazil, that is, it is following the ‘first-to-file’ system. The law but provides a twelve month grace period for the disclosure of an invention.

Brazilian law demands the applications for patents to be submitted in Portuguese. These applications presented by Registered Industrial Property Agents and Attorneys-at-law, are examined by ‘National Institute of Industrial Property’. If it meets all the requirements, it will be automatically allowed. A third party can make opposition for granting the patents by submitting documents and providing information, and may also request ‘administrative nullity’ for a period of six months from the granting of patents. The term of invention patent is 20 years, and for a utility model patent is 15 years. Compulsory licensing provisions also are incorporated into the Brazilian patent law.

Trademarks

The trademark protection in Brazil can be obtained only by registering with the BPTO. In certain cases it is also gives preferential right for registration to any person that has used the trademark in good faith at least six months before the date on which an application for registration is filed for an identical or similar trademark to identify the same or related goods or services.

²⁰ INPI, <http://www.inpi.gov.br/menu-esquerdo/instituto/english-version>, (last visited on July 28, 2011)

²¹ New Zealand Ministry Of Foreign Affairs And Trade, *Report – Intellectual Property Protection in Brazil*, (May-June 2010), available at <http://www.mfat.govt.nz/downloads/foreign-relations/latinamerica/brazil-final-ip-report.pdf>. [hereinafter Brazil IPP Report]

According to Brazilian law, only signs which are visually perceivable may be registered. The BPTO accepts applications for word marks, figurative marks or devices. Smells and sounds, for example, are not eligible for trademark protection. The protection granted to trademark registrations in Brazil is limited to the country's territory (principle of territoriality) and to the field of activity on which the trademark is used (principle of speciality) except for two cases, first, highly renowned trademarks registered in Brazil are given widespread protection of activity; and second the well-known trademarks, even if not registered in Brazil, benefit from the international protection set forth in the terms of the Paris Convention. The term of protection is ten years as from the date of registration, renewable for unlimited successive ten-year periods.²²

The authority for registration of domain names is the Registro.br, a division of the Coordination and Information Centre of Point. Unlike trademarks, registration of a domain is not preceded by any similarity search, and the registration is given to the first person who applies for it.²³

Infringers to trademarks can only be prosecuted by means of a court action. A local alternative resolution procedure called SACI is currently being developed by the relevant authorities.²⁴

Geographical Indications

Brazil recognizes the two traditional types of geographical indications. A softer protection is granted to the indication of origin, which is just the name of a region known as a producing centre of goods or services. A broader and more formal protection is guaranteed to the designations of origin, which refer not only to the name of the place, but also to the quality or characteristics of goods or services that can only be obtained in such place. The use of a given geographical indication is restricted to product manufacturers and service providers established in the respective locality. Use of a GI by any other person, in any other locality, is considered an illicit act and the titleholder can prosecute infringers both civilly and criminally. Reproductions or imitations of GIs cannot be used or registered as trademarks if the identified goods or services are not originated in the indicated territory and there is a potential risk of misleading consumers. Once a GI is registered with the BPTO, the agency takes it into consideration *ex officio* when analyzing other GIs or even trademark applications and in filing of lawsuits. The owner of a registered GI may simply present the certificate of registration, instead of filing arduous sets of documents trying to prove that the geographical name merits GI protection.²⁵

Copyright and Related Rights

In February 19, 1998 two copyright laws were published in Brazil. The first one was the law 9606, which regulated the law over computer software and fixes the authorship rights, the moral and patrimonial rights. The period of protection is 50 years. The second law of February 19, 1998, was the law 9610 that replaces the former legislation about copyright.²⁶

Since Brazil is a member of the Berne Convention, copyright registration is not mandatory for property acquisition or for the enforcement of rights. On the other hand, registration creates a presumption of authorship regarding the registrant and the date of registration, thus reversing the burden of proof in case authorship is challenged judicially. There is no central agency where

²² Denis Borges Barbora, *The New Brazilian Patent Law 1997*, <http://denisbarbosa.addr.com/> (follow hyperlink 'papers in English' and then the hyperlink 'The New Patent Law, 1997')

²³ *Id.*

²⁴ Brazil IPP Report, *supra* note 21

²⁵ Brazil IPP Report, *supra* note 21

²⁶ Brazil IPP Report, *supra* note 21

registration can be made. Instead, registration can be sought before different agencies, depending on the nature of the work. Copyrights remain in force for the whole life of the creator and up to 70 years counted from January 1st of the subsequent year of his/her death. Related Rights last for 70 years after January 1st of the subsequent year of the public performance, the setting of the phonogram or the broadcast takes place.²⁷

IPR Enforcement

Once patent is granted by the BPTO, the recovery of damages may be granted retroactively to the date of application was published in the Official Gazette. In case of trademarks, the owner of a pending and registered trademark can file a suit in order to safeguard the material integrity and reputation of the trademark. Injunctions to enjoin the defendant from violating the plaintiff's rights are also available which is for the search and seizure of the counterfeited goods, to suspend the effects of a patent, design, GI or trademark registration.²⁸

Table VIII: Brazil's Profile of IPR grants, 2011

Patent Applications	Number (Total)	Application by Residents	Application by non-residents
Patent applications	21,825	4023	17,802
Patent registered and in force	2,451	234	2,217
Trademark applications	119,841	97,868	21,973
Trademark registration and in force	60,086	43,762	16,324
Industrial design applications	2,761	1,810	951
Industrial applications registered and in force	5,897	3,945	1,952

Source: WIPO, USTR websites

AGRICULTURE

Agriculture is a major sector of the Brazilian economy, and is the key for economic growth and foreign exchange. Agriculture accounts for about 6% of GDP. Agriculture and agribusiness will constitute 25% of the GDP. Agricultural exports constitute almost 36% of Brazil's total exports, according the data available for the year 2010. Brazil enjoyed a positive agricultural trade balance of \$55 billion in 2009. Brazil is the world's largest producer of sugarcane, coffee, tropical fruits, frozen concentrated orange juice (FCOJ), and has the world's largest commercial cattle herd (50% larger than that of the U.S.) at 170 million head. Brazil is also an important producer of soybeans, sugar,

²⁷ Brazil IPP Report, *supra* note 21

²⁸ Brazil IPP Report, *supra* note 21

cotton, cocoa, tobacco, meat products, and forest products. The remainder of agricultural output is in the livestock sector, mainly the production of beef and poultry pork, milk, and seafood.

