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A Primer on Exporting to Brazil[1]

Christina D. Storz, Timothy G. Taylor, and Gary F. Fairchild[2]

Introduction

Every year the U.S. Department of State publishes extensive Country Commercial Guides for a large number of countries. These guides provide a great deal of information useful to individuals interested in developing export markets either through direct exports or through direct foreign investment. This paper provides an abridged version of the Country Commercial Guide for Brazil as well as supplemental information of direct relevance to agribusiness firms. It is hoped that the information contained in this report provides a useful starting point for individuals interested in exploring export or investment opportunities in Brazil.

Note: County Commercial Guides are available for U.S. exporters from the National Trade Data Bank's CD-ROM or via the Internet. Please contact Stat-USA by telephone (1-800) STAT-USA for more information. Country Commercial Guides can be accessed via the World Wide Web at http://www.stat-usa.gov, http://www.state.gov, and http://www.mac.doc.gov. They can also be ordered as a hard copy or on diskette from the National Technical Information Service (NTIS) by telephone (1-800) 553-NTIS. American exporters seeking general export information/assistance and country-specific commercial information should contact the U.S. Department of Commerce, Trade Information Center by telephone (1-800) USA-TRADE; or by fax (202) 482-4473.

Economic and Political Overview

Brazil has the eleventh largest economy in the world with a GDP (Gross Domestic Product) of US$457 billion, and represents about half of the South American population, territory, and economy. With over 170 million people, it is rich in agricultural, mineral, and industrial resources and offers a substantial market opportunity for U.S. exporters. In 2003, estimated U.S. exports to Brazil reached US$10 billion, and Brazilian exports to the United States reached US$16 billion. Brazil is one of the top three locations for U.S. foreign direct investment. The United States receives over 25% of Brazil's exports, making it Brazil's largest single trading partner.

Government anti-inflation policies, uncertainties about future economic plans, economic difficulties in neighboring Argentina, and the continued sluggish world economy have put a damper on growth in Brazil. However, exports are booming because of the weak real (the Brazilian currency). The Brazilian Statistical Institute (IBGE) estimated that the

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2. Christina D. Storz, Research Assistant; Timothy G. Taylor, Professor; and Gary F. Fairchild, Professor, Department of Food and Resource Economics, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

economy grew 1.5% in 2002, essentially the same as in 2001. Growth was led by agriculture, which expanded 5.8%. In the first quarter of 2003, compared to the same quarter in 2001, the GDP grew 2%, with 8.6% growth in agriculture (driven by grains). The Brazilian agricultural sector is well diversified and Brazilians are world leaders in the production of sugarcane, coffee, soybeans, and orange juice.

The current administration has promised to respect all contracts and to maintain current payments on the external debt. President Lula has also stated that he is committed to completing the Free Trade Area of the Americas (FTAA) negotiations in 2005, which could lead to a reduction in Customs tariffs and increased market access for U.S. exporters if successful. To achieve more sustainable budgetary equilibrium, the Lula government has advanced a program of economic reform founded on major changes in Brazil's tax and pension systems. Despite strict fiscal and monetary policies, economic uncertainty remains high, with estimated growth in 2003 at only 1.5%. Inflation will likely exceed official targets, which are currently set at around 8.5%.

The complexities of the Brazilian business environment still create substantial obstacles for U.S. exporters. Doing business in Brazil requires intimate knowledge of the local environment, including explicit as well as hidden costs of doing business (referred to as the "Custo Brasil"). American companies face high tariff barriers, a difficult Customs system, a heavy and unpredictable tax burden, and a legal system that is overloaded and often incapable of enforcing business law or intellectual property rights effectively. Nevertheless, many companies find that the opportunities outweigh the risks.

Marketing U.S. Products and Services

There are a number of factors that should be considered in exporting products to Brazil. This section provides a brief overview of many critical factors that must be considered.

Establishing a Business

Setting up companies in Brazil and/or acquiring existing entities are options for investing in Brazil. Setting up new companies is relatively complex. Acquisitions of existing companies are monitored by the Central Bank. Corporations (sociedades anonimas) and limited liability companies (limitadas) are relatively easy to form. Local law requires that foreign capital be registered with the Central Bank. Failure to do so may cause serious problems related to access to foreign exchange, capital repatriation, and profit remittance. For further information please contact the Secretariat of Foreign Trade (SECEX), Brazilian Consulate in New York City, and/or Brazil's Ministry of External Relations.

Distribution / Sales Channels

All the customary import channels exist in Brazil (agents, distributors, import houses, trading companies, subsidiaries, and branches of foreign firms, among others). Brazilian importers generally do not maintain inventory of capital equipment, spare parts, or raw materials. This is partly due to high importation and storage costs. However, with the creation of additional bonded warehouses, industries relying heavily on imported components and parts are able to maintain larger inventories.

