BRAZIL

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

Brazil is open to and encourages foreign direct investment (FDI). According to the United Nations Conference on Trade and Development (UNCTAD), Brazil was the fifth largest destination for global FDI flows in 2014. New FDI into Brazil reached approximately USD 64 billion in 2013, and Brazil typically receives close to half of South America's total incoming FDI. The Government of Brazil (GOB) has made attracting private investment in infrastructure a top priority for 2015.

The United States is a major foreign investor in Brazil; according to the Brazilian Central Bank (BCB), the United States had the highest stock of FDI in Brazil as of 2013. While Brazil is generally considered a desirable market for investment given its large economy and growing middle class, complex tax, local content, and regulatory requirements exist. In most cases, these impediments apply without discrimination to both foreign and domestic firms. The GOB generally makes no distinction between foreign and national capital in cases of direct investment.

The Brazilian economy disappointed in 2014 with 0.1 percent GDP growth, and market participants surveyed by the Brazilian Central Bank expect a contraction in 2015. Since 2014, Brazil's anti-corruption oversight bodies have been investigating allegations of widespread corruption involving state-owned energy firm Petrobras and a number of private construction firms. A separate tax bribery investigation, announced in 2015, is also ongoing. Medium- and long-term prospects still remain favorable, however, supported by strong domestic demand, anticipated investments in infrastructure, development of offshore oil reserves, and prudent macroeconomic policies.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Foreign Direct Investment (FDI) is prevalent across Brazil's economy. Brazil is open to and encourages FDI.

Other Investment Policy Reviews

The latest Organization for Economic Cooperation and Development (OECD) Economic Survey for Brazil was released in 2013. The OECD Survey applauds Brazil's efforts to promote inclusive growth and to sustainably manage natural resources, but recommends continued fiscal consolidation, more aggressive monetary policy to bring inflation closer towards the center of the target band, and improvements to productivity and competitiveness. The OECD report can be found at: http://www.oecd.org/eco/surveys/Brazil_2013_Overview_ENG.pdf.

Laws/Regulations of Foreign Direct Investment

The GOB currently restricts foreign investment in domestic airline companies to a maximum of 20 percent (Law 7565/1986, Article 181). A bill in the Chamber of Deputies (PL6716/2009) that would increase the ceiling to 49 percent has been pending since 2009. On March 19, 2011, representatives from the U.S. and Brazilian governments signed an Air Transport Agreement that will lead to an Open Skies relationship between the United States and Brazil, eliminating numerical limits on passenger and cargo flights between the two countries. If it is approved by Brazil’s Congress, the agreement will take effect in October 2015. The agreement currently sits with the Brazilian executive branch waiting to be reviewed and sent to Congress for ratification. On March 18, 2011, both parties also signed a Memorandum of Consultation (MOC) that incrementally increases flight limits in the interim.

To enter Brazil's insurance and reinsurance market, U.S. companies must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. Market entry for banks may occur on a case-by-case basis. Of the top 50 banks in Brazil, 20 are owned or controlled by foreign interests. The Brazilian reinsurance market opened to competition in 2007. In December 2010 and March 2011, however, the Brazilian National Council on Private Insurance (CNSP) rolled back market liberalization through the issuance of Resolutions 225 and 232, which disproportionately affect foreign insurers operating in the Brazilian market. Resolution 225 requires that 40 percent of all reinsurance risk be placed with Brazilian companies. Resolution 232 allows insurance companies to place only 20 percent of risk with affiliated reinsurance companies. In December 2011, the CNSP issued Resolution 241, which walked back some of the restrictions of Resolution 225 by allowing the 40 percent requirement to be waived if local reinsurance capacity does not exist.

In September 2011, President Rousseff signed into force a law covering the subscription television market that removed the previous 49 percent limit on foreign ownership of cable TV companies. Under Law 12485/2011, telecom companies will be allowed to offer television packages with their service. Content quotas require every channel to air at least three and a half hours per week of Brazilian programming during primetime. Additionally, one-third of all channels included in any TV package have to be Brazilian.

Foreign ownership of land within 150 km of national borders remains prohibited unless approved by Brazil’s National Security Council, per Law 6634/1979. On August 23, 2013, the National Land Reform and Settlement Institute (INCRA) published a set of rules covering the purchase of Brazilian land by foreigners. Under the new rules, the area bought or leased by foreigners cannot account for more than 25 percent of the overall area in any municipal district. Additionally, no more than 10 percent of the land in any given municipal district may be owned or leased by foreign nationals from the same country. The rules also make it necessary to obtain congressional approval before large plots of land can be purchased by foreigners, foreign companies, or Brazilian companies with the majority of shareholders from foreign countries.

On February 25, 2014, the Attorney General of Brazil and the Minister of Agrarian Development co-signed a bill that stipulates the rural lands purchased by foreigners between June 7, 1994 and August 22, 2010 in which companies that have foreigners as partners will be considered Brazilian and be regulated to prevent judicial insecurity. In the state of São Paulo, due to a judicial impasse, foreigners have been able to buy unrestricted amounts of land since the end of 2013. Companies controlled by foreign entities have been taking advantage of the opportunity and have been seeking investment properties.

Industrial Promotion

In August 2011, Brazil announced a new industrial policy, Plano Brasil Maior (the "Bigger Brazil" plan), to support domestic producers, encourage investment, and spur innovation. The plan, covering the period of 2011-2014, set targets for investment spending to reach 22.4 percent of GDP by 2014, up from a 2010 baseline of 18.4 percent. Private investment in R&D was to reach 0.90 percent of GDP by 2014, up from the 2010 figure of 0.59 percent. Brasil Maior also set targets for making the economy more energy-efficient, reducing the amount of petroleum used per unit of GDP by 9 percent, and nearly tripling broadband internet penetration from 13.8 million households in 2010 to 40 million households in 2014. The GOB is still assessing the results of the 2011-2014 period.