Although it is reported that Brazil offers assistance to the agricultural sector, the total value of such support is low when compared to the average in OECD countries.

The subsequent quarterly reports will monitor whether Brazil is providing any agricultural assistance.

SERVICES & INVESTMENT

Brazil's financial sector is diversified and competitive, but the state's role remains considerable. Public-sector commercial and development bank assets account for around 40 percent of the financial system's total assets. The two largest state-owned banks control about 25 percent of total assets, and the government directs banks to channel loans to preferred sectors. Three of the top 10 banks are now foreign-owned. Brazil's insurance sector is now the region's largest, and the reinsurance market was opened to private-sector competition in 2008.

Financial Services: In 2010, Brazil introduced certain restrictions which may have the impact of affecting supply of financial services by foreign institutions. This has been the case for the restrictions on reinsurance services. Brazil introduced certain market reforms in 2007; however, this policy was reversed by virtue of two new resolutions (224/2010 and 225/2010) published by the Brazilian National Council of Private Insurers (CNSP). These two resolutions seek to prevent domestic and foreign insurers operating in Brazil from reinsuring their businesses within their own financial group (for example, to a "sister" insurer or reinsurer) located outside Brazil, and making it mandatory for insurers established in Brazil to place at least 40% of their reinsurance with locally admitted reinsurers. The 40% rule went into effect on 31 March 2011. Before this regulation was enacted, local reinsurers had the right to look at every reinsurance risk and had the first right of refusal, but in practice a substantial portion (often up to 100%) of large Brazilian risks were being placed abroad.²⁹

Audiovisual services: In Brazil remittances to foreign producers of audiovisual works are subject to a 25 percent withholding tax. Brazilian distributors of foreign films are also subject to 11% withholding tax. The tax named as Contribution to the Development of a National Film Industry (CONDECINE) is waived for the Brazilian distributor if the producer of the foreign audiovisual work agrees to invest an amount equivalent to 70% of the withholding tax in a coproduction with a Brazilian company.³⁰

Brazil offers significant comparative advantages in terms of production costs, especially with regard to below-the-line expenses (non-starring cast members, technical crew, studio, technical equipment, travel, etc) and these restrictions may have at least a minor impact on Indian production houses, especially if they are targeting the Latin America and Caribbean Region.

Investment Policy: On 5 April 2011, the Brazilian Central Bank vide Resolution No. 3967/2011 extended Tax on Financial Transactions (IOF) levied on non-residents' investment in fixed-income

²⁹ WTO, *Report on G-20 Trade Measures*, (May 24, 2011)

³⁰ USTR, *Non-Tariff Barriers Report: Country Profile- Brazil*, 2011, available at <http://www.ustr.gov>

securities to renewed, renegotiated, or transferred loans of companies.³¹ Hitherto, the tax applied only to new loans.

Dispute Settlement Process: Brazil's involvement during the review quarter

The WTO DSB adopted *United States -Imports of certain orange juice from Brazil* during the review quarter. This was yet another “zeroing” dispute. The details of the proceedings are mentioned in the next page.

Other developments

Consultations initiated during the review quarter- None

On-going disputes during review quarter- None

³¹ *Banco Central do Brasil* Press Release, Resolucao 3967/2011, (April 4, 2011)

DS Reports Adoption: DS (382)

Respondent Country	Date of Adoption of DS report 382	Violations Alleged	Proceedings so far
United States of America	June 17, 2011	Articles II, VI:1 and VI:2 of the GATT 1994, Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2 and 18.4 of the Anti-Dumping Agreement, and Article XVI:4 of the WTO Agreement	<p>On 27 November 2008, Brazil requested consultations with regard to the imports of certain orange juice from Brazil, with respect to the actions by USCBP to collect definitive anti-dumping duties at duty assessment rates established in periodic reviews, including the issuance of USCBP liquidations instructions and notices and certain US laws, regulations, administrative procedures, practices and methodologies.</p> <p>On 22 May 2009, Brazil requested further consultations with regard to complementary matters.</p> <p>On 25 March 2011, the panel report was circulated to Members. The summary of key findings were:</p> <p>The Panel found the United States had acted inconsistently with Article 2.4 of the AD Agreement when the USDOC used “zeroing” to determine margins of dumping (relied upon to set cash deposit rates) and importer-specific assessment rates in the First and Second Administrative Reviews. Likewise, the Panel concluded that the United States’ “continued use” of “zeroing” under the orange juice anti-dumping duty order was inconsistent with Article 2.4 of the AD Agreement. The Panel considered it was unnecessary, for the purpose of satisfactorily resolving the dispute, to make additional findings with respect to Brazil’s claims that the same measures were also inconsistent with Articles 2.4.2 and 9.3 of the AD Agreement and Article VI:2 of the GATT 1994. The Panel recommended that the DSB request the United States to bring its measures into conformity with its obligations under the AD Agreement.</p>