Agents / Distributors: Finding a Partner

Although some companies import directly from foreign manufacturers without local representation, in most cases the presence of a local agent or distributor can be very helpful. As in other countries, the selection of an agent requires careful consideration. In Brazil, larger representatives have sales offices in several Brazilian cities to supply companies all over the country, whereas smaller representatives may either supply companies in a limited region or appoint "business opportunity finders" in major Brazilian regions. It is up to the international supplier and the local agent or distributor to negotiate the type of representation that will take place, whether it is an exclusive representation, and whether any performance targets or term limitations will be incorporated.

American companies should consult with a local law firm when signing agent or distribution contracts with a Brazilian partner. Commercial distribution contracts are not regulated by specific legislation, only by general Brazilian commercial law, whereas there is specific legislation regulating the relationship between the foreign company and the Brazilian agent. Although the contract clauses are freely negotiated between a U.S. company and the local agent, there are laws that govern this relationship. The indemnification payable to the agent in case the contract is broken is established by law and is usually very favorable to the agent.

Performing Due Diligence

Because laws regulating commercial agreements and commercial transactions vary from country to country, the U.S. Commercial Service strongly encourages all U. S. companies to conduct legal and financial due diligence before completing a commercial transaction or formalizing any agreement outside of the United States. In Brazil, the Commercial Service can provide U.S. companies with lists of well-known and respected credit rating companies and law firms to assist U.S. firms in conducting credit checks on potential customers or in obtaining important legal advice before signing commercial agreements.

It is crucial to use detailed due diligence in acquiring proper documentation and performing field investigations to avoid any negative surprises when doing business in Brazil. In the event the relationship with a Brazilian company is strictly commercial, a U.S. company may not have access to the private and confidential documentation and information, having to rely solely on public investigations regarding the legal and financial situation of the Brazilian company. It is advisable to check corporate compliance with Brazilian corporate tax laws. The Federal Taxpayer Registry number of the company can help obtain information that attests to the firm's compliance with tax requirements and other public and third-party interests.

Direct Marketing

E-commerce is on the increase and provides many additional marketing and business opportunities. Because of its excellent postal service, direct marketing is a proven way to reach 35 million middle-class Brazilian consumers. Major U.S. catalog, e-commerce, and teleservice firms have had a significant presence and have successfully marketed their products and services in Brazil.

Brazil is the ninth largest Internet market in the world, and the first in Latin America with the most advanced Internet and e-commerce industries. The Internet is having a profound effect on Brazil, and Brazilians have rapidly become the Latin American leaders in technological innovation and Internet applications. Because growth has been steady, it is estimated that, in 2003, the Brazilian e-commerce sector (B2C) would top US$2 billion and B2B revenues would reach US$12 billion.

American exporters may sell directly to Brazilian consumers or distributors. However, different Brazilian Customs rules apply to these types of transactions. As far as shipments to distributors or Brazilian trading companies, U.S. exporters can only sell to Brazilian companies that are registered with the Secretariat of Foreign Trade (SECEX) of the Ministry of Development, Industry and Commerce (MDIC). SECEX plays a central role in the implementation of directives on trade issues in general. With respect to sales to end-users or consumers, U.S. exporters may ship the goods directly to them. However, additional regulations apply.

Franchising

Franchising is one of the healthiest segments in the Brazilian economy and accounts for approximately 25% of gross revenue in the retail sector. Local Brazilian franchises dominate the market (90%); however, foreign groups, particularly from the United States, are making their way into the market, too. The apparent success of local franchise operations is primarily attributed to the speed of service and quality of products offered by these firms.

To take best advantage of this huge market, U.S. franchisers must be prepared to adapt their product or service to the Brazilian market, invest in market research, and test market receptivity thorough pilot projects. In Brazil, franchise consultants call this process “the tropicalization of the franchise.”

The Franchising Law requires close attention. It states that franchisers or their master-franchisees should provide all their potential franchisees with a “Franchise Offering Circular” (Circular de Oferta de Franquia). This document must contain basic information regarding the economic and financial health of the franchiser, as well as information on any pending legal disputes.

Joint Ventures / Licensing

Establishment of joint ventures is a common practice in Brazil. A major motivation for joint ventures is to pair foreign firms with Brazilian partners to compete in segments of the government procurement market or in other markets subject to government regulation (e.g., telecommunications and energy). Formation of a joint venture can be accomplished through a variety of business entities, the most common of which are “sociedades anônimas” and “limitadas”, which are similar to corporations and limited partnerships companies in the United States.