Limits on Foreign Control

FDI is prevalent across Brazil's economy, although certain sectors are subject to foreign ownership limitations as specified in the sections above. A 1995 constitutional amendment (EC 6/1995) terminated the distinction between foreign and local capital in general, but there are laws that restrict foreign ownership within some sectors, notably aviation, insurance, and media.

Privatization Program

Brazil has begun an ambitious USD 133 billion Logistics Investment Program (PIL) to draw in private capital and managerial expertise to upgrade the nation's infrastructure, including projects in roads, ports, airports, energy, and urban mobility. All of the infrastructure concessions are open to foreign companies. In fact, in the airport concessions, foreign companies have not only been encouraged to bid, but the auction criteria have been defined in a way that has the effect of requiring the participation of foreign airport operators. The bidding process is non-discriminatory, transparent, and performed without political interference.

In addition to the PIL mentioned above, between January 2011 and December 2014, the government's Program to Accelerate Growth (PAC) disbursed USD 530 billion to fund transportation, energy, housing, and sanitation projects, representing 96.5 percent of total spending projected by the end of 2014. The next phase of PAC will launch in 2015.

Screening of FDI

Foreigners investing in Brazil must register their investment with the BCB within 30 days of the inflow of resources to Brazil. Registration is done electronically. Investments involving royalties and technology transfer must be registered with Brazil's patent office, the National Institute of Industrial Property (INPI). Investors must also have a local representative in Brazil. Portfolio investors must have a Brazilian financial administrator and register with the Brazilian Securities Exchange Commission (CVM).

Competition Law

Regulatory review of mergers and acquisitions are carried out by the Administrative Council for Economic Defense (CADE). In October 2012, Brazil performed its first-ever pre-merger review of a pending merger, bringing Brazil in line with U.S. and European practices. This shift in merger review was a result of 2011 legislation (Law 12529), which was adopted to modernize Brazil's antitrust review and to combine the antitrust functions of the Ministry of Justice and the Ministry of Finance into those of the so-called "Super CADE." This government body is be responsible for enforcement of competition laws, consumer defense, and combating abuse of economic power.

Investment Trends

Brazil was the fifth largest destination for global FDI flows in 2014. New FDI into Brazil reached approximately USD 64 billion in 2013, and Brazil typically receives close to half of South America's total incoming FDI. The GOB has made attracting private investment in infrastructure a top priority for 2015.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	69 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	120 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	61 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 11,690	data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

Foreign Exchange

There are few restrictions on converting or transferring funds associated with a foreign investment in Brazil. Foreign investors may freely convert Brazilian currency in the unified foreign exchange market where buy-sell rates are determined by market forces. All foreign exchange transactions, including identifying data, must be reported to the BCB. Foreign exchange transactions on the current account have been fully liberalized.
All incoming foreign loans must be approved by the BCB. In most instances, the loans are automatically approved. Automatic approval is not issued when the costs of the loan are "not compatible with normal market conditions and practices." In such instances, the BCB may request additional information regarding the transaction. Foreign loans obtained abroad do not require advance approval by the BCB, provided the recipient is not a government entity. Loans to government entities, however, require prior approval from the Brazilian Senate as well as from the Finance Ministry's Treasury Secretariat, and must be registered with the BCB.

Interest and amortization payments specified in a loan contract can be made without additional approval from the BCB. Early payments can also be made without additional approvals, if the contract includes a provision for them. Otherwise, early payment requires notification to the BCB to ensure accurate records of Brazil's stock of debt.

On March 6, 2014, the Federal Revenue Service of Brazil consolidated the regulations on withholding tax (IRRF) applicable to earnings and capital gains realized by individuals and legal entities resident or domiciled outside Brazil. The regulation states that the cost of acquisition must be calculated "in reais." The drafting is not clear enough to determine, however, whether the acquisition cost in reais is obtained by converting the value of the direct foreign investment registered with the BCB using the quoted exchange rate on the date of acquisition (the historic rate), or the quoted rate for the date of the sale, or the rate for day two days prior to the sale. Additional requirements were also created for the application of a zero-rate IRRF, such as good tax standing (formalities not specified). Also, the "technical services" definition was broadened to include administrative support and consulting services rendered by individuals (employees or not) or resulting from automated structures having clear technological content. This change is significant for the purposes of determining the applicable IRRF rate, whether the Contribution of Intervention in the Economic Domain (CIDE) tax applies, and for the application of Treaties to Avoid Double Taxation.

Remittance Policies

Foreign investors, upon registering their investment with the BCB, are able to remit dividends, capital (including capital gains), and, if applicable, royalties. Remittances must also be registered with the BCB. Dividends cannot exceed corporate profits. The remittance transaction may be carried out at any bank by documenting the source of the transaction (evidence of profit or sale of assets) and showing that applicable taxes have been paid.

Capital gain remittances are subject to a 15 percent income withholding tax, with the exception of the capital gains and interest payments on tax-exempt domestically issued Brazilian bonds. Repatriation of the initial investment is also exempt from income tax. Lease payments are assessed a 15 percent withholding tax. Remittances related to technology transfers are not subject to the tax on credit, foreign exchange, and insurance, although they are subject to a 15 percent withholding tax and an extra 10 percent CIDE.