Licensing agreements are common forms of accessing the Brazilian market. Use of a competent local attorney in structuring such an arrangement is advised. All licensing and technical assistance agreements, including trademark licenses, must be registered with the Brazilian Industrial Property Institute (INPI): Praça Mauá n° 7 - Centro, 20081-240, Rio de Janeiro, Brazil (telephone 55-21-2206-3000; fax 55-21-2263-2539; e-mail patente@inpi.gov.br).

Selling Factors / Techniques

Sales are typically price-driven, but quality has become increasingly important. Other important aspects include financing, delivery, after sales support, and customer service. To be successful in Brazil, U.S. companies should consider the local culture and technical requirements and adapt their products accordingly. In many cases, products manufactured at U.S. standards are not acceptable in Brazil. Due to Brazil's vast territory and cultural differences, one must often develop different approaches for different parts of the country.

Advertising / Trade Promotion

Advertising in specialized trade and technical publications is an important marketing tool in the Brazilian market. With its well-established and diversified industrial sector, Brazil has a variety of specialized publications that serve the industrial and business communities. American firms wishing to sell in the Brazilian market should not ignore advertising in these trade publications. Television advertising in Brazil is highly developed and plays an important role in the promotion of consumer goods and food products. Brazil also has many major newspapers and news magazines in which to advertise. Brazil is home for many well-established and sophisticated advertising agencies, with first-world standards and a high level of creativity.

Participation in Brazilian trade fairs is another important marketing tool. The city of São Paulo hosts around 300 trade fairs per year. These events attract a large number of visitors and exhibitors from Brazil and foreign countries. The U.S. Department of Commerce assists U.S. companies seeking to do outreach at several of them (information is online at http:www.focusbrazil.org.br).

Sales Service / Customer Support

The “Consumer Protection Law” of 1992 requires customer support and after-sales servicing. In the case of imported products, the importer or the distributor is responsible for such services. Therefore, it is important that U.S. manufacturers appoint agents or distributors in Brazil that are qualified to provide such services.

Product Pricing

Due to high local interest rates, often the price of products sold in the domestic market reflects financing costs. Therefore, price negotiations are intimately related to the supplier's payment terms. It is not unusual for a company to select a supplier whose prices are higher than the competition based solely on payment terms.

The tax burden in Brazil on both imported and locally manufactured products is the heaviest in Latin America and higher than in the United States. To be competitive in the market, several companies are reducing profit margins and implementing efficient logistics systems to reduce costs.

In the case of foreign suppliers, it is important to calculate import-related costs. In Brazil, such costs are generally high. In some cases, they are so high that a simple calculation may indicate that there is *de facto* no way the product can effectively compete with a locally made similar product.

Selling to the Government

Brazilian government procurement policies apply to purchases by government entities and parastatal companies. Government procurement regulations are contained in Law 8666 (August of 1993), which establishes an open competitive process for major government procurement. Under Law 8666, price is to be the determining factor in selecting suppliers (i.e., the bid with the lowest price becomes the provisional winner). Most government procurements are open to international competition, either through direct bidding, consortia, or imports. However many of the larger bids (e.g., military purchases) become very political and are done through “sole sourcing” or through “national security” arrangements that exclude competition. This kind of purchasing often requires an act of Congress, which can be difficult and time consuming. Brazil is not a signatory of the GATT (General Agreement on Tariffs and Trade) procurement protocols, and as such does not necessarily use the same procedures as in the developed countries of GATT in the area of public procurement. International bidding is required for all procurements with international development bank funding (i.e., the Interamerican Development Bank, the World Bank, etc.). The Brazilian executing agencies of IDB loans require international bidding above specific ceilings, according to IDB procurement guidelines. For example, consultant contracts require international bidding above US$200,000 and civil works above US$5 million. However, portions of major projects financed by IDB may not require bidding where local Brazilian counterpart funding is involved.

In practice, it is difficult for foreign companies to operate in the public sector in Brazil unless in association with a local firm. To be considered Brazilian, a firm must have majority Brazilian capital participation and decision-making authority. A Brazilian State enterprise is permitted to subcontract services to a foreign firm if domestic expertise is not available for the specific task. A foreign firm may only bid for government contracts to provide technical services when no qualified Brazilian firms exist.

Due to advancements in Internet technology and its successes with e-government trials, the Brazilian Government is changing Law 8666 to modify electronic procurement. The goal is to create a more efficient system using electronic purchase contracts and to allow small companies to have a better chance at competing with medium- and large-size companies. This year the Ministry of Finance launched a “Portal da Concorrência” (Competitiveness Portal), which is a website for products in the surgery, medications, cement, and beer sectors, as well as the basic food basket sectors. The goal for launching this site is to heighten transparency in these sectors to promote competitiveness. The proposed changes to the “Project of Law” and other relevant information are available online at the Brazilian e-Procurement homepage (only in Portuguese).

IPR Infringement Protection

Brazil is a signatory to the Paris, Bern, and Universal Copyright conventions on intellectual property rights (IPR) protection, the World Trade Organization WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and the Patent Cooperation Treaty (PCT). Brazil is also a member of the World Intellectual Property Organization (WIPO). The Brazilian Institute of Industrial Property (INPI) is the government entity responsible for industrial property rights, and examines requests for patents and registration of trademarks.

Need for a Local Attorney

Securing competent local legal representation is a fundamental step in establishing a commercial presence in Brazil when intellectual property licensing or protection is involved, or where investments involve local manufacturing or local investment incentives.

Agribusiness Industry Prospects

A GSM-102 credit assistance program was extended to the Brazilian private sector in 1995. The program is currently authorized at US$ 250 million. Terms were increased to 18 months in March of 1997; just at the time the Brazilian government instituted restrictions on short-term import financing. Payment terms are available for up to three years for breeder livestock exports.

The U.S. Department of Agriculture has authorized US$10 million in credit guarantees for sales of U.S. agricultural commodities to Brazil under the Commodity Credit Corporation's Supplier Credit Guarantee Program (SCGP) of 1997. This is an adaptation of the GSM-102 program and is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short-term credit to their importers

These credit guarantee programs reduce the risk of nonpayment to U.S. banks that extend credit to Brazilian banks to finance U.S. agricultural exports. The reduction of risk may be reflected in lower interest rates on financing than would be the case without a USDA guarantee, or it may mean the difference in the availability of U.S. bank financing.

American exporters may apply for credit guarantees on a first-come, first-serve basis to cover sales of any of food and agricultural products. To obtain an updated list of the OAA Brazilian participating banks, please contact the Foreign Agricultural Office at the U.S. Embassy in Brasilia.

Coarse Grains

Traditionally a net coarse grain importer, Brazil emerged as a corn exporter in 2001. However, a smaller and weather-damaged crop in 2003 necessitated increased imports to meet consumption needs. Even in years of surplus production, Northeastern Brazil continues to import because of high internal freight costs. Argentina enjoys many advantages in the Brazilian market (e.g., proximity, lower transportation costs, shorter delivery times, and protection from the 9.5% MERCOSUL duty and 25% merchant marine tax). Despite Argentina's advantages, there are opportunities for U.S. grains, particularly in feeds and fodder, which enjoyed US$17 million in sales from the United States to Brazil in 2002.

Wheat

Brazil relies on imports for the majority of its wheat consumption, with Argentina as its primary supplier. For the past several years, Brazil blocked U.S. wheat imports due to several phytosanitary issues related to wheat, including TCK smut, cereal stripe, and flag smut. On March 15, 2001, the Ministry of Agriculture lifted the ban on U.S. Soft Red Winter, Hard Red Spring, and Hard Red Winter wheat. Exports of these wheat varieties must come with an additional declaration in the phytosanitary certificate that “the wheat comes from an area free of anguina tritici”, and cannot be shipped out of west coast ports. Importation of U.S. wheat from the states of Washington, Oregon, Idaho, California, Nevada, and Arizona remains prohibited due to phytosanitary concerns.

Brazil is one of the world's largest wheat importers. Despite Argentina's advantages, there are significant opportunities for U.S. wheat, particularly from May through September. Furthermore, importers and millers have stated a willingness to pay a premium for U.S. wheat, given its superior quality. Access to U.S. wheat classes will benefit Brazilian millers and consumers. In 1996, before Brazil imposed import restrictions on U.S. wheat, it purchased roughly 760,000 tons of U.S. wheat worth US$174 million. In 2002, U.S. wheat exports became the number one agricultural export item to Brazil, with sales of nearly US$96 million.

Rice

Due to tight rice supplies in Brazil and its neighbors, Brazil will require imports from non-Mercosul sources to meet its rice demand. The

United States is likely to be the primary supplier for non-Mercosul product, and importers will prefer paddy rice to supply Brazilian mills. American Customs data indicates 56,703 tons of U.S. rice exports to Brazil in 2002, worth US$6.58 million dollars, comprised almost entirely of paddy rice. American exports are unlikely from March through June due to the Brazilian harvest.