3. Expropriation and Compensation

There have been no known expropriation actions in Brazil against foreign interests in the recent past, nor have there been any signs that the current government is contemplating such actions. Some claims regarding land expropriations by state agencies have been judged by Brazilian courts in U.S. citizens' favor; however, compensation has not always been paid, as states have filed appeals to these decisions, and the Brazilian judicial system moves slowly. In June 2014, a amendment to Article 243 of the Constitution was approved, determining that assets can be expropriated if human slavery or planting of illegal psychotropic plants is confirmed on the grounds. Expropriation will be done through all lawful means, with the right to appeal, but once determined, the owner will not receive the money generated through the sale of the asset.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The Brazilian court system is overburdened, and contract disputes can be lengthy and complex. Brazil has both a federal and a state court system, and jurisprudence is based on civil law. Federal judges hear most disputes in which one of the parties is the State and rule on lawsuits between a foreign State or international organization and a municipality or a person residing in Brazil. Five regional federal courts hear appeals of federal judges' decisions.

Bankruptcy

Brazil has a commercial code that governs most aspects of commercial association, except for corporations formed for the provision of professional services, which are governed by the civil code. In 2005, bankruptcy legislation (Law 11101) went into effect creating a system modeled on Chapter 11 of the U.S. bankruptcy code, which allows a company in financial trouble to negotiate a restructuring with its creditors outside of the courts. In the event a company does fail despite restructuring efforts, the reforms improve creditors' ability to recover their debts.

Investment Disputes

Article 34 the 1996 Brazilian Arbitration Act (Law 9307) defines a foreign arbitration judgment as any judgment rendered outside the national territory. The law established that the Brazilian Federal Supreme Court must ratify foreign arbitration awards. Law 9307 also stipulates that the foreign arbitration award is to be recognized or executed in Brazil in conformity with the international agreements ratified by the country and, in their absence, with domestic law. [Note: A 2001 Brazilian Federal Supreme Court ruling established that the 1996 Brazilian Arbitration Act, permitting international arbitration subject to Federal Supreme Court ratification of arbitration decisions, does not violate the Federal Constitution's provision that "the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power."]

International Arbitration

Brazil has ratified the 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention) and the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitration Awards (Montevideo Convention).

ICSID Convention and New York Convention

Brazil has ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitration Awards (New York Convention). Brazil, however, is not a member of the International Center for the Settlement of Investment Disputes (ICSID), also known as the Washington Convention.

Duration of Dispute Resolution

The 2015 World Bank, Doing Business report found that on average it takes 44 procedures and 731 days to litigate a contract breach at an average cost of 16.5 percent of the claim.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Brazil is not a signatory to the World Trade Organization (WTO) Agreement on Government Procurement (GPA). U.S. companies seeking to participate in Brazil's public sector procurement effectively need to partner with a local firm or have operations in Brazil. Foreign companies are often successful in obtaining subcontracting opportunities with large Brazilian firms that win government contracts.

Investment Incentives

The Brazilian government uses a variety of tax incentives and attractive financing through the National Bank for Economic and Social Development (BNDES) to actively encourage both domestic and foreign investment. BNDES is one of the largest development banks in the world, outpacing the lending of even the World Bank. BNDES lending in 2014 was concentrated in infrastructure and Micro, Small and Medium Enterprises, accounting respectively for 36.7 and 32 percent of total disbursements. Industry accounted for 26.7 percent of total disbursements, a setback of 14 percent compared to 2013. The telecommunications sector saw the largest proportional growth in lending, with total disbursement of R$5.3 billion, a 97 percent increase over the previous year.

As part of its package of fiscal tightening, in December 2014, the GOB announced its intention to scale back the expansionary activities of BNDES. The GOB will end direct Treasury support to the bank, which provided 20 percent of BNDES cash flow in 2014, and raised the Long Term Interest Rate that serves as the basis for BNDES loans from 5.0 to 5.5 percent.

The GOB extends tax benefits for investment in less developed parts of the country, such as the Northeast and the Amazon regions, with equal application to foreign and domestic investors. These incentives have been successful in attracting major foreign plants to areas like the Manaus Free Trade Zone, but most foreign investment remains concentrated in the more industrialized southern part of Brazil.

Individual states have sought to attract investment by offering ad hoc tax benefits and infrastructure support to specific companies, negotiated on a case by case basis. These benefits have spurred a so-called "fiscal war" between the states, with some states challenging the tax benefits as harmful fiscal competition. In June 2011, the Brazilian Supreme Court ruled that the benefits granted by 14 states on interstate commerce are unconstitutional, since they were implemented without unanimous consent from the National Council of Fiscal Policy (Confaz). In November 2012, the Ministry of Finance proposed to Congress an end to the "fiscal war" by setting the interstate tax rate on goods at 4 percent for all states, thus limiting states' ability to offer special tax incentives to attract investment away from other states. However, state finance secretaries have been unable reach consensus on the tax rate exemptions proposal.

In January 2015, the Minister of Finance proposed reversing an October 2012 decree (7819) in support of domestic auto manufacturers. The decree raised the Industrial Products Tax (IPI) by 30 percentage points of the price of the vehicle on all vehicle sales in the Brazilian market on or after January 1, 2013. This change affected all vehicles in Brazil. Auto manufacturers are able to apply for a tax credit based on their ability to meet certain criteria, including the number of manufacturing processes performed in Brazil, enhancing fuel efficiency, committing to invest in research and development in Brazil or to use Brazilian engineering services, and agreeing to participate in a fuel-efficiency labeling scheme.

In September 2014, the GOB issued Decree 8304 to reinstate the Special Regime for the Reinstatement of Taxes for Exporters, dubbed the Reintegra Program. Under the program, exporters of products covering 8,630 tariff codes receive a subsidy of 3 percent of the value of their exports. To qualify, the imported content of the exported goods cannot exceed 40 percent, except in the case of high-tech goods, such as pharmaceuticals, electronics, and aircraft and parts, which are permitted to have up to 65 percent of inputs imported. In addition, Reintegra exempts exporters from so-called indirect taxes on capital expenditures, including the PIS/Cofins social contribution taxes and the IOF tax on financial transactions. On February 27, 2015, Decree 8415 revoked Decree 8304 and determined new regulations for the program; however, the three percent subsidy on the value of the exports is still in effect.