The Brazilian Chamber of Foreign Trade (Camex) has reduced rice import tariffs from non-Mercosul nations, with the paddy rice tariff being reduced from 14% to 11.5% and the milled rice tariff being reduced from 18% to 13.5%. Camex also removed rice from Brazil's Mercosul List of Exceptions to fight inflation due to the rice shortage in Brazil and the inability of Mercosul suppliers to meet Brazilian demand.

Apples / Pears

Brazil has virtually no commercial pear production. While Brazilian apple production continues to increase, imports are ongoing. Argentina and Chile, the dominant suppliers of pears and apples to Brazil, benefit from preferential tariff treatment. European suppliers are also active in the market. Consumer knowledge of U.S. product characteristics and quality, nevertheless, is expanding. American production benefits from having an opposite harvest season from that of Argentina and Chile, allowing for a marketing window, and active U.S. marketing programs, particularly for pears. American exports have interesting opportunities in this market.

Whey

Although Brazil produces a small amount of whey derived from its cheese production, whey is considered a residue and is seldom used as a food ingredient. However, the market may become lucrative because most of the whey used by the dairy and beverage industry in Brazil is imported. This offers an opportunity for U.S. exporters because local production does not meet demand. The European Union is the major competitor for this product.

Cotton

Domestic cotton consumption is down 780,000 metric tonnes (MT) and lint cotton consumption is down 50,000 MT. Major factors causing a reduction in consumption include decreased consumer purchasing power and high unemployment rates in Brazil.

Cotton imports for 2003 were estimated at 120,000 MT, based on updated information from SECEX.According to SECEX, cotton imports for 2004 are projected at 70,000 MT, down 41% from 2003, an expected increase in domestic production.

Fresh Fruit (Excluding Apples and Pears)

In 1996, Brazil imported US$21.4 million of U.S. fruit. This situation shifted, however, with the 1999 maxi-currency devaluation; increased competition from MERCOSUL countries and Chile, which enjoy duty-free entry and preferential tariffs, respectively; increased phytosanitary restrictions; and greater local production.

A year after the maxi devaluation, however, the Brazilian economy showed significant recovery. Brazil has enormous growth potential when comparing per capita fresh fruit consumption with that of more economically developed countries. There are market segments to be developed. Today, opportunities exist for imported cherries, grapes, plums, kiwi, peaches, and strawberries.

Brazil ranks among the major fruit producers. It is the top grower of oranges, bananas and papayas, and is among the larger producers of pineapple, mangoes and grapes.

Wine

Trade sources indicate that Brazilian wine consumption has grown on average from 1.3 liters per capita to 3 liters in the last decade. Even though domestic wine production has increased, it is not enough to supply the expanded demand, which favors imported wine. Production is concentrated in the southernmost part of the country, notably the state of Rio Grande do Sul.

The sector is promising for imported wines, and is highly competitive. The main suppliers of imported wine are France, Italy, Portugal, Chile, and Argentina. These last two countries also enjoy Mercosul tariff rate advantages. Despite the decline of the real, vis-à-vis the U.S. dollar, sector specialists indicate that the wine segment will be one of the least affected because it is consumed by higher economic classes, which are not as sensitive to economic fluctuations. While Brazilian consumers generally lack awareness of U.S. quality wines, they show great interest in learning more. Importers believe there is a great potential for the U.S. product in Brazil.

Trade Regulations and Standards

Trade Barriers

Since 1990, Brazil has made substantial progress in reducing traditional border trade barriers, even though tariff rates in many areas are still high. Significant non-border trade barriers remain.

Tariffs, in general, are the primary instrument in Brazil for regulating imports. Brazil's average applied tariff was 11.8% in 2002, as opposed to an average applied tariff of 32% in 1990. Brazil currently maintains no applied tariff rate higher than 32%, with some exceptions. Brazil continues to promote significant tariff reductions for many capital goods, which constitute approximately 40% of U.S. exports to Brazil. The United States continues to encourage tariff reductions on products of interest to U.S. firms. Brazil and its Southern Cone Common Market, or Mercosul partners (Argentina, Paraguay, and Uruguay) implemented the MERCOSUL CET on January 1, 1995. In November of 1997, after consulting with its Mercosul partners, Brazil implemented an across-the-board 3% increase on all tariffs (inside and outside the CET), raising the ceiling from 20% to 23%. The surcharge is being gradually phased out.

The United States signed a trade and investment framework agreement with Mercosul in 1991. The United States will continue to encourage the reduction of barriers to trade and investment, including tariffs and the creation of a Customs union that is open and consistent with the WTO, specifically GATT Article XXIV.