In May 2010, the GOB launched a National Broadband Plan, which featured fiscal incentives, private sector participation, and regulatory reform to build out internet infrastructure under the leadership of state-owned firm Telebras. While the plan provided commercial opportunities for foreign investors, it also sought to boost Brazilian technology by granting domestic IT equipment tax exemptions, favorable BNDES financing, and preference in the procurement process.

Research and Development

Tax credits are available based on a producer's ability to meet certain criteria, including investing in research and development in Brazil.

Performance Requirements

In firms employing three or more persons, Brazilian nationals must constitute at least two-thirds of all employees and receive at least two-thirds of total payroll, according to Brazilian Labor Law Articles 352 to 354. Foreign specialists in fields where Brazilians are unavailable are not counted in calculating the one-third permitted for non-Brazilians.

Law 8666 (from 1993) covers most government procurement other than information technology/telecommunications and requires non-discriminatory treatment for all bidders regardless of nationality or origin of the product or service. GOB procurement rules apply to purchases by government entities and state-owned companies. Brazil has an open competition process for major government procurements. The GOB may not make a distinction between domestic and foreign-owned companies during the tendering process; however, when two equally qualified vendors are considered, the law's implementing regulations provide for a preference for Brazilian goods and services. Price is to be the overriding factor in selecting suppliers. However, the law's implementing regulations also allow for consideration of non-price factors, giving preferences to certain goods produced in Brazil and stipulating local content requirements in order to qualify for tax benefits. Additionally, nearly all bids require establishment of a local representative for any foreign company bidding.

Government procurement is just one of thirty-five industrial policy components under Brasil Maior intended to support Brazilian industry and protect domestic producers, particularly the labor-intensive sectors threatened by imports. The textile, clothing and footwear industries – among the few industries to have lost jobs during the current growth period – were the first to benefit from Brasil Maior when, in November 2011, the Ministry of Development, Industry and Commerce implemented an 8 percent preference margin for domestic producers in these industries when bidding on government contracts. In April 2012, Decrees 7709 and 7713 expanded the use of preference margins to pharmaceuticals and medicine (8 or 20 percent) and excavators and bulldozers (15 and 25 percent). The preference margins for these goods are valid until December 31, 2015.

Decree 7174 (2010), which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preferential treatment to domestically produced computer products and goods or services with technology developed in Brazil based on a complicated price/technology matrix.

Data Storage

In general, the government does not explicitly practice “forced localization” in which foreign investors must use domestic content in goods and technology, but local content products have the advantage of tax breaks, BNDES financing, and price preferences of up to 25 percent in government purchases. To date, there is no general requirement for foreign IT providers to turn over source codes or otherwise provide access to surveillance, but Decree 8135 of 2013 calls for auditing of hardware and software used in government data communications.

In 2014, Brazil passed the comprehensive Marco Civil Internet Law without an explicit data localization requirement. The law states, however, that data collected, stored, retained, or treated in Brazil shall respect Brazilian law, implying that certain data stored overseas by foreign companies might be subject to the law. Penalties for non-compliance could include fines of up to 10 percent of gross Brazil revenues and/or suspension or prohibition of related operations in country.

6. Right to Private Ownership and Establishment

Foreign and domestic private entities may establish, own, and dispose of business enterprises.

7. Protection of Property Rights

Real Property

Brazil has a system in place for mortgage registration, but implementation is uneven and there is no standardized contract. Foreign individuals or foreign-owned companies can purchase real property in Brazil. These buyers frequently arrange alternative financing in their own countries, where rates may be more attractive. Law 9514 (from 1997) helped spur the mortgage industry by establishing a legal framework for a secondary market in mortgages and streamlining the foreclosure process, but the mortgage market in Brazil is still underdeveloped, and foreigners may have difficulty obtaining mortgage financing. Large U.S. real estate firms, nonetheless, are expanding their portfolios in Brazil.

Intellectual Property Rights

The quality of Intellectual Property Right (IPR) protection and level of enforcement within Brazil is improving. The country has an array of domestic laws and regulations that address IP, and government entities and private industry pay attention to the issue. National and local authorities are active in carrying out enforcement actions, but a long land border and active ports complicate this effort. While Brazil itself is not a major producer of counterfeit and pirated products, societal attitudes toward their purchase remain permissive, and industry stakeholders are increasingly concerned about online IP violations.

Brazil is a member of the WTO, and has legislatively implemented its obligations under the Trade Related Aspects of Intellectual Property (TRIPS) agreement through through its 1996 Industrial Property Law and 1998 Copyrights Law. Brazil is a signatory of the Berne Convention for the Protection of Literary and Artistic Works, the Patent Cooperation Treaty, the Convention on Plant Variety Protection, and the Paris Convention on Protection of Intellectual Property, and plays an active role at the World Intellectual Property Organization (WIPO). Brazil is not a party to the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, collectively known as the WIPO Internet Treaties, nor the Anti-Counterfeiting Trade Agreement (ACTA). Brazil has been taking steps to join the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol"), which would make the process of obtaining a trademark in Brazil faster.

In multilateral negotiations and the WTO TRIPS Council, Brazil, together with other countries, presses demands for unlimited technology transfer that could lead to coercion of private rights holders, weakening their property rights. These outcomes could undermine innovation, trade, and investment in IP-intensive products and services that are critical parts of the response to climate change, sustainable economic development, and other challenges. By advancing such positions, the Brazilian government is creating uncertainty with respect to its commitment to create a domestic environment that will encourage innovation and investment in innovative industries.