In 1997, the Secretariat of Foreign Trade (SECEX) implemented a computerized trade documentation system, SISCO MEX, to handle import licensing, and a wide variety of products were subject to non-automatic licensing. There are fees assessed per import statement submitted through SISCOMEX, and importers must comply with onerous registration guidelines, including a minimum capital requirement, to register with SECEX (the Foreign Trade Secretariat). Complete information on requirements for importing into Brazil is available only through SISCOMEX, which is only available to registered importers. In 1998, Brazil issued a series of administrative measures that required additional sanitary/phytosanitary (SPS), quality and safety approvals from various government entities for products subject to non-automatic licenses. Under Brazil's new Customs Valuation regulations, Customs will focus its efforts on under-invoicing, and are authorized to hold up imports until the goods are valued.

In 2000, the government required product registrations to be issued by the Ministry of Health for imported processed food products and food supplement products, with a reduced term of validity for registrations. Registration fees for these imports, as well as for medical and pharmaceutical products, are scheduled to increase significantly. The U.S. government has received complaints relating to Brazil's “law of similars”, including criticisms that it leads to non-transparent preferences for Brazilian products in procurement bids for government and non-profit hospitals and prejudices against the import of refurbished medical equipment when domestically-produced “similars” exist. Implementation of such import measures continues to be poorly coordinated and not well publicized, magnifying the negative impact on U.S. exports.

Customs Valuation

Customs clearance in Brazil can be a time consuming and frustrating process, similar to other countries in the region. In a report issued by ICEX (Instituto de Estudos das Operações de Comércio Exterior), the average Customs clearance time in

Brazil was the slowest in the Hemisphere (150 hours). Products can get “caught up” in Customs because of minor errors of emissions in paperwork. In FTAA negotiations, Brazil and the United States are working on measures to allow more rapid Customs clearance. The Brazilians recognize that many of its ports, loading and unloading, as well as Customs clearance need increased efficiency. To this end, they are also working on a “green line” expedited method of clearance. However, one should be prepared for the fact that unloading and clearance may take substantially longer than expected.

Labeling Requirements

The Brazilian Customer Protection Code, in effect since September 12, 1990, requires that product labeling provide the consumer with correct, clear, precise, and easily readable information about the product's quality, quantity, composition, price, guarantee, shelf life, origin, and risks to consumer health and safety. Imported products should bear a Portuguese translation of this information. Since metric units are the official measuring system, products should be labeled in metric units or show a metric equivalent. The labeling requirement for genetically modified organisms (GMO) is currently being debated in Brazil.

The U.S. Senate Concurrent Resolution Number 40, adopted July 30, 1953, invited U.S. exporters to inscribe, on external shipping containers in indelible print of a suitable size, the words “United States of America”. Although such marking is not compulsory under law, U.S. shippers are urged to follow this procedure in publicizing U.S. made goods.

Temporary Entry Provisions

On December 20, 1999, Brazilian Customs issued Regulation 150 (Instrução Normativa 150), establishing new procedures for imports under Temporary Admission Program. The program allows for imports of goods for a pre-determined time frame and a clear objective. Under the program, the import tax and Federal tax (IPI) are only charged on products that will be used in the production of other products and involves payment of rental or lease from the local importer to the international exporter. This includes products such as dies, matrices, sheets, and industrial tools. Taxes due are proportional to the time frame the imported product will remain in Brazil.

Import Controls

Imports are subject to a number of taxes and fees in Brazil, which are usually paid during the Customs clearance process. There are three main taxes that account for the bulk of importing costs: Import Duty itself (II), the Industrialized Product tax (IPI), and the Merchandise and Service Circulation tax (ICMS). Please note that most taxes are calculated on a cumulative basis. In addition to these three taxes, several other taxes and fees apply to imports; such costs are discussed below.

Import duty is a federally mandated product specific tax. After the creation of the MERCOSUR Customs Union, the four member countries (Argentina, Brazil, Paraguay, and Uruguay) adopted a single import tariff structure known as the “common external tariff” (known in Brazil as the “TEC”). After the adoption of the TEC, Brazilian import tariff rates were reduced, but they are still high in comparison to U.S. import tariff rates. In most cases, Brazilian import duty rates range from 10% to 20 %.

The IPI is a federal tax levied on most domestic and imported manufactured products. It is assessed at the point of sale by the manufacturer or processor in the case of domestically-produced goods and at the point of Customs clearance in the case of imports. The IPI tax is not considered a cost for the importer since the value is credited to the importer. Specifically, when the product is sold to the end-user, the importer debits the IPI cost. The government levies the IPI rate by determining how essential the product may be for the Brazilian end-user. Generally, the IPI tax rate ranges from 0% to 15 %.