Brazil is developing a revised copyright law that will more directly address digital issues, as well as other bills to address such items as the ownership of genetic biodiversity resources. These laws might clarify the IP landscape, but foreign industry stakeholders are watching carefully to see how they might affect their IP interests.

Brazil does not publish a comprehensive database on counterfeit seizures, but a recent non-government estimate placed losses to illicit commerce (including contraband) at over USD 20 billion in 2014 http://arte.folha.uol.com.br/mercado/2015/03/12/crime-sem-castigo/ . Brazil has remained on the "Watch List" of the U.S. Trade Representative's Special 301 report since 2007, when it was upgraded from the "Priority Watch List" in recognition of improvements in its IPR regime. Continuing challenges include regulatory issues such as the longstanding role of the health regulator in reviewing pharmaceutical patent applications before the patent office considers them, long wait time in the patent application process, and high levels of digital and hard-goods piracy and counterfeiting. USTR's 2015 "Notorious Markets" report flagged Sao Paulo's Galeria Page market for its high levels of illicit goods and low levels of enforcement. The report also flagged baixeturbo.org, an overseas website with infringing content that targets Brazilian users.

Customs officers have ex-officio authority to seize suspected counterfeit goods. The authorities, however, are required to retain such goods throughout the investigative and legal process, rather than merely keeping a representational sample. This taxes physical storage and budget capabilities of the authorities, hampering overall enforcement. Rights holders are not responsible for paying for the storage and destruction of counterfeit goods. Counterfeit goods readily available in Brazil include apparel, fashion accessories, toys, and audiovisual entertainment products; these items are produced within Brazil, in neighboring countries such as Paraguay, and in Asia. Smuggled genuine goods, such as cigarettes and beverages, are also a serious concern.

Industry stakeholders continue to voice concern over INPI's backlog of pending patent applications. INPI has increased its hiring and training of new examiners, but it still takes about 10 years for a patent to be granted. The average time from application to grant of trademark is 46 months. Brazil has modern trade secret laws, including criminal penalties, and Brazilian courts are accessible and equitable to foreigners. In most respects, the Industrial Property Law meets the international standards specified in TRIPS regarding patent and trademark protection. The law does provide for compulsory licensing if a patent owner has failed to adequately commercialize the technology, but there are several exceptions to this that can be referenced by the patent holder so that compulsory licensing can be averted.

IP protections in general are improving in Brazil, exemplified by continued whole-of-government dialogue and efforts under the National Council on Combating Piracy. Authorities conduct and publicize raids in cities like Brasilia and Rio. The 2014 FIFA soccer World Cup helped draw attention to IP issues, and it is expected that the 2016 Olympics will further boost enforcement and IP protection efforts.

Resources for Rights Holders

Embassy point of contact: Albert Keyack, U.S. Patent and Trademark Office, Rio de Janeiro, Albert.Keyack@trade.gov

Local lawyers list: http://brazil.usembassy.gov/lawyers.html

8. Transparency of the Regulatory System

In the 2015 World Bank "Doing Business" report, Brazil ranked 120th out of 189 countries in terms of overall ease of doing business, an improvement of three positions compared to the 2014 report. According to the study, it takes an average of 12 procedures and 102.5 days to start a new business in São Paulo, significantly longer than the OECD high-income economies' average of 9.2 days. In Rio de Janeiro, it takes an average of 11 procedures and 54 days to start a new business. The study noted that the annual administrative burden to a medium-size business of tax payments in Brazil is an average of 2,600 hours versus 176 hours in the OECD high-income economies. According to this same study, the total tax rate for a medium-sized business in Brazil is 69 percent of profits, compared to 41.3 percent in the OECD high-income economies. Business managers often complain of not understanding tax regulations, despite their investments in large tax and accounting departments.

Tax regulations, while burdensome and numerous, do not differentiate between foreign and domestic firms. However, there have been instances of complaints that the value-added tax collected by individual states (ICMS) favors local companies. Although the tax is designed to be refunded when goods are exported abroad, exporters in many states have had difficulty receiving their ICMS rebates. Taxes on commercial and financial transactions are particularly burdensome, and businesses complain that these taxes hinder the international competitiveness of Brazilian-made products. In addition, the U.S. government is evaluating Provisional Measure 668, which increases the PIS/Cofins tax rate on imported goods only and is scheduled to take effect May 1, 2015.

Of Brazil's ten federal regulatory agencies, the most prominent include ANVISA (the Brazilian equivalent of the U.S. Food and Drug Administration), which has regulatory authority over the production and marketing of food, drugs and medical devices; ANATEL, the country's telecommunication agency, which handles licensing and assigning of bandwidth; ANP, the National Petroleum Agency, which regulates oil and gas contracts and oversees the bidding process for oil blocks, including for pre-salt oil; ANAC, the agency that oversees the civil aviation industry; and ANEEL, the country's electric energy agency. In addition to these federal regulatory agencies, Brazil has at least 27 state-level agencies and 17 municipal-level agencies.

The Office of the Presidency's Program for the Strengthening of Institutional Capacity for Management in Regulation (PRO-REG), created in 2007 by Decree 6062, has tried to introduce a broad program for improving the regulatory framework in Brazil including via a 2014 Work Plan with the White House Office of Information and Regulatory Affairs to exchange best practices in developing regulations. Five exchanges under the work plan occurred in 2014.

Pursuant to the GOB's priority to improve transparency, the general public has online access to both approved and proposed federal legislation via websites for the Chamber of Deputies, Federal Senate, and the Office of the Presidency. Brazil is seeking to improve its public comment and stakeholder input process. Since 2004, the Brazilian government has instituted a Transparency Portal, a website in which data is available on funds transferred to and from the federal, state and city governments, as well as to and from foreign countries. It also includes information on civil servants' salaries. The Brazilian Transparency Portal has been a model for other developing countries, and the United States partnered with Brazil to replicate the portal in

El Salvador.

Foreign investors have encountered obstacles engaging with regulatory agencies. Notable examples include companies in the electric power sector that have complained about the high level of regulatory risk, including the tariff review process. Additionally, some industries have reported challenges in obtaining licenses from IBAMA, the environmental regulator, citing unclear licensing requirements, though the process was reportedly streamlined in 2008. There have also been examples of federal agencies levying significant fines on U.S. companies.

9. Efficient Capital Markets and Portfolio Investment

Brazil's credit market has grown significantly over the past several years. Real interest rates, once among the highest in the world, fell dramatically in 2012, driven by continued decreases in the BCB's benchmark overnight Selic lending rate and a concerted effort by the GOB to reduce lending spreads charged by public and private banks. The BCB initiated a cycle of monetary policy tightening in April 2013, which continued into 2014 and 2015, and real interest rates have increased again.

While local private sector banks are beginning to offer longer credit terms, BNDES, the state-owned national development bank, has been the traditional Brazilian source of long-term credit, and also provides export credits. BNDES provides foreign- and domestically-owned companies operating in Brazil financing for the manufacturing and marketing of capital goods. As part of its package of fiscal tightening, in December 2014 the GOB announced its intention to scale back the expansionary activities of BNDES. The GOB will end direct Treasury support to the bank, and it has raised the Long Term Interest Rate that serves as the basis for BNDES loans from 5.0 to 5.5 percent. Further increases are expected.

All stock trading is performed on the Sao Paulo Stock Exchange (BOVESPA), while trading of public securities is conducted on the Rio de Janeiro market. In 2008, the Brazilian Mercantile & Futures Exchange (BM&F) merged with the BOVESPA to form what is now the fourth largest exchange in the Western Hemisphere, after the NYSE, NASDAQ, and Canadian TSX Group exchanges. BOVESPA has launched in 2000 a "New Market" in which the listed companies comply with stricter corporate governance requirements. A majority of initial public offerings (IPOs) are listed on the New Market. There are currently 133 companies listed under the "New Market" program. In 2014, two new IPOs and follow-ons raised over R$ 14 billion in capital.

At the end of 2014, there was an average of 367 companies traded on the BM&F/BOVESPA. Total daily trading average volume has risen from R$ 2.4 billion in 2006 to R$ 7.29 billion in 2014, and the number of trades has reached historical high and increased to 228,100,922.

The BM&F/BOVESPA currently has no competition, but that may change soon. In January 2013, Direct Edge, the fourth-largest stock exchange operator in the United States, applied for a license to launch its services in Brazil in 2013. Direct Edge's position in the Brazilian market may be strengthened after its proposed merger with BATS Global Markets in 2014. Direct Edge is expected to begin operations in Brazil in 2015.

Foreign investors, both institutions and individuals, can directly invest in equities, securities and derivatives. Foreign investors are required to trade derivatives and stocks of publicly held companies on established markets. At year-end 2014, foreign investors accounted for 51.2 percent of the total turnover on the BOVESPA. Domestic institutional investors were the second most active market participants, accounting for 28.9 percent of activity. Individual investors comprised 13.7 percent of activity, followed by financial institutions (5.1 percent), and public and private companies (1 percent). Law 10303 of 2001 limits preferred shares to 50 percent of new issuances.

Wholly owned subsidiaries of multinational accounting firms, including the major U.S. firms, are present in Brazil. As of 1996, auditors are personally liable for the accuracy of accounting statements prepared for banks.

Money and Banking System, Hostile Takeovers

The Brazilian financial sector is large and sophisticated. Banks lend at Brazilian market rates, which remain high. Reasons cited by industry observers include high taxation, repayment risk, concern over inconsistent judicial enforcement of contracts, high mandatory reserve requirements, and administrative overhead.

The financial sector is concentrated, with BCB data indicating that the 10 largest commercial banks (excluding brokerages) account for approximately 89.6 percent of the commercial banking sector. Three of the five largest banks (in assets) in the country -- Banco do Brasil, Caixa Economica Federal, and BNDES -- are partially or completely federally owned. Lending by the large banking institutions is focused on the largest companies, while small- and medium-sized banks primarily serve small- and medium-sized companies.

The BCB has strengthened bank audits, implemented more stringent internal control requirements, and tightened capital adequacy rules to better reflect risk. It also established loan classification and provisioning requirements. These measures are applied to private and publicly owned banks alike. The Brazilian Securities and Exchange Commission (CVM) independently regulates the stock exchanges, brokers, distributors, pension funds, mutual funds, and leasing companies with penalties against insider trading.

10. Competition from State-Owned Enterprises

In the 1990s and early 2000s, the GOB privatized state-owned enterprises across a broad spectrum of industries, including mining, steel, aeronautics, banking, energy, and electricity generation and distribution. While the GOB has divested itself from many of its state-owned companies, it maintains partial control (at both the federal and state level) of some previously wholly state-owned enterprises. Notable examples of partially federally-controlled firms include energy giant Petrobras and power utility Eletrobras. Both Petrobras and Eletrobras include non-government shareholders, are listed on both the Brazilian and NYSE stock exchanges, and are subject to the same accounting and audit regulations as all publicly traded Brazilian companies.

The 2010 “pre-salt” legislation gives Petrobras sole operator status for the development of the new oil discoveries. The terms and conditions of the new regime favor Petrobras as the sole operator, although foreign firms are still anticipated to play a role in the pre-salt oil fields.