The ICMS is a state government value-added tax applicable to both imports and domestic products. The ICMS tax on imports is assessed ad valorem on the CIF value, plus import duty, plus IPI. Although importers have to pay the ICMS to clear the imported product through Customs, it is not necessarily a cost item for the importer because the paid value represents a credit to the importer. When the product is sold to the end-user, the importer debits the ICMS, which is included in the final price of the product and is paid by the end-user. Effectively, the tax is paid only on the value-added since the cost of the tax is generally passed on to the buyer in the price charged for the merchandise. The ICMS tax due to the state government by companies is based on taxes collected on sales by the company minus the taxes paid in purchasing raw materials and intermediate goods. The ICMS tax is levied on both intrastate and interstate transactions and is assessed on every transfer or movement of merchandise. The rate varies among the Brazilian states (e.g., in the State of Sao Paulo, the rate is 18%).

Licenses are required for the following imports:

- *Automatic License*: As a general rule, Brazilian imports are subject to the “automatic import license” process. All commercial, financial, and fiscal information regarding each individual importation as well as information required for the preparation of the Import Declaration (DI) are fed into the SISCOMEX. The Brazilian Foreign Trade Secretariat (SECEX) is the government agency responsible for granting import licenses. Some products and import operations are subject to special requirements, which should be completed prior to Customs clearance. These requirements include:
    - Approval by Brazil's Agricultural Ministry for imports of meat and food products, seafood products, milk and milk derivatives, eggs and honey, fruits, and several other animal or vegetal products.
    - The Brazilian Environmental Protection Agency may need to issue a determination concerning imports of natural, synthetic, or artificial rubber.
    - Company and/or product registration may be required for imports of numbers for asbestos, agricultural chemicals, pharmaceutical products, perfumes and cosmetics, and medical related products.
- *Non-Automatic License (LI)*: Whenever imports are subject to the LI, the importer must provide information concerning each shipment either prior to shipment or prior to Customs clearance. The required information includes a description of the product as well as the harmonized tariff classification number, quantity, value of the shipment, shipping costs, etc.

The Brazilian Government has eliminated most import prohibitions. However, it places special controls on certain imports and prohibits the importation of others. The general rule prohibits the importation of all used consumer goods. Used capital goods are allowed only when there is no similar produced locally. There is also specific legislation that prohibits the importation of products that the Brazilian regulatory agencies consider harmful to health/sanity, national security interest, and to the environment. Imports of used machinery and equipment to the Manaus Free Trade Zone are subject to more liberal treatment.

Export Controls

At this time, the U.S. government maintains no export controls specific to Brazil. Normal controls are maintained on military equipment, high-tech information systems, and equipment of a highly sensitive nature. Items on the Munitions Control list are also a controlled export to Brazil, requiring a special license from the U.S. State Department or Commerce Department, depending on the item. Companies needing more information on this subject can check with the Trade Information Center by telephone (1-800) USA-TRADE, or online at the U.S. Department of Commerce's website at http://doc.gov.

Foreign Trade Zones / Warehouses

There are eight free trade zones in Brazil: Manaus, in the State of Amazonas; Macapá/Santana, in the State of Amapá; Tabatinga, in the state of Amazonas, which borders Peru; Guajaramirim, in the State of Rondônia, bordering Bolivia; Bonfim and Paracaíma in the State of Roraima; and Brasiléia-Epitaciolândia and Cruzeiro do Sul in the State of Acre.

Membership in Free Trade Agreements

Brazil is a founding member of Mercosul (the Southern Cone Common Market), a member of the

WTO, and a participant in negotiations that would establish a FTAA by the year 2005. An imperfect Customs union, Mercosul members (Brazil, Argentina, Paraguay, and Uruguay) implemented a Common External Tariff (CET) on January 1, 1995. Chile and Bolivia joined Mercosul as associate members in 1996.

Investment Climate in Brief

- Brazil welcomes foreign investment and has lifted many restrictions in the past several years to encourage foreign investors. The 1962 Foreign Capital law and subsequent amendments govern most foreign investment. Foreign investors have been permitted to invest in the Brazilian stock market since 1991.

- Constitutional amendments passed in 1995 opened formerly closed sectors, such as petroleum, telecommunications, mining, power generation, and internal transport to foreign investors.

- Foreign investment accounted for US$42 billion in sales revenue, 48% of the total. One third of the foreign investment was from the United States (US$14 billion).

- All foreign investment must be registered with the Central Bank. In most cases, registration is a pro forma matter. The certificate of registration permits remittances of profits and repatriation of invested capital without additional Central Bank authorization.

- In 2001, Brazil received a US$22.5 billion in FDI. Foreign direct investment dropped to US$16.6 billion in 2002, reflecting both investor uncertainty in Brazil and a global decline in investment.