OECD Guidelines on Corporate Governance of SOEs

In addition to major players like Petrobras and Eletrobras, the Brazilian government, at both the federal and state levels, maintains ownership interests in a variety of other smaller enterprises. Typically, corporate governance is led by a board comprised of directors elected by the state or federal government with additional directors elected by non-government shareholders. Brazilian enterprises with state ownership are concentrated in the energy, electricity generation and distribution, transportation, and banking sectors. Many of these firms are also publically traded companies on the Brazilian and other stock exchanges.

Sovereign Wealth Funds

The Sovereign Fund of Brazil (FSB) is the sovereign wealth fund of Brazil, established on December 24, 2008. It is a non-commodity fund that is required to support national companies in their export activities and acts as a mechanism for anti-cyclical development, promoting investment in projects of strategic interest to Brazil domestically and abroad.

11. Corporate Social Responsibility

Most state-owned and private sector corporations of any significant size in Brazil pursue corporate social responsibility (CSR) activities. Many corporations support local education, health and other programs in the communities where they have a presence. Brazilian consumers, especially the local citizenry where a corporation has or is planning a local presence, expect CSR activity. It is not uncommon for corporate officials to meet with community members prior to building a new plant or factory to review what types of local services the corporation will commit to providing. Foreign and local enterprises in Brazil often advance United Nations Development Program (UNDP) Millennium Development Goals (MDGs) as part of their CSR activity, and will cite their local contributions to MDGs, such as universal primary education and environmental sustainability.

The U.S. diplomatic mission in Brazil supports American business CSR activities through the +Unidos Group (Mais Unidos), a group of more than 100 American companies established in Brazil. Additional information on how the partnership supports public and private alliances in Brazil can be found on its website: www.maisunidos.org.

OECD Guidelines for Multinational Enterprises

Brazil adheres to the OECD Declaration on International Investment and Multinational Enterprises.

12. Political Violence

Strikes and demonstrations occur occasionally in urban areas and may cause temporary disruption to public transportation. Occasional port strikes also impact commerce. Large, spontaneous protests occurred in June 2013 during the Confederations Cup. The protests started in response to a hike in bus fares and later grew to include complaints regarding the government’s perceived inability to tackle corruption and improve public services, such as education and healthcare. During the 2014 FIFA World Cup, protests were far smaller. On March 15, 2015, nearly two million Brazilians, principally in Sao Paulo, organized to protest the government of President Rousseff, citing the economic downturn and the Petrobras corruption scandal. Although U.S. citizens have traditionally not been targeted during such events, U.S. citizens traveling or residing in Brazil are advised to take common-sense precautions and avoid any large gatherings or any other event where crowds have congregated to demonstrate or protest. For the latest U.S. State Department guidance on travel in Brazil, please consult www.travel.state.gov.

13. Corruption

In 2013, Brazil ranked 72nd (out of 175 countries) in Transparency International's Corruption Perceptions Index. In South America, Brazil ranked behind Chile and Uruguay, and ranked ahead of Colombia, Peru, Argentina, Suriname, Bolivia, Ecuador, Guyana, Paraguay and Venezuela. With regard to major emerging economies in the BRICS grouping, Brazil ranked ahead of China (80th), India (94th), and Russia (127th), and tied with South Africa (72nd).

Corruption scandals are a regular feature of Brazilian political life. Since 2014, focus has centered on what could be the biggest corruption scandal in Brazil’s history, involving Petrobras, the para-statal petroleum company. Known as Operation Car Wash (Lava Jato), more than 103 people have been criminally charged in the scandal, including former Petrobras directors and executives of the biggest private construction companies in Brazil. Nearly fifty politicians are reportedly under investigation as well, including leaders of both houses of Brazil’s Congress. In 2015, prosecutors announced "Operacao Zelotes" (i.e. "Operation Zealots"), in which firms are alleged to have bribed tax officials to reduce their assessments. Experts predict that these scandals could take years to unravel, and judicial proceedings usually move quite slowly in Brazil. Still, these investigations are seen as largely independent and a positive step in breaking widespread corruption in Brazil.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Brazil is a signatory to the OECD Anti-Bribery Convention and a participating member of the OECD Working Group on bribery. It was one of the founders, along with the United States, of the intergovernmental Open Government Partnership, which seeks to help governments increase transparency. Brazil has laws, regulations and penalties to combat corruption, but their effectiveness is inconsistent. Bribery is illegal, and a bribe by a local company to a foreign official is a criminal act. A company cannot deduct a bribe to a foreign official from its taxes. While federal government authorities generally investigate allegations of corruption, there are inconsistencies in the level of enforcement among individual states. Corruption has been reported to be problematic in business dealings with some authorities, particularly at the municipal level. U.S. companies operating in Brazil are subject to the U.S. Foreign Corrupt Practices Act.

Resources to Report Corruption

Contact at government agency or agencies are responsible for combating corruption:
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Contact at "watchdog" organization (international, regional, local or nongovernmental organization operating in the country/economy that monitors corruption:

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14. Bilateral Investment Agreements

Brazil does not have a Bilateral Investment Treaty (BIT) with the United States. On March 26, 2015, Brazil signed a Bilateral Investment Treaty with Mozambique. In the 1990's Brazil signed BITs with Belgium and Luxembourg, Chile, Cuba, Denmark, Finland, France, Germany, Italy, the Republic of Korea, the Netherlands, Portugal, Switzerland, the United Kingdom and Venezuela, but none of these have been approved by the Brazilian Congress. In 2002, an inter-ministerial working group decided to withdraw the agreements from Congress for approval, so they have not and will not be voted on any time soon. Brazil also has not ratified the Mercosul investment protocol.