- Brazil has witnessed a significant reduction in trade barriers in recent years. In 2002, Brazil's average MFN tariff was 11.8% versus 32% percent in 1990, and average tariff should have fallen to 10.3% in 2003.

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

- Taxes are numerous and burdensome, but do not discriminate between foreign and domestic firms, although in a few instances there have been complaints that the value-added tax collected by individual states (ICMS) is set to favor local companies. Taxes on commercial and financial transactions are particularly burdensome, and businesses complain that these taxes hinder international competitiveness of Brazilian products. Dividend and capital gain remittances are subject to a 15% income withholding tax.

- There are few restrictions on converting or transferring funds associated with an investment. However, the Central Bank has broad administrative discretion in regulating remittances, which in the past has created problems for foreign investors. At this time, foreign investors may freely convert Brazilian currency at the “commercial” rate.

- Although some improvements have been made, the Brazilian legal and procedural system is complex and overburdened. State courts in particular are subject to political influence. Corruption is a persistent problem in Brazil.

- The Brazilian financial sector is large and sophisticated, in part a legacy of the high inflation period when good financial management was critical for a firm's survival. Despite current moderate inflation rates, bank lending spreads remain extremely high due to taxation, risk, high mandatory reserve requirements, and administrative overhead.

- In January of 2000, Brazilian regulators removed a number of remaining restrictions on foreign portfolio investment. As a result, 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.

Business Customs

Travel Advisory and Visas

While visitors for tourism may enter Brazil with the tourist visa, Brazilian law requires that travelers must have a temporary (business) visa if they plan to transact business. “Business” would include signing legal documents, engaging in financial or commercial transactions, and working or engaging in research. Many cases have recently been brought to our attention of U.S. companies having problems obtaining business visas. The change is apparently due to a stricter application of work requirements restrictions. In cases where a business visa would normally be sufficient, U.S. companies are being required to obtain work visas, which are difficult to obtain. The concern has been brought to the attention of the government of Brazil, which is seeking to clarify the issue. However, businessmen should be aware that anyone traveling to Brazil on work assignments may be required to obtain work visas.

For complete visa and Customs requirements for Brazil, travelers may contact the U.S. Brazilian Embassy at 3009 Whitehaven Street N.W., Washington, D.C., 20008 (telephone 202-238-2818; e-mail consular@brasilemb.org). For complete information on travel to Brazil, including safety and security, crime, traffic and road conditions, and medical and health information, business travelers may wish to consult the U.S. Department of State's consular information sheet online at http://www.travel.state.gov.

Business Infrastructure

American business visitors should become accustomed to several business conditions specific to Brazil. Compared to the United States, the pace of negotiation is slower and is based much more on personal contact. It is rare for important business deals to be concluded by telephone or letter. Many Brazilian executives do not react favorably to quick and infrequent visits by foreign sales representatives. They prefer a more continuous working relationship. The Brazilian buyer is also concerned with after-sales service provided by the exporter.

While many Brazilians may speak English, they may wish to conduct business in Portuguese. The non-Portuguese speaking U.S. executive may need an interpreter on more than 50% of business calls. Correspondence and product literature should be in Portuguese (English is preferred as a substitute over Spanish). Specifications and other technical data should be in the metric system.

Useful Web Sites

BRAZIL:

- Brazil-US Business Council http://www.brazilcouncil.org
- BrazilBiz http://www.brazilbiz.com.br
- Brazil Business Reports http://www.businessculture.com/cgi-bin/shop.pl/page=brazil.html

UNITED STATES:

- USDA Foreign Agricultural Service http://www.fas.usda.gov
- US Export Programs Guide http://infoserv2.ita.doc.gov/ticwebsite/tic.nsf/AF34FA880278BDD5825690D00656C6F/F69FDCF72B7713B58525691900746F18?OpenDocument
- Internet Guide to Trade Leads http://infoserv2.ita.doc/gov/ticwebsite/tic.nsf/504ca249c786e20f85256284006da7ab/ef7db94aef24919885266470049c1cd?OpenDocument
- US Trade Finance Resources http://infoserv2.ita.doc.gov/ticwebsite/tic.nsf/AF34FA880278BDD5825690D00656C6F/F69FDCF72B7713B58525691900746F18?OpenDocument
- Basic Guide to Exporting http://www.unzco.com/basicguide/index.html

HEMISPHERIC:

- Hemispheric Guide on Customs Procedures http://alca-ftaa.iadb.org/hgcp_eng.htm

- Hemispheric Trade and Tariff Database
  http://alca-ftaa.iadb.org/eng/ngmadb_e.htm