Bilateral Taxation Treaties

Brazil does not have a double taxation treaty with the United States, but it does have such treaties with 33 other countries, including, among others, Japan, France, Italy, the Netherlands, Canada, Spain, Portugal, and Argentina. Brazil signed a Tax Information Exchange Agreement (TIEA) with the United States in March 2007, and that agreement entered into force on May 15, 2013, signed by President Dilma Rousseff in Decree 8003/2013.

15. OPIC and Other Investment Insurance Programs

Programs of the Overseas Private Investment Corporation (OPIC) are fully available, and activity has increased in recent years. The size of OPIC's exposure in Brazil may occasionally limit its capacity for new coverage. Brazil has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1992.

16. Labor

The Brazilian Ministry of Labor estimates that in 2014, only 396,993 formal jobs were created, a drop of 64.4 percent compared to 1.1 million in 2013. Job creation results for 2014 were Brazil's worst on record since 1999, when the country created only 196,000 formal jobs. Still, the Brazilian Institute of Geography and Statistics (IBGE) estimated unemployment in the six major metropolitan areas to be 4.3 percent at the end of 2014, the lowest level since the survey began in

2002. Unemployment levels vary significantly across regions.

According to a 2011 IBGE report, the Brazilian labor force has 92.5 million workers. In 2014, roughly 58 percent were located in the services sector, 15 percent in agriculture, and 21 percent in the construction and manufacturing sectors. Brazil has ratified a number of International Labor Organization (ILO) conventions. Brazil is party to the UN Convention on the Rights of the Child and major ILO conventions concerning the prohibition of child labor, forced labor and discrimination.

Brazil's labor code is highly detailed. Formal sector workers are guaranteed 30 days of annual leave and severance pay in the case of dismissal without cause. Brazilian employers are required to pay a "thirteenth month" of salary to employees at the end of the year. Brazil also has a system of labor courts that are charged with resolving routine cases involving unfair dismissal, working conditions, salary disputes, and other grievances. Labor courts have the power to impose an agreement on employers and unions if negotiations break down and either side appeals to the court system. As a result, labor courts routinely are called upon to determine wages and working conditions in industries across the country. The system is tantamount to compulsory arbitration and does not encourage collective bargaining. In recent years, however, both labor and management have become more flexible and collective bargaining has assumed greater relevance.

The Ministry of Labor estimates that there are nearly 11,000 labor unions in Brazil, but officials note that these figures are inexact. Labor unions, especially in sectors such as metalworking and banking, tend to be well-organized and aggressive in advocating for wages and working conditions and account for approximately 19 percent of the official workforce according to a recent IBGE release. Strikes occur periodically, particularly among public sector unions. Unions in various sectors engage in industry-wide collective bargaining negotiations mandated by federal regulation. While some labor organizations and their leadership operate independently of the government and of political parties, others are considered to be closely associated with political parties.

Employer federations, supported by mandatory fees based on payroll, play a significant role in both public policy and labor relations. Each state has its own federation, which reports to the National Confederation of Industries (CNI), headquartered in Brasilia.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

The federal government has granted tax benefits for certain free trade zones. Most of these free trade zones aim to attract investment to the country's relatively underdeveloped North and Northeast regions. The most prominent of these is the Manaus Free Trade Zone, in Amazonas State, which has attracted significant foreign investment, including from U.S. companies. In October 2011, President Rousseff signed a constitutional amendment that extends Manaus's status as an industrial zone for another 50 years. Constitutional amendment 83/2014 came into force in August 2014 and extended the status of Manaus Free Trade Zone until the year 2073.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	2,243,074	2013	2,243,074	www.worldbank.org/en/country

Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2013	87,500	2013	78,094	http://www.bea.gov
Host country's FDI in the United States ($M USD, stock positions)	2014	14,086	2013	1,054	http://www.bea.gov
Total inbound stock of FDI as % host GDP	2013	28%	N/A	N/A	

* http://www.bcb.gov.br

Table 3: Sources and Destination of FDI

Results from the IMF's Coordinated Direct Investment Survey (CDIS) are generally consistent with host country data. There is a discrepancy between BCB and IMF calculations for U.S. FDI distribution in Brazil, as well as Brazilian FDI distribution in the United States. According to the BCB, the United States had the highest stock of FDI in Brazil as of 2013. The BCB calculates FDI distribution by ultimate investing country (for which the United States ranks number one), whereas the IMF calculates FDI distribution by immediate investing country (for which the Netherlands ranks number one). The ultimate investor occupies the top of the control chain and does not necessarily coincide with the immediate investor.

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	715,182	100%	Total Outward	225,635	100%
Netherlands	182,610	26%	Austria	66,172	29%
United States	107,693	15%	Cayman Islands	38,806	17%
Spain	73,628	10%	Virgin Islands	25,407	11%
Luxembourg	53,254	8%	Spain	19,273	9%
France	36,393	5%	The Bahamas	18,165	8%
"0" reflects amounts rounded to +/- USD 500,000.					

Table 4: Sources of Portfolio Investment

Results from the IMF's Coordinated Portfolio Investment Survey (CPIS) are generally consistent with host country data.

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			**Equity Securities**			**Total Debt Securities**		
All Countries	29,217	100%	All Countries	15,554	100%	All Countries	13,757	100%
United States	10,661	36%	United States	6,260	40%	United States	4,620	32%
Denmark	3,452	12%	Cayman Islands	2,145	14%	Denmark	3,439	25%
South Korea	2,483	8%	Bermuda	1,630	10%	South Korea	2,483	18%
Cayman Islands	2,263	8%	Switzerland	750	5%	The Bahamas	1,279	9%
Bermuda	1,631	6%	Portugal	612	4%	Spain	860	6%

19. Contact for More Information

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